FEDERAL RULES
OF
CIVIL PROCEDURE

DECEMBER 1, 2016



Printed for the use
of

THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

联邦民事诉讼规则

2016年12月1日



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司法委员会
众议院

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OF
CIVIL PROCEDURE

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第2届会议

委员会印刷版

!No.8

联邦规则
的
民事诉讼程序

2016年12月1日

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的

司法委员会
众议院

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FOREWORD

This document contains the Federal Rules of Civil Procedure together with forms, as amended to December 1, 2016. The rules have been promulgated and amended by the United States Supreme Court pursuant to law, and further amended by Acts of Congress. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 28, United States Code, following the particular rule to which they relate.

Bob Goodlatte

Chairman, Committee on the Judiciary.

DECEMBER 1, 2016.

前言

本文件包含经2016年12月1日修正的《联邦民事诉讼规则》及表格。这些规则由美国最高法院依法颁布并修正，并经由国会法案进一步修正。本文件由委员会编制，以满足对包含规则最新修正案的官方最新文件的需求。

为方便用户，凡规则经修正的，规则文本之后附有该修正公布日期和该修正生效日期的引用。

美国司法会议规则与实践委员会及联邦民事诉讼规则咨询委员会编写了注释，解释规则修正案的目的和意图。委员会注释可见于《美国法典》第28编附录中，列于其相关特定规则之后。

Bob Goodlatte

主席，司法委员会。

2016年12月1日。

AUTHORITY FOR PROMULGATION OF RULES

TITLE 28, UNITED STATES CODE

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648, eff. Dec. 1, 1988; amended Pub. L. 101–650, title III, §§ 315, 321, Dec. 1, 1990, 104 Stat. 5115, 5117.)

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

规则制定权

《美国法典》第28编

2072. 程序与证据规则；制定权

(a) 最高法院有权为美国地区法院(包括其治安法官面前的程序)和上诉法院的案件制定一般实践与程序规则及证据规则。

(b) 此类规则不得削减、扩大或修改任何实体权利。与此类规则冲突的所有法律在此类规则生效后不再具有效力或作用。

(c) 此类规则可界定地区法院的裁决何时为本编第1291条下上诉目的的终局裁决。(公法100-702第IV编第401(a)条增补，1988年11月19日，102 Stat.4648,1988年12月1日生效；公法101-650第III编第315、321条修正，1990年12月1日，104 Stat.5115、5117。)

2073. 程序和证据规则；规定方法

(a)(1) 司法会议应制定并公布本条下审议拟议规则的程序。

(2) 司法会议可授权任命委员会，通过推荐根据本编第2072条和第2075条制定的规则来协助会议。每个此类委员会应由法官席成员和职业律师界成员，以及初审和上诉法官组成。

(b) 司法会议应授权根据本条(a)款任命一个关于实践、程序和证据规则的常设委员会。该常设委员会应审查如此任命的其他委员会提出的每项建议，并向司法会议推荐实践、程序和证据规则，以及根据本条(a)(2)款任命的委员会所提议的规则变更，以保持一致性并促进司法公正。

(c)(1) 根据本节任命的任何委员会根据本章处理事务的每次会议均应向公众开放，除非该委员会在公开会议上且有过半数成员出席的情况下，认定将当日剩余会议的全部或部分对公众关闭符合公共利益，并说明关闭会议的理由。委员会应保存根据本章处理事务的每次会议记录并向公众提供，但此类记录中与闭门会议有关并向公众提供的任何部分，可包含为避免妨碍闭门会议目的所必需的删减。

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988; amended Pub. L. 103–394, title I, § 104(e), Oct. 22, 1994, 108 Stat. 4110.)

§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649, eff. Dec. 1, 1988.)

(2) 根据本条任命的委员会为处理本章下事务而举行的任何会议，应事先给予充分通知，使所有利害关系人能够出席。

(d) 在根据本条或第2072条或第2075条提出建议时，提出该建议的机构应提供拟议规则、关于该规则的解释性说明，以及解释该机构行动的书面报告，包括任何少数意见或其他单独意见。

(e) 未遵守本条不影响根据本编第2072条或第2075条制定的规则。

(公法100-702第IV编第401(a)条增补，1988年11月19日，102 Stat.4649,1988年12月1日生效；公法103-394第I编第104(e)条修正，1994年10月22日，108 Stat.4110。)

2074. 程序与证据规则；提交国会；生效日期

(a) 最高法院应在根据第2072条规定的规则生效当年的5月1日之前，向国会转交拟议规则的副本。该规则不得早于其被转交当年的12月1日生效，除非法律另有规定。最高法院可确定该规则对当时待决程序适用的范围，但最高法院不得要求将该规则适用于当时待决的进一步程序，前提是待决该程序的法院认为在该程序中适用该规则不可行或将造成不公正，在此情况下适用原规则。

(b) 任何此类设立、废除或修改证据特权的规则，除非经国会法案批准，否则不具有效力或作用。

(新增，Pub.L.100-702，第四编，401(a),1988年11月19日，102 Stat.4649,1988年12月1日生效。)

HISTORICAL NOTE

The Supreme Court prescribes rules of civil procedure for the district courts pursuant to section 2072 of Title 28, United States Code, as enacted by Title IV ''Rules Enabling Act'' of Pub. L. 100–702 (approved Nov. 19, 1988, 102 Stat. 4648), effective December 1, 1988. Pursuant to section 2074 of Title 28, the Supreme Court transmits to Congress (not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective) a copy of the proposed rule. The rule takes effect no earlier than December 1 of the year in which the rule is transmitted unless otherwise provided by law.

By act of June 19, 1934, ch. 651, 48 Stat. 1064 (subsequently 28 United States Code, §2072), the Supreme Court was authorized to prescribe general rules of civil procedure for the district courts. The rules, and subsequent amendments, were not to take effect until (1) they had been first reported to Congress by the Attorney General at the beginning of a regular session and (2) after the close of that session.

Under a 1949 amendment to 28 U.S.C., §2072, the Chief Justice of the United States, instead of the Attorney General, reported the rules to Congress. In 1950, section 2072 was further amended so that amendments to the rules could be reported to Congress not later than May 1 each year and become effective 90 days after being reported. Effective December 1, 1988, section 2072 was repealed and supplanted by new sections 2072 and 2074, see first paragraph of Historical Note above.

The original rules, pursuant to act of June 19, 1934, were adopted by order of the Court on December 20, 1937, transmitted to Congress by the Attorney General on January 3, 1938, and became effective September 16, 1938 (308 U.S. 645; Cong. Rec., vol. 83, pt. 1, p. 13, Exec. Comm. 905; H. Doc. 460 and H. Doc. 588, 75th Cong.)

Rule 81(a)(6) was abrogated by order of the Court on December 28, 1939, transmitted to Congress by the Attorney General on January 3, 1940, effective April 3, 1941 (308 U.S. 642; Cong. Rec., vol. 86, pt. 1, p. 14, Exec. Comm. 1152).

Further amendments were adopted by the Court by order dated December 27, 1946, transmitted to Congress by the Attorney General on January 3, 1947, and became effective March 19, 1948 (329 U.S. 839; Cong. Rec., vol. 93, pt. 1, p. 41, Exec. Comm. 32; H. Doc. 46 and H. Doc. 473, 80th Cong.). The amendments affected Rules 6, 7, 12, 13, 14, 17, 24, 26, 27, 28, 33, 34, 36, 41, 45, 52, 54, 56, 58, 59, 60, 62, 65, 66, 68, 73, 75, 77, 79, 81, 84, and 86, and Forms 17, 20, 22, and 25.

Additional amendments were adopted by the Court by order dated December 29, 1948, transmitted to Congress by the Attorney General on January 3, 1949, and became effective October 20, 1949 (335 U.S. 919; Cong. Rec., vol. 95, pt. 1, p. 94, Exec. Comm. 24; H.

历史注释

最高法院依据《美国法典》第28编第2072条(由Pub.L.100-702第四编"规则授权法"颁布，1988年11月19日批准，102 Stat.4648)为地区法院制定民事诉讼规则，于1988年12月1日生效。依据《美国法典》第28编第2074条，最高法院向国会(不迟于依据第2072条制定的规则生效当年的5月1日)转交拟议规则的副本。除法律另有规定外，该规则最早于转交当年的12月1日生效。

根据1934年6月19日法案(第651章，48 Stat.1064，后为《美国法典》第28编第2072条)，最高法院被授权为地区法院制定一般民事诉讼规则。这些规则及后续修正案须在(1)由司法部长在常会开始时首次向国会报告且(2)该会期结束后方可生效。

根据1949年对《美国法典》第28编第2072条的修正，由美国首席大法官而非司法部长向国会报告规则。1950年，第2072条被进一步修正，使规则修正案可不迟于每年5月1日向国会报告，并在报告后90天生效。自1988年12月1日起，第2072条被废止，由新的第2072条和第2074条取代，见上文历史注释第一段。

原始规则依据1934年6月19日法案，由法院于1937年12月20日命令通过，由司法部长于1938年1月3日转交国会，并于1938年9月16日生效(308 U.S.645;Cong.Rec.，第83卷，第1部分，第13页，Exec.Comm.905;H.Doc.460及H.Doc.588，第75届国会)。

规则81(a)(6)由法院于1939年12月28日命令废止，由司法部长于1940年1月3日转交国会，1941年4月3日生效(308 U.S.642;Cong.Rec.，第86卷，第1部分，第14页，Exec.Comm.1152)。

进一步修正案由法院于1946年12月27日命令通过，由司法部长于1947年1月3日转交国会，并于1948年3月19日生效(329 U.S.839;Cong.Rec.，第93卷，第1部分，第41页，Exec.Comm.32;H.Doc.46及H.Doc.473，第80届国会)。修正案涉及规则6、7, 12, 13, 14, 17, 24, 26, 27, 28, 33, 34, 36, 41, 45, 52, 54, 56, 58, 59, 60, 62、65、66、68、73、75、77、79、81、84 和 86，以及表格 17、20、22 和 25.

附加修正案由法院于1948年12月29日命令通过，由司法部长于1949年1月3日转交国会，并于1949年10月20日生效(335 U.S.919;Cong.Rec.，第95卷，第1部分，第94页，Exec.Comm.24;H.

Doc. 33, 81st Cong.). The amendments affected Rules 1, 17, 22, 24, 25, 27, 37, 45, 57, 60, 62, 65, 66, 67, 69, 72, 73, 74, 75, 76, 79, 81, 82, and 86, and Forms 1, 19, 22, 23, and 27.

Amendment to Rule 81(a)(7) and new Rule 71A and Forms 28 and 29 were adopted by the Court by order dated April 30, 1951, transmitted to Congress on May 1, 1951, and became effective August 1, 1951 (341 U.S. 959; Cong. Rec., vol. 97, pt. 4, p. 4666, Exec. Comm. 414; H. Doc. 121, 82d Cong.).

Additional amendments were adopted by the Court by order dated April 17, 1961, transmitted to Congress by the Chief Justice on April 18, 1961, and became effective July 19, 1961 (368 U.S. 1009; Cong. Rec., vol. 107, pt. 5, p. 6524, Exec. Comm. 821). The amendments affected Rules 25, 54, 62, and 86, and Forms 2 and 19.

Additional amendments were adopted by the Court by order dated January 21, 1963, transmitted to Congress by the Chief Justice (374 U.S. 861; Cong. Rec., vol. 109, pt. 1, p. 1037, Exec. Comm. 267; H. Doc. 48, 88th Cong.), and became effective July 1, 1963, by order of the Court dated March 18, 1963 (374 U.S. 861; Cong. Rec., vol. 109, pt. 4, p. 4639, Exec. Comm. 569; H. Doc. 48, pt. 2, 88th Cong.; see also H. Doc. 67, 88th Cong.). The amendments affected Rules 4, 5, 6, 7, 12, 13, 14, 15, 24, 25, 26, 28, 30, 41, 49, 50, 52, 56, 58, 71A, 77, 79, 81, and 86, and Forms 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 21, 22–A, and 22–B, and added Forms 30, 31, and 32.

Additional amendments were adopted by the Court by order dated February 28, 1966, transmitted to Congress by the Chief Justice on the same day (383 U.S. 1029; Cong. Rec., vol. 112, pt. 4, p. 4229, Exec. Comm. 2094; H. Doc. 391, 89th Cong.), and became effective July 1, 1966. The amendments affected Rules 1, 4, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 23, 24, 26, 38, 41, 42, 43, 44, 47, 53, 59, 65, 68, 73, 74, 75, 81, and 82, and Forms 2 and 15, and added Rules 23.1, 23.2, 44.1, and 65.1, and Supplementary Rules A, B, C, D, E, and F for certain Admiralty and Maritime claims. The amendments govern all proceedings in actions brought after they became effective and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court an application in a particular action then pending would not be feasible or would work injustice, in which event the former procedure applies.

In addition, Rule 6(c) of the Rules of Civil Procedure promulgated by the Court on December 20, 1937, effective September 16, 1938; Rule 2 of the Rules for Practice and Procedure under section 25 of an act to amend and consolidate the acts respecting copyright, approved March 4, 1909, promulgated by the Court on June 1, 1909, effective July 1, 1909; and the Rules of Practice in Admiralty and Maritime Cases, promulgated by the Court on December 6, 1920, effective March 7, 1921, as revised, amended and supplemented, were rescinded, effective July 1, 1966.

Additional amendments were adopted by the Court by order dated December 4, 1967, transmitted to Congress by the Chief Justice on January 15, 1968 (389 U.S. 1121; Cong. Rec., vol. 114, pt. 1, p. 113, Exec. Comm. 1361; H. Doc. 204, 90th Cong.), and became effective July 1, 1968. The amendments affected Rules 6(b), 9(h), 41(a)(1), 77(d), 81(a), and abrogated the chapter heading ''IX. Appeals'' and Rules 72–76, and Form 27.

Additional amendments were adopted by the Court by order dated March 30, 1970, transmitted to Congress by the Chief Justice

Doc.33，第81届国会)。修正案涉及规则1、17、22、24、25、27、37、45、57、60、62、65、66、67、69、72、73、74、75、76、79、81、82及

86，以及表格1、19、22、23和27。

对规则81(a)(7)的修正及新规则71A和表格28和29由法院于1951年4月30日命令通过，于1951年5月1日转交国会，并于1951年8月1日生效(341 U.S.959;Cong.Rec.，第97卷，第4部分，第4666页，Exec.Comm.414;H.Doc.121，第82届国会)。

附加修正案由法院于1961年4月17日命令通过，由首席大法官于1961年4月18日转交国会，并于1961年7月19日生效(368 U.S.1009;Cong.Rec.，第107卷，第5部分，第6524页，Exec.Comm.821)。修正案涉及规则25、54、62和86，以及表格2和19。

法院于1963年1月21日以命令形式通过了附加修正案，由首席大法官转交国会(374 U.S.861; Cong.Rec., vol.109, pt.1, p.1037, Exec.Comm.267; H.Doc.48, 88th Cong.)，并依法院1963年3月18日命令于1963年7月1日生效(374 U.S.Rec.4, p.4639, Exec.569; H.Doc.48, pt.2, 88th Cong.；另见 H.Doc.67, 88th Cong.)。该修正案涉及规则 4、5、6、7、12、13、14、15、24、25、26、28、30、41、49、50、52、56、58、71A、77、79、

81和86，以及表格3、4、5、6、7、8、9、10、11、12、13、16、18、21、22-A和22-B，并新增表格30、31和32。

附加修正案由法院于1966年2月28日命令通过，由首席大法官于同日转交国会(383 U.S.1029;Cong.Rec.，第112卷，第4部分，第4229页，Exec.Comm.2094;H.Doc.391，第89届国会)，并于1966年7月1日生效。修正案涉及规则1、4、8、9、12、13、14、15、17、18、19、20、23、24、26、38、41、42、43、44、47、53、59、65、68、73、

74、75、81和82，以及表格2和15，并增加了规则23.1、23.2、44.1和65.1，以及关于某些海事和海商索赔的补充规则A、B、C、D、E和F。修正案管辖其生效后提起的诉讼中的所有程序，以及当时待决诉讼中的所有后续程序，但法院认为在特定待决诉讼中适用不可行或会造成不公正的情况除外，此种情况下适用先前程序。

此外，法院于1937年12月20日颁布、1938年9月16日生效的《民事诉讼规则》规则6(c)；法院于1909年6月1日颁布、1909年7月1日生效的《关于修订和合并有关版权诸法案的法案》第25条项下《实践与程序规则》规则 2；以及法院于1920年12月6日颁布、1921年3月7日生效的《海事与海商案件实践规则》(经修订、修正和补充)，均予废止，自1966年7月1日起生效。

附加修正案由法院于1967年12月4日命令通过，由首席大法官于1968年1月15日转交国会(389 U.S.1121;Cong.Rec.，第114卷，第1部分，第113页，Exec.Comm.1361;H.Doc.204，第90届国会)，并于1968年7月1日生效。修正案涉及规则6(b)、9(h)、41(a)(1)、77(d)、81(a)，并废止章节标题“IX.上诉”及规则72-76和表格27。

附加修正案由法院于1970年3月30日命令通过，由首席大法官于同日

on the same day (398 U.S. 977; Cong. Rec., vol. 116, pt. 7, p. 9861, Exec. Comm. 1839; H. Doc. 91–291), and became effective July 1, 1970. The amendments affected Rules 5(a), 9(h), 26, 29 to 37, 45(d), and 69(a), and Form 24.

On March 1, 1971, the Court adopted additional amendments, which were transmitted to Congress by the Chief Justice on the same day (401 U.S. 1017; Cong. Rec., vol. 117, pt. 4, p. 4629, Exec. Comm. 341; H. Doc. 92–57), and became effective July 1, 1971. The amendments affected Rules 6(a), 27(a)(4), 30(b)(6), 77(c), and 81(a)(2).

Further amendments were proposed by the Court in its orders dated November 20 and December 18, 1972, and transmitted to Congress by the Chief Justice on February 5, 1973 (409 U.S. 1132 and 419 U.S. 1133; Cong. Rec., vol. 119, pt. 3, p. 3247, Exec. Comm. 359; H. Doc. 93–46). Although these amendments were to have become effective July 1, 1973, Public Law 93–12 (approved March 30, 1973, 87 Stat. 9) provided that the proposed amendments ''shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by Act of Congress.'' Section 3 of Public Law 93–595 (approved January 2, 1975, 88 Stat. 1949) approved the amendments proposed by the Court, to be effective July 1, 1975. The amendments affected Rules 30(c), 43, and 44.1, and abrogated Rule 32(c).

On April 29, 1980, the Court adopted additional amendments, which were transmitted to Congress by the Chief Justice on the same day (446 U.S. 995; Cong. Rec., vol. 126, pt. 8, p. 9535, Exec. Comm. 4260; H. Doc. 96–306), and became effective August 1, 1980. The amendments affected Rules 4, 5, 26, 28, 30, 32, 33, 34, 37, and 45.

Section 205(a) and (b) of Public Law 96–481 (approved October 21, 1980, 94 Stat. 2330) repealed Rule 37(f) and deleted the corresponding item from the Table of Contents, to be effective October 1, 1981.

Amendments to Rule 4 were adopted by the Court by order dated April 28, 1982, transmitted to Congress by the Chief Justice on the same day (456 U.S. 1013; Cong. Rec., vol. 128, pt. 6, p. 8191, Exec. Comm. 3822; H. Doc. 97–173), and became effective August 1, 1982. However, Public Law 97–227 (approved August 2, 1982, 96 Stat. 246) provided that the amendments to Rule 4 shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress, and further provided that this Act shall be effective as of August 1, 1982, but shall not apply to the service of process that takes place between August 1, 1982, and the date of enactment of this Act [August 2, 1982]. Section 5 of Public Law 97–462 (approved January 12, 1983, 96 Stat. 2530) provided that the amendments to Rule 4 the effective date of which was delayed by Public Law 97–227 shall not take effect. Sections 2 to 4 of Public Law 97–462 amended Rule 4(a), (c) to (e), and (g), added Rule 4(j), and added Form 18–A in the Appendix of Forms, effective 45 days after enactment of Public Law 97–462 [February 26, 1983].

Additional amendments were adopted by the Court by order dated April 28, 1983, transmitted to Congress by the Chief Justice on the same day (461 U.S. 1095; Cong. Rec., vol. 129, pt. 8, p. 10479, Exec. Comm. 1027; H. Doc. 98–54), and became effective August 1, 1983. The amendments included new Rules 26(g), 53(f), 72 through

转交国会(398 U.S.977;Cong.Rec.，第116卷，第7部分，第9861页，Exec.Comm.1839;H.Doc.91-291)，并于1970年7月1日生效。修正案涉及规则5(a)、9(h)、26、29至37、45(d)和69(a)，以及表格24。

1971年3月1日，法院通过附加修正案，由首席大法官于同日转交国会(401 U.S.1017;Cong.Rec.，第117卷，第4部分，第4629页，Exec.Comm.341;H.Doc.92-57)，并于1971年7月1日生效。修正案涉及规则6(a)、27(a)(4)、30(b)(6)、77(c)和81(a)(2)。

法院在其1972年11月20日和12月18日的命令中提出了进一步修正案，并由首席大法官于1973年2月5日转交国会(409 U.S.1132 和 419 U.S.1133; Cong.Rec., vol.119, pt.3, p.3247, Exec.Comm.359; H.Doc.93-46)。尽管这些修正案原定于1973年7月1日生效，但公法 93-12(1973年3月30日批准，87 Stat.9)规定，拟议修正案"不具有任何效力，除非且仅限于国会法案明确批准的范围并连同该等修正"。公法 93-595(1975年1月2日批准，88 Stat.1949)第3条批准了法院提出的修正案，自1975年7月1日起生效。该修正案涉及规则 30(c)、43 和 44.1，并废止了规则 32(c)。

1980年4月29日，法院通过附加修正案，由首席大法官于同日转交国会(446 U.S.995;Cong.Rec.，第126卷，第8部分，第9535页，Exec.Comm.4260;H.Doc.96-306)，并于1980年8月1日生效。修正案涉及规则4、5、26、28、30、32、33、34、37和45。

公法96-481(1980年10月21日批准，94 Stat.2330)第205(a)和(b)条废止规则37(f)并从目录中删除相应条目，自1981年10月1日生效。

法院于1982年4月28日以命令形式通过了规则 4 的修正案，由首席大法官于同日转交国会(456 U.S.1013; Cong.Rec., vol.128, pt.6, p.8191, Exec.Comm.3822; H.Doc.97-173)，并于1982年8月1日生效。然而，公法 97-227(1982年8月2日批准，96 Stat.246)规定，规则 4 的修正案应于1983年10月1日生效，除非此前经国会法案批准、否决或修改，并进一步规定该法案自1982年8月1日起生效，但不适用于1982年8月1日至该法案颁布之日[1982年8月2日]之间进行的送达。公法 97-462(1983年1月12日批准，96 Stat.2530)第5条规定，生效日期被公法 97-227 延迟的规则 4 修正案不得生效。公法 97-462 第2至4条修正了规则 4(a)、(c)至(e)和(g)，增加了规则 4(j)，并在《表格附录》中增加了表格 18-A，自公法 97-462 颁布后45日[1983年2月26日]起生效。

附加修正案由法院于1983年4月28日命令通过，由首席大法官于同日转交国会(461 U.S.1095;Cong.Rec.，第129卷，第8部分，第10479页，Exec.Comm.1027;H.Doc.98-54)，并于1983年8月1日生效。修正案包括新规则26(g)、53(f)、72至

76 and new Official Forms 33 and 34, and amendments to Rules 6(b), 7(b), 11, 16, 26(a), (b), 52(a), 53(a), (b), (c), and 67.

Additional amendments were adopted by the Court by order dated April 29, 1985, transmitted to Congress by the Chief Justice on the same day (471 U.S. 1153; Cong. Rec., vol. 131, pt. 7, p. 9826, Exec. Comm. 1156; H. Doc. 99–63), and became effective August 1, 1985. The amendments affected Rules 6(a), 45(d)(2), 52(a), 71A(h), and 83, Official Form 18–A, and Rules B(1), C(3), and E(4)(f) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Additional amendments were adopted by the Court by order dated March 2, 1987, transmitted to Congress by the Chief Justice on the same day (480 U.S. 953; Cong. Rec., vol. 133, pt. 4, p. 4484, Exec. Comm. 714; H. Doc. 100–40), and became effective August 1, 1987. The amendments affected Rules 4(b), (d)(1), (e), (i)(1), 5(b), (e), 6(e), 8(a), (b), (e)(2), 9(a), 11, 12(a), (b), (e) to (g), 13(a), (e), (f), 14, 15, 16(f), 17, 18, 19(a), (b), 20(b), 22(1), 23(c)(2), 23.1, 24(a), 25(b), (d), 26(b)(3), (e)(1), (2), (f)(5), (g), 27(a)(1), (b), 28(b), 30(b)(1), (2), (4), (6), (7), (c), (e), (f)(1), (g), 31(a), (b), 32(a)(4), 34(a), 35(a), (b)(1), (2), 36, 37(a)(2), (b)(2), (c), (d), (g), 38(c), (d), 41(a)(2), (b), 43(f), 44(a)(1), 44.1, 45(c), (f), 46, 49(a), 50(b), (d), 51, 53(a), (c) to (e)(1), (3), (5), 54(c), 55(a), (b), (e), 56(a), (b), (e) to (g), 60(b), 62(f), 63, 65(b), 65.1, 68, 69, 71, 71A(d)(2), (3)(ii), (e) to (g), (j), 73(b), 75(b)(2), (c)(1), (2), (4), 77(c), 78, and 81(c), and Rules B, C(3), (6), E(2)(b), (4)(b), (c), (5)(c), (9)(b), (c), and F(1) to (6) of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Additional amendments were adopted by the Court by order dated April 25, 1988, transmitted to Congress by the Chief Justice on the same day (485 U.S. 1043; Cong. Rec., vol. 134, pt. 7, p. 9154, Exec. Comm. 3515; H. Doc. 100–185), and became effective August 1, 1988. The amendments affected Rules 17(a) and 71A(e).

Section 7047(b) of Public Law 100–690 (approved November 18, 1988, 102 Stat. 4401) amended Rule 35. Section 7049 of Public Law 100–690, which directed amendment of Rule 17(a) by striking ''with him'', and section 7050 of Public Law 100–690, which directed amendment of Rule 71A(e) by striking ''taking of the defendants property'' and inserting ''taking of the defendant's property'', could not be executed because of the intervening amendments to those Rules by the Court by order dated April 25, 1988, effective August 1, 1988.

Additional amendments were adopted by the Court by order dated April 30, 1991, transmitted to Congress by the Chief Justice on the same day (500 U.S. 963; Cong. Rec., vol. 137, pt. 7, p. 9721, Ex. Comm. 1190; H. Doc. 102–77), and became effective December 1, 1991. The amendments affected Rules 5, 15, 24, 34, 35, 41, 44, 45, 47, 48, 50, 52, 53, 63, 72, and 77, the headings for chapters VIII and IX, and Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims, added new Official Forms 1A and 1B, and abrogated Form 18–A.

Section 11 of Pub. L. 102–198 (approved December 9, 1991, 105 Stat. 1626) amended Rule 15(c)(3) as transmitted to Congress by the Supreme Court to become effective on December 1, 1991; provided that Forms 1A and 1B included in the transmittal shall not be effective; and provided that Form 18–A, abrogated by the Supreme Court in the transmittal, effective December 1, 1991, shall continue in effect on or after that date.

76 以及新的官方表格 33 和 34，以及对规则的修订
6(b)、7(b)、11、16、26(a)、(b)、52(a)、53(a)、(b)、(c) 和 67。

附加修正案由法院于1985年4月29日命令通过，由首席大法官于同日转交国会(471 U.S.1153;Cong.Rec.，第131卷，第7部分，第9826页，Exec.Comm.1156;H.Doc.99-63)，并于1985年8月1日生效。修正案涉及规则6(a)、45(d)(2)、52(a)、71A(h)和83，官方表格18-A，以及关于某些海事和海商索赔的补充规则B(1)、C(3)和E(4)(f)。

附加修正案由法院于1987年3月2日命令通过，由首席大法官于同日转交国会(480 U.S.953;Cong.Rec.，第133卷，第4部分，第4484页，Exec.Comm.714;H.Doc.100-40)，并于1987年8月1日生效。修正案涉及规则4(b)、(d)(1)、(e)、(i)(1)、5(b)、(e)、6(e)、8(a)、(b)、(e)(2)、9(a)、11、12(a)、(b)、(e)至(g)、13(a)、(e)、(f)、14、15、16(f)、17、18、19(a)、(b)、20(b)、22(1)、23(c)(2)、23.1、24(a)、25(b)、(d)、26(b)(3)、(e)(1)、(2)、(f)(5)、(g)、27(a)(1)、(b)、28(b)、30(b)(1)、(2)、(4)、(6)、(7)、(c)、(e)、(f)(1)、(g)、31(a)、(b)、32(a)(4)、34(a)、35(a)、(b)(1)、(2)、36、37(a)(2)、(b)(2)、(c)、(d)、(g)、38(c)、(d)、41(a)(2)、(b)、43(f)、44(a)(1)、44.1、45(c)、(f)、46、49(a)、50(b)、(d)、51、53(a)、(c) 至 (e)(1)、(3)、(5)、54(c)、55(a)、(b)、(e)、56(a)、(b)、(e) 至 (g)、60(b)、62(f)、63、65(b)、65.1、68、69、71、71A(d)(2)、(3)(ii)、(e) 至 (g)、(j)、73(b)、75(b)(2)、(c)(1)、(2)、(4)、77(c)、78和81(c)，以及关于某些海事和海商索赔的补充规则B、C(3)、(6)、E(2)(b)、(4)(b)、(c)、(5)(c)、(9)(b)、(c)和F(1)至(6)。

附加修正案由法院于1988年4月25日命令通过，由首席大法官于同日转交国会(485 U.S.1043;Cong.Rec.，第134卷，第7部分，第9154页，Exec.Comm.3515;H.Doc.100-185)，并于1988年8月1日生效。修正案涉及规则17(a)和71A(e)。

公法 100-690(1988年11月18日批准，102 Stat.4401)第7047(b)条修正了规则 35。公法 100-690 第7049条指示通过删除"with him"修正规则 17(a)，公法 100-690 第7050条指示通过删除"taking of the defendants property"并插入"taking of the defendant's property"修正规则 71A(e)，但因法院于1988年4月25日以命令形式、自1988年8月1日起生效对这些规则作出的介入修正而无法执行。

法院于1991年4月30日以命令形式通过了附加修正案，并由首席大法官于同日转交国会(500 U.S.963; Cong.Rec., vol.137, pt.7, p.9721, Ex.Comm.1190; H.Doc.102-77)，于1991年12月1日生效。该修正案影响了规则 5、15、24、34、35、41、44、45、47、48、50、52、53、63、72 和 77，第八章和第九章的标题，以及《某些海事和海商索赔补充规则》的规则 C 和 E，新增了新的官方表格 1A 和 1B，并废除了表格 18-A。

公法102-198(1991年12月9日批准，105 Stat.1626)第11条修正了最高法院转交国会拟于1991年12月1日生效的规则15(c)(3)；规定转交中包含的表格1A和1B不生效；并规定最高法院在转交中废止的表格18-A自1991年12月1日起继续有效。

Additional amendments were adopted by the Court by order dated April 22, 1993, transmitted to Congress by the Chief Justice on the same day (507 U.S. 1089; Cong. Rec., vol. 139, pt. 6, p. 8127, Exec. Comm. 1102; H. Doc. 103–74), and became effective December 1, 1993. The amendments affected Rules 1, 4, 5, 11, 12, 15, 16, 26, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 50, 52, 53, 54, 58, 71A, 72, 73, 74, 75, and 76, added new Rule 4.1, affected Forms 2, 33, 34, and 34A, added new Forms 1A, 1B, and 35, and abrogated Form 18–A.

Additional amendments were adopted by the Court by order dated April 27, 1995, transmitted to Congress by the Chief Justice on the same day (514 U.S. 1151; Cong. Rec., vol. 141, pt. 8, p. 11745, Ex. Comm. 804; H. Doc. 104–64), and became effective December 1, 1995. The amendments affected Rules 50, 52, 59, and 83.

Additional amendments were adopted by the Court by order dated April 23, 1996, transmitted to Congress by the Chief Justice on the same day (517 U.S. 1279; Cong. Rec., vol. 142, pt. 6, p. 8831, Ex. Comm. 2487; H. Doc. 104–201), and became effective December 1, 1996. The amendments affected Rules 5 and 43.

Additional amendments were adopted by the Court by order dated April 11, 1997, transmitted to Congress by the Chief Justice on the same day (520 U.S. 1305; Cong. Rec., vol. 143, pt. 4, p. 5550, Ex. Comm. 2795; H. Doc. 105–67), and became effective December 1, 1997. The amendments affected Rules 9 and 73, abrogated Rules 74, 75, and 76, and affected Forms 33 and 34.

Additional amendments were adopted by the Court by order dated April 24, 1998, transmitted to Congress by the Chief Justice on the same day (523 U.S. 1221; H. Doc. 105–266), and became effective December 1, 1998. The amendments affected Rule 23.

Additional amendments were adopted by the Court by order dated April 26, 1999, transmitted to Congress by the Chief Justice on the same day (526 U.S. 1183; Cong. Rec., vol. 145, pt. 6, p. 7907, Ex. Comm. 1787; H. Doc. 106–54), and became effective December 1, 1999. The amendments affected Rule 6 and Form 2.

Additional amendments were adopted by the Court by order dated April 17, 2000, transmitted to Congress by the Chief Justice on the same day (529 U.S. 1155; Cong. Rec., vol. 146, pt. 5, p. 6328, Ex. Comm. 7336; H. Doc. 106–228), and became effective December 1, 2000. The amendments affected Rules 4, 5, 12, 14, 26, 30, and 37 and Rules B, C, and E of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Additional amendments were adopted by the Court by order dated April 23, 2001, transmitted to Congress by the Chief Justice on the same day (532 U.S. 992; Cong. Rec., vol. 147, pt. 5, p. 6126, Ex. Comm. 1575; H. Doc. 107–61), and became effective December 1, 2001. The amendments affected Rules 5, 6, 65, 77, 81, and 82.

Additional amendments were adopted by the Court by order dated April 29, 2002, transmitted to Congress by the Chief Justice on the same day (535 U.S. 1147; Cong. Rec., vol. 148, pt. 5, p. 6813, Ex. Comm. 6623; H. Doc. 107–204), and became effective December 1, 2002. The amendments affected Rules 54, 58, and 81 and Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims and added new Rule 7.1.

Additional amendments were adopted by the Court by order dated March 27, 2003, transmitted to Congress by the Chief Justice on the same day (538 U.S. 1083; Cong. Rec., vol. 149, pt. 6, p. 7689,

附加修正案由法院于1993年4月22日命令通过，由首席大法官于同日转交国会(507 U.S.1089;Cong.Rec.，第139卷，第6部分，第8127页，Exec.Comm.1102;H.Doc.103-74)，并于1993年12月1日生效。修正案涉及规则1、4、5、11、12、15、16、26、28、

29、30、31、32、33、34、36、37、38、50、52、53、54、58、71A、72、73、74、75 以及 76，新增规则 4.1，影响表格 2、33、34 和 34A，新增表格 1A、1B 和 35，并废止表格 18-A。

法院于1995年4月27日以命令通过了附加修正案，首席大法官于同日将其转交国会(514 U.S.1151; Cong.Rec., vol.141, pt.8, p.11745, Ex.Comm.804; H.Doc.104-64)，并于1995年12月1日生效。该修正案影响了规则 50、52、59 和 83。

法院于1996年4月23日以命令通过了附加修正案，首席大法官于同日将其转交国会(517 U.S.1279; Cong.Rec., vol.142, pt.6, p.8831, Ex.Comm.2487; H.Doc.104-201)，并于1996年12月1日生效。该修正案影响了规则 5 和 43。

法院于1997年4月11日以命令通过了附加修正案，首席大法官于同日将其转交国会(520 U.S.1305; Cong.Rec., vol.143, pt.4, p.5550, Ex.Comm.2795; H.Doc.105-67)，并于1997年12月1日生效。该修正案影响了规则 9 和 73，废止了规则 74、75 和 76，并影响了表格 33 和 34。

法院于1998年4月24日以命令通过了附加修正案，首席大法官于同日将其转交国会(523 U.S.1221; H.Doc.105-266)，并于1998年12月1日生效。该修正案影响了规则 23。

法院于1999年4月26日以命令通过了附加修正案，首席大法官于同日将其转交国会(526 U.S.1183; Cong.Rec., vol.145, pt.6, p.7907, Ex.Comm.1787; H.Doc.106-54)，并于1999年12月1日生效。该修正案影响了规则 6 和表格 2。

法院于2000年4月17日以命令通过了附加修正案，首席大法官于同日将其转交国会(529 U.S.1155; Cong.Rec., vol.146, pt.5, p.6328, Ex.Comm.7336; H.Doc.106-228)，并于2000年12月1日生效。该修正案影响了规则 4、5、12、14、26、30 和 37，以及《特定海事与海商索赔补充规则》的规则 B、C 和 E。

法院于2001年4月23日以命令通过了附加修正案，首席大法官于同日将其转交国会(532 U.S.992; Cong.Rec., vol.147, pt.5, p.6126, Ex.Comm.1575; H.Doc.107-61)，并于2001年12月1日生效。该修正案影响了规则 5、6、65、77、81 和 82。

法院于2002年4月29日以命令通过了附加修正案，首席大法官于同日将其转交国会(535 U.S.1147; Cong.Rec., vol.148, pt.5, p.6813, Ex.Comm.6623; H.Doc.107-204)，并于2002年12月1日生效。该修正案影响了规则 54、58 和 81，以及《特定海事与海商索赔补充规则》的规则 C，并新增了规则 7.1。

法院于2003年3月27日以命令通过了附加修正案，首席大法官于同日将其转交国会(538 U.S.1083; Cong.Rec., vol.149, pt.6, p.7689,

Ex. Comm. 1493; H. Doc. 108–56), and became effective December 1, 2003. The amendments affected Rules 23, 51, 53, 54, and 71A and Forms 19, 31, and 32.

Additional amendments were adopted by the Court by order dated April 25, 2005, transmitted to Congress by the Chief Justice on the same day (544 U.S. 1173; Cong. Rec., vol. 151, pt. 7, p. 8784, Ex. Comm. 1906; H. Doc. 109–23), and became effective December 1, 2005. The amendments affected Rules 6, 27, and 45, and Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Additional amendments were adopted by the Court by order dated April 12, 2006, transmitted to Congress by the Chief Justice on the same day (547 U.S. 1233; Cong. Rec., vol. 152, pt. 6, p. 7213, Ex. Comm. 7317; H. Doc. 109–105), and became effective December 1, 2006. The amendments affected Rules 5, 9, 14, 16, 24, 26, 33, 34, 37, 45, 50, and 65.1, added new Rule 5.1, affected Form 35, affected Rules A, C, and E of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, and added new Rule G to such Supplemental Rules.

Additional amendments were adopted by the Court by order dated April 30, 2007, transmitted to Congress by the Chief Justice on the same day (550 U.S. 1003; Cong. Rec., vol. 153, pt. 8, p. 10612, Ex. Comm. 1377; H. Doc. 110–27), and became effective December 1, 2007. The amendments affected Rules 1 through 86 and added new Rule 5.2; Forms 1 through 35 were amended to become restyled Forms 1 through 82.

An additional amendment was adopted by the Court by order dated April 23, 2008, transmitted to Congress by the Chief Justice on the same day (553 U.S. 1149; Cong. Rec., vol. 154, pt. 8, p. 11078, Ex. Comm. 6881; H. Doc. 110–117), and became effective December 1, 2008. The amendment affected Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

Additional amendments were adopted by the Court by order dated March 26, 2009, transmitted to Congress by the Chief Justice on March 25, 2009 (556 U.S. 1341; Cong. Rec., vol. 155, pt. 8, p. 10210, Ex. Comm. 1264; H. Doc. 111–29), and became effective December 1, 2009. The amendments affected 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, added new Rule 62.1, and affected Forms 3, 4, and 60, and Rules B, C, and G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

Additional amendments were adopted by the Court by order dated April 28, 2010, transmitted to Congress by the Chief Justice on the same day (559 U.S.1139; Cong. Rec., vol. 156, pt. 6, p. 8139, Ex. Comm. 7473; H. Doc. 111–111), and became effective December 1, 2010. The amendments affected Rules 8, 26, and 56, and Form 52.

Additional amendments were adopted by the Court by order dated April 16, 2013, transmitted to Congress by the Chief Justice on the same day (569 U.S.——; Cong. Rec., vol. 159, p. H2653, Daily Issue, Ex. Comm. 1495; H. Doc. 113–29), and became effective December 1, 2013. The amendments affected Rules 37 and 45.

An additional amendment was adopted by the Court by order dated April 25, 2014, transmitted to Congress by the Chief Justice on the same day (572 U.S.——; Cong. Rec., vol. 160, p. H7933, Daily

Ex.Comm.1493; H.Doc.108-56)，并于2003年12月1日生效。该修正案影响了规则 23、51、53、54 和 71A，以及表格 19、31 和 32。

法院于2005年4月25日以命令通过了附加修正案，首席大法官于同日将其转交国会(544 U.S.1173; Cong.Rec., vol.151, pt.7, p.8784, Ex.Comm.1906; H.Doc.109-23)，并于2005年12月1日生效。该修正案影响了规则 6、27 和 45，以及《特定海事与海商索赔补充规则》的规则 B 和 C。

法院于2006年4月12日以命令通过了附加修正案，首席大法官于同日将其转交国会(547 U.S.1233; Cong.Rec., vol.152, pt.6, p.7213, Ex.Comm.7317; H.Doc.109-105)，并于2006年12月1日生效。该修正案影响了规则 5、9、14、16、24、26、33、34、37、45、50 和 65.1，新增了规则 5.1，影响了表格 35，影响了《海事或海商索赔及资产没收补充规则》的规则 A、C 和 E，并在该补充规则中新增了规则 G。

法院于2007年4月30日以命令通过了附加修正案，首席大法官于同日将其转交国会(550 U.S.1003; Cong.Rec., vol.153, pt.8, p.10612, Ex.Comm.1377; H.Doc.110-27)，并于2007年12月1日生效。该修正案影响了规则 1 至 86，并新增了规则 5.2；表格 1 至 35 经修正后成为重新编排的表格 1 至 82。

法院于2008年4月23日以命令通过了附加修正案，首席大法官于同日将其转交国会(553 U.S.1149; Cong.Rec., vol.154, pt.8, p.11078, Ex.Comm.6881; H.Doc.110-117)，并于2008年12月1日生效。该修正案影响了《海事或海商索赔及资产没收补充规则》的规则 C。

法院于2009年3月26日以命令通过了附加修正案，首席大法官于2009年3月25日将其转交国会(556 U.S.1341; Cong.Rec., vol.155, pt.8, p.10210, Ex.Comm.1264; H.Doc.111-29)，并于2009年12月1日生效。该修正案影响了规则 6、12、13、14、15、23、27、32、38、48、50、52、53、54、55、56、59、62、65、68、71.1、72 和 81，新增了规则 62.1，并影响了表格 3、4 和 60，以及《海事或海商索赔及资产没收补充规则》的规则 B、C 和 G。

法院于2010年4月28日以命令通过了附加修正案，首席大法官于同日将其转交国会(559 U.S.1139; Cong.Rec., vol.156, pt.6, p.8139, Ex.Comm.7473; H.Doc.111-111)，并于2010年12月1日生效。该修正案影响了规则 8、26 和 56，以及表格 52。

法院于2013年4月16日以命令通过了附加修正案，首席大法官于同日将其转交国会(569 U.S.--; Cong.Rec., vol.159, p.H2653, Daily Issue, Ex.Comm.1495; H.Doc.113-29)，并于2013年12月1日生效。该修正案影响了规则 37 和 45。

法院于2014年4月25日以命令通过了附加修正案，首席大法官于同日将其转交国会(572 U.S.--; Cong.Rec., vol.160, p.H7933, Daily

Issue, Ex. Comm. 7579; H. Doc. 113–163), and became effective December 1, 2014. The amendment affected Rule 77.

Additional amendments were adopted by the Court by order dated April 29, 2015, transmitted to Congress by the Chief Justice on the same day (575 U.S.——; Cong. Rec., vol. 161, p. H2790, Daily Issue, Ex. Comm. 1373; H. Doc. 114–33), and became effective December 1, 2015. The amendments affected Rules 1, 4, 16, 26, 30, 31, 33, 34, 37, and 55, abrogated Rule 84, and abrogated the Appendix of Forms (Forms 1 through 82).

Additional amendments were adopted by the Court by order dated April 28, 2016, transmitted to Congress by the Chief Justice on the same day (578 U.S.——; Cong. Rec., vol. 162, p. H2147, Daily Issue, Ex. Comm. 5233; H. Doc. 114–128), and became effective December 1, 2016. The amendments affected Rules 4, 6, and 82.

Committee Notes

Committee Notes prepared by the Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States, explaining the purpose and intent of the amendments are set out in the Appendix to Title 28, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Committee Notes, are set out in the House documents listed above.

Issue, Ex.Comm.7579; H.Doc.113-163)，并于2014年12月1日生效。该修正案影响了规则77。

法院于2015年4月29日以命令通过了附加修正案，首席大法官于同日将其转交国会(575 U.S.--; Cong.Rec., vol.161, p.H2790, Daily Issue, Ex.Comm.1373; H.Doc.114-33)，并于2015年12月1日生效。该修正案影响了规则 1、4、16、26、30、31、33、34、37 和 55，废止了规则 84，并废止了表格附录(表格 1 至 82)。

法院于2016年4月28日以命令通过了附加修正案，首席大法官于同日将其转交国会(578 U.S.--; Cong.Rec., vol.162, p.H2147, Daily Issue, Ex.Comm.5233; H.Doc.114-128)，并于2016年12月1日生效。该修正案影响了规则 4、6 和 82。

委员会注释

由美国司法会议实践与程序规则委员会和联邦民事诉讼规则咨询委员会编写的委员会注释，解释了修正案的目的和意图，载于《美国法典》第28编附录中，紧随其相关特定规则之后。此外，上述规则和修正案连同委员会注释载于上文所列的众议院文件中。

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RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS [1]

Effective September 16, 1938, as amended to December 1, 2016

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

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

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 2. One Form of Action

There is one form of action—the civil action.

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

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

Rule 3. Commencing an Action

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

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

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

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

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

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

(F) be signed by the clerk; and

(G) bear the court's seal.

[1] Title amended December 29, 1948, effective October 20, 1949.

民事诉讼规则

供

美国联邦地区法院 1

自1938年9月16日起生效，至2016年12月1日修订

第一编规则适用范围；诉讼形式

规则 1. 范围与目的

本规则管辖美国地区法院所有民事诉讼和程序，但规则81另有规定的除外。法院和当事人应当对本规则进行解释、管理和适用，以确保每一起诉讼和程序得到公正、迅速和经济的裁决。

(1948年12月29日修正，1949年10月20日生效；1966年2月28日修正，1966年7月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效；2015年4月29日修正，2015年12月1日生效。)

规则 2. 单一诉讼形式

只有一种诉讼形式--民事诉讼。(2007年4月30日修正，2007年12月1日生效。)

第二编提起诉讼；送达诉讼文书；书状、动议和命令

规则 3. 提起诉讼

民事诉讼通过向法院提交起诉状而启动。

(2007年4月30日修订，2007年12月1日生效。)

规则 4. 传票

(a) 目录；修正案。

(1) 目录。传票必须：

(A) 载明法院和当事人；(B) 向被告送达；

(C) 载明原告律师的姓名和地址，或--如无代理人--载明原告的姓名和地址；

(D) 说明被告必须出庭和答辩的时间；

(E) 通知被告，若未能出庭和答辩，将导致法院根据起诉状中请求的救济对被告作出缺席判决；

(F) 由书记员签署；且

(G) 加盖法院印章。

1 标题于1948年12月29日修订，1949年10月20日生效。

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

(b) ISSUANCE. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) SERVICE.

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

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

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

(d) WAIVING SERVICE.

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

(A) be in writing and be addressed:

(i) to the individual defendant; or

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

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

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

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

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

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

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

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

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

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

(2) 修订。法院可允许对传票进行修订。

(b) 签发。在提交起诉状之时或之后，原告可以向书记官提交传票以供签署和盖章。如果传票填写妥当，书记官必须签署、盖章并向原告签发，以便向被告送达。传票--或发给多个被告的传票副本--必须为每一名需被送达的被告签发。

(c) 服务。

(1) 一般规定。传票必须与起诉状副本一并送达。原告有责任在规则4(m)允许的期限内完成传票和起诉状的送达，并必须向实施送达的人提供必要的副本。

(2) 送达人。任何年满18周岁且非当事人的人均可送达传票和起诉状。

(3) 由联邦法警或特别指定人员送达。经原告请求，法院可以命令由美国联邦法警或副法警，或由法院特别指定的人员进行送达。如果原告依据 28 U.S.C.1915 获准以贫民身份进行诉讼，法院必须作出此种命令。

U.S .C.1915 或作为海员依据《美国法典》第28编第1916条。

(d) 放弃送达服务。

(1) 请求放弃送达。受规则 4(e)、(f) 或 (h) 项下送达约束的个人、公司或协会，有义务避免送达传票的不必要费用。原告可以通知该被告诉讼已经启动，并请求被告放弃传票送达。该通知和请求必须：

(A) 采用书面形式并致送：

(i) 向个人被告发出；或(ii) 对于受规则4(h)送达约束的被告，向高级职员、管理代理人或一般代理人，或任何其他经指定或依法授权接收诉讼文书送达的代理人发出；

(B) 写明起诉状提交的法院；

(C) 附有起诉状副本、本规则4所附放弃送达表格的2份副本，以及用于退回该表格的预付邮资方式；

(D) 使用本规则4所附表格，告知被告放弃送达和不放弃送达的后果；

(E) 说明请求发送的日期；

(F) 给予被告合理期限，自请求发出之日起至少30天--如请求发送至美国任何司法区以外的被告，则至少60天--以退回放弃送达书；以及

(G) 以一等邮件或其他可靠方式寄送。

(2) 未放弃送达。如果位于美国境内的被告无正当理由未签署并退回位于美国境内的原告所请求的放弃送达书，法院必须对该被告施加：

(A) 此后为完成送达而产生的费用；以及

(B) 为收取上述送达费用而提出的任何动议所产生的合理费用，包括律师费。

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

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

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

(e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

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

(2) doing any of the following:

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

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

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

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

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

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

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

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

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

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

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

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

(g) SERVING A MINOR OR AN INCOMPETENT PERSON. A minor or an incompetent person in a judicial district of the United States

(3) 放弃送达后的答辩时间。被告在收到诉讼文书送达之前及时退回放弃送达书的，无需在请求发出后 60 日之前--或向美国任何司法区以外的被告发出后 90 日之前--对起诉状作出答辩。

(4) 提交放弃送达书的结果。原告提交放弃送达书时，无需提供送达证明，本规则适用如同传票和起诉状已于提交放弃送达书时送达。

(5) 不放弃管辖权和审判地。放弃传票送达不放弃对属人管辖权或审判地的任何异议。

(e) 在司法辖区内为个人提供服务

美国境内。除联邦法律另有规定外，个人--未成年人、无行为能力人或已提交放弃送达书的人除外--可以在美国司法区内通过以下方式送达：

(1) 遵循地区法院所在州或送达实施地州普通管辖权法院在诉讼中送达传票的州法律；或

(2) 实施以下任何行为：

(A) 将传票和起诉状副本当面交付给该个人；

(B) 将各一份副本留置于该个人的住所或惯常居所，交给居住在该处的适龄且审慎的人；或

(C) 将各一份副本交付给经指定或依法授权接收诉讼文书送达的代理人。

(f) 向身处外国的个人送达。除非联邦

法律另有规定外，个人--未成年人、无行为能力人或已提交放弃送达书的人除外--可以在美国任何司法区以外的地方通过以下方式送达：

(1) 通过任何国际商定的、合理计算以给予通知的送达方式，例如《关于向国外送达民事或商事司法文书和司法外文书的海牙公约》所授权的送达方式；

(2) 如果没有国际商定的方式，或者国际协议允许但未规定其他方式，则通过合理计算以给予通知的方法：

(A) 按照外国法律为该外国法院一般管辖权诉讼中在该国送达所规定的方式；

(B) 按照外国当局针对调查委托书或请求书所指示的方式；或

(C除非外国法律禁止，通过：(i) 将传票和起诉书的副本亲自送达个人；或

(ii) 使用书记官填写地址并寄送给个人且要求签署回执的任何邮寄方式；或

(3) 通过国际协议不禁止的其他方式，按照法院的命令。

(g) 向未成年人或无行为能力人送达。未成年人或

美国司法区内的无行为能力人

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

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

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

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

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

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

(i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.

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

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

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

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

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

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

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

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

必须遵循在送达地所在州的一般管辖权法院提起的诉讼中向此类被告送达传票或类似令状的州法律进行送达。不在美国任何司法区内的未成年人或无行为能力人必须按照规则 4(f)(2)(A)、(f)(2)(B) 或 (f)(3) 规定的方式送达。

(h) 向公司、合伙企业或协会送达。非除非联邦法律另有规定或被告的弃权书已提交，否则国内或外国公司，或可以以通用名称被起诉的合伙或其他非法人社团，必须按以下方式送达：

(1) 在合众国的一个司法区内：

(A)按照规则 4(e)(1) 规定的向个人送达的方式；或

(B) 将传票和起诉书的副本送达给高级职员、管理或一般代理人，或任何其他经指定或依法授权接收诉讼文书送达的代理人--并且，如果该代理人是法规授权的且法规如此要求--还须将每份文件的副本邮寄给被告；或

(2) 在美国任何司法区以外的地方，按照规则 4(f) 规定的向个人送达的任何方式，但 (f)(2)(C)(i) 项下的亲自送达除外。

(i) 向美国及其机构、公司、高级职员或雇员送达。

(1)美国。向美国送达，一方必须：(A)(i) 将传票和起诉书的副本送达给诉讼提起地所在地区的美国检察官--或送达给美国检察官以书面形式向法院书记官提交指定的助理美国检察官或文书雇员--或

(ii) 通过挂号信或认证邮件将每份文件的副本寄送给美国检察官办公室的民事文书书记官；

(B) 通过挂号信或认证邮件将每份文件的副本寄送给位于华盛顿特区的美国司法部长；以及

(C) 如果诉讼挑战非当事方机构或美国官员的命令，通过挂号信或认证邮件将每份文件的副本寄送给该机构或官员。

(2) 机构；公司；以官方身份被起诉的高级职员或雇员。向美国机构或公司，或仅以官方身份被起诉的美国高级职员或雇员送达时，一方当事人必须向美国送达，并且还必须通过挂号信或认证邮件向该机构、公司、高级职员或雇员寄送传票和起诉状的副本。

(3) 以个人身份被起诉的高级职员或雇员。向因代表美国履行职务相关行为或不作为而以个人身份被起诉的美国高级职员或雇员送达(无论该高级职员或雇员是否同时以官方身份被起诉)，一方当事人必须向美国送达，并且还必须依据规则 4(e)、(f) 或 (g) 向该高级职员或雇员送达。

(4) 延长时间。法院必须给予一方合理的时间来补正其未能：

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

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

(j) SERVING A FOREIGN, STATE, OR LOCAL GOVERNMENT.

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

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

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

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

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

(C) when authorized by a federal statute.

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

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

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

(*l*) PROVING SERVICE.

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

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

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

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

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

(m) TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its

(A) 向规则 4(i)(2) 要求送达的人送达，如果该方已向美国检察官或美国司法部长送达；或

(B) 按照规则 4(i)(3) 向美国送达，如果该方已向美国高级职员或雇员送达。

(j) 为外国、州或地方政府提供服务。

(1) 外国。外国或其政治分区、机构或工具必须按照 28 U.S.C.1608 送达。

(2) 州或地方政府。受起诉的州、市政公司或任何其他州设立政府组织，必须通过以下方式送达：

(A) 将传票和起诉书的副本送达给其首席执行官；或

(B) 按照该州法律规定的向此类被告送达传票或类似令状的方式送达每份文件的副本。

(k) 领土有效送达的地域限制。

(1) 一般规定。送达传票或提交送达弃权书确立对被告的对人管辖权：

(A) 被告受地区法院所在州的一般管辖权法院的管辖；

(B) 被告是根据规则 14 或 19 合并的当事人，且在美国司法区内送达，且距离传票签发地不超过 100 英里；或

(C) 经联邦法规授权时。

(2) 州法院管辖权之外的联邦请求。对于依据联邦法律产生的请求，送达传票或提交放弃送达书即确立对被告的属人管辖权，如果：

(A) 被告不受任何州一般管辖权法院的管辖；以及

(B) 行使管辖权符合美国宪法和法律。

(l) 证明服务。

(1) 所需宣誓书。除送达被放弃外，必须向法院提交送达证明。除由美国联邦法警或副法警送达外，送达证明必须由送达人的宣誓书作出。

(2) 美国境外送达。在美国任何司法区以外进行的送达，必须按以下方式证明：

(A) 如果是根据规则 4(f)(1) 作出的，则按适用的条约或公约的规定证明；或

(B) 如果是根据规则 4(f)(2) 或 (f)(3) 作出的，则通过收件人签署的收据证明，或通过其他使法院确信传票和起诉状已送达收件人的证据证明。

(3) 送达的有效性；修改送达证明。未能证明送达不影响送达的有效性。法院可以允许修改送达证明。

(m) 送达的时间限制。如果被告在起诉状提交后 90 天内未获送达，法院--根据动议或在其

own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).[1]

(n) ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

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

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

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 97–462, §2, Jan. 12, 1983, 96 Stat. 2527, eff. Feb. 26, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015; Apr. 28, 2016, eff. Dec. 1, 2016.)

RULE 4 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.

(Caption)

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

WHY ARE YOU GETTING THIS?

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

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

WHAT HAPPENS NEXT?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will

[1] Rule 4(m) is set out above as it appears in the Supreme Court order of Apr. 28, 2016. As amended by the Supreme Court order of Apr. 29, 2015, the last sentence of Rule 4(m) reads as follows: ''This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).'' The language added to the last sentence in 2015, ''or to service of a notice under Rule 71.1(d)(3)(A)'', probably should be part of Rule 4(m), but does not appear in the 2016 amendment.

自行通知原告后--必须驳回针对该被告的诉讼且不得损害其权利，或命令在指定时间内完成送达。但如果原告证明未能送达有正当理由，法院必须将送达时间延长一段适当的时间。本(m) 款不适用于根据规则 4(f)、4(h)(2) 或 4(j)(1) 在外国进行的送达。[1]

(n) 主张对财产或资产的管辖权。

(1) 联邦法律。如联邦制定法授权，法院可对财产主张管辖权。必须按该制定法的规定向财产主张人发出通知，或依本规则送达传票。

(2) 州法律。在表明通过依本规则合理努力送达传票仍无法在提起诉讼的地区法院获得对被告的对人管辖权时，法院可对该地区内发现的被告资产主张管辖权。管辖权通过按该地区州法律规定的条件和方式扣押该资产而取得。

（经1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1980年4月29日修正，1980年8月1日生效；《公法》第97-462号第2条，1983年1月12日，96 Stat. 2527，1983年2月26日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2000年4月17日修正，2000年12月1日生效；2007年4月30日修正，2007年12月1日生效；2015年4月29日修正，2015年12月1日生效；2016年4月28日修正，2016年12月1日生效。）规则4 诉讼通知及放弃传票送达请求。

(Caption)

致(列明被告姓名--或者，如果被告是公司、合伙企业或协会--列明被授权接收送达的高级职员或代理人):

你为什么会收到这个?

已有一宗诉讼在本院针对你或你所代表的实体提起，案号见上文。随函附上起诉状副本。本文件并非传票，亦非法院的正式通知。这是一项请求：为避免费用，你应签署并交回随附的放弃送达书，以放弃传票的正式送达。为避免上述费用，你必须在以下所示日期(即本通知发出之日)起(至少给予 30 日，或如被告位于美国任何司法区之外，则至少给予 60 日)内交回已签署的放弃送达书。随函附上放弃送达书表格两份，以及一个已贴邮票、写明回邮地址的信封或其他预付回邮方式，用于交回其中一份。另一份你可自行保留。

接下来会发生什么?

如果您退回签署的放弃书，我将把它提交给法院。此后诉讼将如同您已在放弃书提交之日获送达一样进行，但不会向您送达传票，您将有

1 规则 4(m) 按美国最高法院 2016 年 4 月 28 日命令中的文本列于上文。经美国最高法院 2015 年 4 月 29 日命令修正后，规则 4(m) 最后一句如下："本 (m) 款不适用于根据规则 4(f) 或 4(j)(1) 在外国进行的送达，也不适用于根据规则 71.1(d)(3)(A) 送达通知。"2015 年添加到最后一句的措辞"也不适用于根据规则 71.1(d)(3)(A) 送达通知"，可能本应属于规则 4(m) 的一部分，但未出现在 2016 年修正案中。

have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

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

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

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

Date:_____

_____
(Signature of the attorney
or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

RULE 4 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

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

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

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

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

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

Date:_____

_____
(Signature of the attorney
or unrepresented party)

_____
(Printed name)

_____
(Address)

_____
(E-mail address)

_____
(Telephone number)

自本通知发出之日起 60 天(见下方日期)的时间来答复起诉状(如果本通知发送至美国任何司法区以外的地方，则为 90 天)。

如果您未在所示时间内退回签署的放弃书，我将安排向您送达传票和起诉状。并且我将请求法院要求您或您所代表的实体支付送达费用。

请阅读随附的关于避免不必要费用义务的说明。

我证明本请求已于下列日期发送给您。日期：IIIIIIIIII IIIIIIIIII IIIIIIIIIIIIII(律师或非代理当事人签名)

IIIIIIIIIIIIIIIIIIIIIIII(打印姓名)IIIIIIIIIIIIIIIIIIIIIIII(地址)IIIIIIIIIIIIIIIIIIIIIIII(电子邮件地址)IIIIIIIIIIIIIIIIIIIIIII(电话号码)

规则 4 放弃送达传票。

(Caption)

致(原告的律师或无代理人的原告)：我已收到您要求放弃本诉讼中传票送达的请求，以及起诉状副本一份、本放弃送达表格两份和一份用于将签署后的表格副本寄回给您的预付邮资方式。

我，或我所代表的实体，同意节省本案中送达传票和起诉状的费用。

我理解，我，或我所代表的实体，将保留对诉讼、法院管辖权及诉讼地点的所有抗辩或异议，但我放弃对缺少传票或送达的任何异议。

我还理解，我，或我所代表的实体，必须在本请求发送之日 IIIIIIIIIIIIIIIIII 起 60 日内(如在美国境外发送，则为 90 日内)提交并送达答辩状或根据规则 12 提出的动议。如我未能如此行事，将对我或我所代表的实体作出缺席判决。

日期：IIIIIIIIII IIIIIIIIII IIIIIIIIIIIIII(律师或非代理当事人签名)IIIIIIIIII

IIIIIIIIIIIIII(打印姓名)IIIIIIIIII IIIIIIIIIIIIII(地址)IIIIIIIIII IIIIIIIIIIIIII(电子邮件地址)IIIIIIIIII IIIIIIIIIIIIII(电话号码)

(Attach the following)

DUTY TO AVOID UNNECESSARY EXPENSES
OF SERVING A SUMMONS

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

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

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

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

Rule 4.1. Serving Other Process

(a) IN GENERAL. Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits. Proof of service must be made under Rule 4(*l*).

(b) ENFORCING ORDERS: COMMITTING FOR CIVIL CONTEMPT. An order committing a person for civil contempt of a decree or injunction issued to enforce federal law may be served and enforced in any district. Any other order in a civil-contempt proceeding may be served only in the state where the issuing court is located or elsewhere in the United States within 100 miles from where the order was issued.

(As added Apr. 22, 1993, eff. Dec. 1, 1993; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 5. Serving and Filing Pleadings and Other Papers

(a) SERVICE: WHEN REQUIRED.

(1) *In General*. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(附上以下内容)

避免不必要费用的义务

送达传票

联邦民事诉讼规则规则 4 要求某些被告配合节省送达传票和起诉状的不必要费用。位于美国境内的被告，如未返还位于美国境内的原告所请求的经签署的送达放弃书，将被要求支付送达费用，除非该被告就该未返还说明正当理由。

“正当理由”不包括认为诉讼无依据、或诉讼系在不当地点提起、或法院对本事项或对被告或被告财产无管辖权的看法。

如放弃书经签署并返还，您仍可提出这些及所有其他抗辩和异议，但您不能对缺少传票或送达提出异议。

如您放弃送达，则您必须在放弃表格上指定的时间内，向原告送达答辩状或根据规则 12 提出的动议，并向法院提交副本。通过签署并返还放弃表格，您比已送达传票的情形获得更长的答复时间。

规则 4.1. 送达其他程序文书

(a) 一般规定。除规则 4 项下的传票或规则 45 项下的传票以外的程序文书，必须由美国联邦法警或副法警或为此目的特别指定的人员送达。可在地区法院所在州的领土范围内任何地方送达，如联邦法规授权，也可在该范围之外送达。送达证明必须根据规则 4(*l*) 作出。

(b) 强制执行命令：裁定民事藐视法庭。

因民事藐视为执行联邦法律而签发的命令或禁令而拘禁某人的命令，可在任何地区送达和执行。民事藐视程序中的任何其他命令，只能在签发法院所在州或美国境内距命令签发地 100 英里以内的其他地方送达。

(1993 年 4 月 22 日增补，1993 年 12 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效。)

规则 5. 送达与提交诉辩文书及其他文件

(a) 服务：于必要时提供。

(1) 一般规定。除本规则另有规定外，下列每份文书必须送达每一方当事人：

(A) 一份命令，说明需要送达；

(B) 原始起诉状之后提交的诉答文书，除非法院根据规则 5(c) 因被告人数众多而另有命令；

(C) 要求送达一方当事人的证据开示文书，除非法院另有命令；

(D) 书面动议，但可单方听审的动议除外；以及

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear*. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property*. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) SERVICE: HOW MADE.

(1) *Serving an Attorney*. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General*. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) *Using Court Facilities*. If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(c) SERVING NUMEROUS DEFENDANTS.

(1) *In General*. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties*. A copy of every such order must be served on the parties as the court directs.

(E) 书面通知、出庭、要求或判决要约，或任何类似文书。

(2) 当事人未出庭的情形。对于因未出庭而处于缺席状态的当事人，无需向其送达。但是，针对该当事人提出新的救济请求的诉答文书，必须依照规则 4 向其送达。

(3) 扣押财产。如诉讼以扣押财产开始且无人被列明或需要被列明为被告，则在提交出庭、答辩状或请求之前所需的任何送达，必须向扣押时对该财产有保管或占有的人作出。

(b) 服务：如何作出。

(1) 向律师送达。如果当事人由律师代理，则依本规则进行的送达必须向该律师作出，除非法院命令向当事人送达。

(2) 一般送达。依本规则，文件通过以下方式送达：(A) 将其当面交给该人；

(B) 将其留在：

(i) 在该人的办公室交给书记官或其他负责人，如无人负责，则留置在办公室的显眼处；或

(ii) 如该人无办公室或办公室关闭，则在该人的住所或惯常居所交给居住在那里的适龄且具有判断力的人；

(C) 邮寄至该人最后已知地址--在此情形下，送达于邮寄时完成；

(D)如果该人没有已知地址，则将其留给法院书记官；

(E) 如该人书面同意，通过电子方式发送--在此情形下，送达于发送时完成，但如送达方得知其未到达应受送达人，则不生效；或

(F) 通过该人书面同意的任何其他方式交付--在此情形下，送达于送达人将其交付给指定负责交付的机构时完成。

(3) 使用法院设施。如果当地规则如此授权，当事人可以使用法院的传输设施依规则 5(b)(2)(E) 进行送达。

(c) 送达众多被告。

(1) 一般规定。如果诉讼涉及异常大量的被告，法院可以依动议或自行命令：

(A) 被告的诉答文书及对其的答复无需送达其他被告；

(B) 这些诉答文书及对其答复中的任何交叉请求、反请求、回避或积极抗辩，将被视为所有其他当事人均已否认或回避；以及

(C) 提交任何此类诉答文书并将其送达原告，即构成向所有当事人发出该诉答文书的通知。

(2) 通知当事人。每项此类命令的副本必须按法院指示送达当事人。

(d) FILING.

(1) *Required Filings; Certificate of Service*. Any paper after the complaint that is required to be served—together with a certificate of service—must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *How Filing Is Made—In General*. A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Electronic Filing, Signing, or Verification*. A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

(4) *Acceptance by the Clerk*. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. The court must, under 28 U.S.C. §2403, certify to the appropriate attorney general that a statute has been questioned.

(d) 归档。

(1) 必需提交的文件；送达证明。起诉状之后任何需要送达的文书--连同送达证明--必须在送达后的合理时间内提交。但规则 26(a)(1) 或 (2) 项下的披露以及下列证据开示请求和答复，在诉讼程序中被使用或法院命令提交之前，不得提交：庭外取证、书面质询、要求提供文件或有形物或准许进入土地的请求，以及要求自认的请求。

(2) 提交的方式--一般规定。文件通过以下方式提交：

(A) 交给书记员；或

(B) 交给同意接收提交的法官，该法官随后必须在文件上注明提交日期，并迅速将其送交书记官。

(3) 电子提交、签署或核实。法院可以通过当地规则，允许以符合美国司法会议所确立的任何技术标准的电子方式提交、签署或核实文件。当地规则只有在允许合理例外的情况下，才可以要求电子提交。依当地规则以电子方式提交的文件，就本规则而言即为书面文件。

(4) 书记官的接受。书记官不得仅因文件不符合本规则或当地规则或惯例所规定的格式而拒绝提交该文件。

(经1963年1月21日修订，1963年7月1日生效；1970年3月30日修订，1970年7月1日生效；1980年4月29日修订，1980年8月1日生效；1987年3月2日修订，1987年8月1日生效；1991年4月30日修订，1991年12月1日生效；1993年4月22日修订，1993年12月1日生效；1996年4月23日修订，1996年12月1日生效；2000年4月17日修订，2000年12月1日生效；2001年4月23日修订，2001年12月1日生效；2006年4月12日修订，2006年12月1日生效；2007年4月30日修订，2007年12月1日生效。)

规则 5.1. 对法规的合宪性挑战--通知、证认证与干预

(a) 当事人通知。提交诉答文书、书面动议或其他文件，对联邦或州法规的合宪性提出质疑的当事人，必须迅速：

(1) 提交一份合宪性问题通知，说明该问题并指明提出该问题的文件，如果：

(A) 被质疑的是联邦法规，且当事人不包括美国、其机构之一或其以官方身份行事的官员或雇员之一；或

(B) 被质疑的是州法规，且当事人不包括该州、其机构之一或其以官方身份行事的官员或雇员之一；以及

(2) 如果被质疑的是联邦法规，将通知和文件送达美国司法部长--如果被质疑的是州法规，则送达州司法部长--通过认证邮件或挂号邮件，或发送至司法部长为此目的指定的电子地址。

(b) 法院证明。法院必须根据 28 U.S.C.2403 向适当的司法部长证明某项法规受到质疑。

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 5.2. Privacy Protection For Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 5.2(c) or (d); and

(6) a pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255.

(c) LIMITATIONS ON REMOTE ACCESS TO ELECTRONIC FILES; SOCIAL-SECURITY APPEALS AND IMMIGRATION CASES. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

(A) the docket maintained by the court; and

(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) 介入；对案件实体的最终决定。除非法院设定较晚时间的，司法部长可以在通知提交后或法院证明挑战后60天内介入，以较早者为准。在介入期限届满前，法院可以驳回合宪性挑战，但不得作出认定该法规违宪的最终判决。

(d) 不丧失权利。当事人未提交和送达通知，或法院未予证明，不丧失原本及时主张的宪法请求或抗辩。

(2006年4月12日添加，2006年12月1日生效；2007年4月30日修订，2007年12月1日生效。)

规则 5.2. 向法院提交文件中的隐私保护

(a) 经删减的提交文件。除法院另有命令外，在向法院提交的包含个人社会安全号码、纳税人识别号码或出生日期、已知为未成年人的个人姓名或金融账户号码的电子或纸质文件中，提交文件的当事人或非当事人只能包含：

(1) 社会安全号码和纳税人识别号码的最后四位数字；

(2) 个人出生年份；(3) 未成年人的姓名首字母；以及

(4) 金融账号的最后四位数字。

(b) 删减要求的豁免。删减要求不适用于以下内容：

(1) 在没收程序中指明据称应予没收财产的金融账户号码；

(2) 行政或机构程序的记录；(3) 州法院程序的官方记录；(4) 法院或法庭的记录，如果该记录在最初提交时不受删减要求的约束；

(5) 受规则 5.2(c) 或 (d) 约束的提交文件；以及 (6) 根据 28 U.S.C.2241、2254 或 2255 提起的诉讼中的自行提交文件。

(c) 对电子文件远程访问的限制；社会安全上诉和移民案件。除法院另有命令外，在根据《社会安全法》提起的福利诉讼中，以及在涉及驱逐令、免于驱逐的救济或移民福利或拘留的诉讼或程序中，电子文件的访问权限如下：

(1) 当事人及其律师可以远程电子访问案件档案的任何部分，包括行政记录；

(2) 任何其他人可以在法院大楼内电子访问完整记录，但远程电子访问仅限于：

(A) 法院维护的案件摘要；以及

(B) 法院的意见、命令、判决或其他处置，但不包括案件卷宗或行政记录的任何其他部分。

(d) 密封提交。法院可以命令某份文件以密封方式提交而无需涂黑。法院此后可以解封该文件，或命令提交该文件的人向公开记录提交一份经涂黑的版本。

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

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

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:

(e) 保护令。基于正当理由，法院可在案件中通过命令：

(1) 要求对额外信息进行删减；或

(2)限制或禁止非当事人对已提交法院的文件进行远程电子访问。

(f) 根据密封提交补充未删节文件的选项。A

提交经涂黑文件的人也可以密封提交一份未经涂黑的副本。法院必须将未经涂黑的副本作为记录的一部分予以保留。

(g) 提交参考清单的选择。包含涂黑信息的文件可以与一份参考清单一并提交，该清单列明每一项涂黑信息，并指定一个与所列每一项唯一对应的适当标识符。该清单必须密封提交，并可以依权利予以修改。案件中凡提及所列标识符之处，均应解释为指代相应的信息项。

(h) 标识符保护的放弃。某人以未经涂黑且非密封的方式提交其自身信息，即放弃规则5.2(a) 对该人自身信息的保护。(2007年4月30日增补，2007年12月1日生效。)

规则 6. 期间的计算与延长；动议文书的提交时间

(a) 期间的计算。在计算本规则、任何地方规则或法院命令、或任何未规定时间计算方法的法律所指定的任何期间时，适用以下规则。

(1) 以日或更长时间单位规定的期限。当期限以日或更长时间单位规定时：

(A) 不计入触发该期间的事件发生之日；(B) 计算每一天，包括中间的星期六、星期日和法定节假日；以及

(C) 计入期间的最后一日，但若最后一日为星期六、星期日或法定节假日，则该期间持续计算至下一个非星期六、星期日或法定节假日之日的结束。

(2) 以小时表示的期限。当期限以小时表示时：

(A) 自触发该期间的事件发生时立即开始计算；

(B) 计算每一小时，包括中间的星期六、星期日和法定节假日期间的小时；以及

(C) 若该期间将在星期六、星期日或法定节假日结束，则该期间持续计算至下一个非星期六、星期日或法定节假日之日的同一时刻。

(3) 书记官办公室无法进入。除非法院另有命令，如果书记官办公室无法进入：

(A) 在规则 6(a)(1) 规定的提交最后一日，则提交时间延长至第一个可进入且非星期六、星期日或法定节假日之日；或

(B) 在规则 6(a)(2) 规定的提交最后一时段内，则提交时间延长至第一个可进入且非星期六、星期日或法定节假日之日的同一时刻。

(4) “最后一日”的定义。除非法规、当地规则或法院命令设定了不同的时间，最后一日结束于：

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *''Next Day'' Defined.* The ''next day'' is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *''Legal Holiday'' Defined.* ''Legal holiday'' means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) EXTENDING TIME.

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) MOTIONS, NOTICES OF HEARING, AND AFFIDAVITS.

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

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

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

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

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

(d) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

(A) 对于电子提交，以法院所在时区的午夜为准；以及

(B)在书记官办公室预定关闭时，通过其他方式提交。

(5) "次日"的定义。当期限是在某一事件之后计算的，"次日"通过继续向前计算确定；当期限是在某一事件之前计算的，"次日"通过向后计算确定。

(6) "法定假日"的定义。"法定假日"指：

(A) 法律为庆祝元旦、马丁·路德·金诞辰、华盛顿诞辰、阵亡将士纪念日、独立日、劳动节、哥伦布日、退伍军人节、感恩节或圣诞节而留出的日期；

(B)总统或国会宣布为节假日的任何日期；以及

(C) 对于在某一事件之后计算的期间，地区法院所在州宣布为节假日的任何其他日期。

(b) 延长时限。

(1) 一般规定。当某一行为可以在或必须在指定时间内完成时，法院可以基于正当理由延长时间：

(A) 无论是否有动议或通知，只要法院在原定时间或其延长期届满之前采取行动或收到请求；或

(B) 在时间届满后提出动议，若当事人因可原谅的疏忽而未采取行动。

(2) 例外。法院不得延长规则 50(b) 和 (d)、52(b)、59(b)、(d) 和 (e) 以及 60(b) 规定的行为时间。

(c) 动议、听证通知与宣誓书。

(1) 一般规定。书面动议和听证通知必须在指定听证时间至少 14 日前送达，但有以下例外：

(A) 当该动议可以单方听审时；

(B) 当这些规则规定了不同的时间；或

(C) 法院命令--当事人可以基于正当理由单方面申请--设定了不同时间。

(2) 支持性宣誓书。任何支持动议的宣誓书必须与动议一并送达。除规则 59(c) 另有规定外，任何反对宣誓书必须在听证至少 7 日前送达，除非法院允许在其他时间送达。

(d) 特定类型送达后的额外时间。当

当事人可以在送达后的指定时间内采取或必须采取行为，且送达系依据规则 5(b)(2)(C)(邮寄)、(D)(留交书记官)或 (F)(同意的其他方式)作出，则在依规则 6(a) 本应届满的期间之后增加 3 日。

（经1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1967年12月4日修正，1968年7月1日生效；1971年3月1日修正，1971年7月1日生效；1983年4月28日修正，1983年8月1日生效；1985年4月29日修正，1985年8月1日生效；1987年3月2日修正，1987年8月1日生效；1999年4月26日修正，1999年12月1日生效；2001年4月23日修正，2001年12月1日生效；2005年4月25日修正，2005年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效；2016年4月28日修正，2016年12月1日生效。）

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) PLEADINGS. Only these pleadings are allowed:
(1) a complaint;
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party complaint; and
(7) if the court orders one, a reply to an answer.

(b) MOTIONS AND OTHER PAPERS.
(1) *In General*. A request for a court order must be made by motion. The motion must:
(A) be in writing unless made during a hearing or trial;
(B) state with particularity the grounds for seeking the order; and
(C) state the relief sought.
(2) *Form*. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 7.1. Disclosure Statement

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file 2 copies of a disclosure statement that:
(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
(2) states that there is no such corporation.

(b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:
(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
(2) promptly file a supplemental statement if any required information changes.

(As added Apr. 29, 2002, eff. Dec. 1, 2002; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:
(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) DEFENSES; ADMISSIONS AND DENIALS.
(1) *In General*. In responding to a pleading, a party must:
(A) state in short and plain terms its defenses to each claim asserted against it; and
(B) admit or deny the allegations asserted against it by an opposing party.

第三编诉辩与动议

规则 7. 允许的诉状；动议和其他文件的格式

(a) 诉答文书。仅允许以下诉答文书：(1) 起诉状；(2) 对起诉状的答辩状；
(3) 对指定为反请求的反请求的答复；
(4) 对交叉诉讼的答复；
(5) 第三方起诉状；(6) 对第三方起诉状的答辩状；以及(7) 如果法院命令，对答辩状的答复。

(b) 动议和其他文书。
(1) 一般规定。请求法院命令必须通过动议提出。该动议必须：
(A) 除在听证或审判过程中作出外，应以书面形式进行；
(B) 具体说明寻求该命令的理由；以及
(C) 说明请求的救济。
(2) 表格。管辖诉答文书中标题及其他格式事项的规则适用于动议和其他文书。

(1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1983年4月28日修正，1983年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 7.1. 披露声明

(a) 谁必须提交；内容。非政府企业当事方必须提交2份披露声明，该声明：
(1) 指明任何母公司以及任何拥有其10%或以上股份的公开持股公司；或
(2) 称不存在该等公司。

提交时间；补充提交。当事方必须：(1) 在其首次出庭、诉答文书、申请书、动议、回应或其他向法院提出的请求时提交披露声明；以及

(b)
(2) 如果任何所需信息发生变化，及时提交补充声明。

(2002年4月29日新增，2002年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 8. 诉答的一般规则

(a) 救济请求。提出救济请求的诉状必须包含：
(1) 关于法院管辖权依据的简短而平实的陈述，除非法院已具有管辖权且该请求无需新的管辖权依据支持；
(2) 一份简短而明确的诉求陈述，表明诉答人有权获得救济；以及
(3) 对所寻求救济的请求，其中可包括替代性救济或不同类型的救济。

(b) 抗辩；自认与否认。
(1) 一般规定。在回应诉状时，一方当事人必须：
(A) 以简短明了的措辞陈述其对针对其主张的每一项请求的抗辩；以及
(B)承认或否认对方当事人对其提出的指控。

(2) *Denials—Responding to the Substance*. A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials*. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation*. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny*. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) AFFIRMATIVE DEFENSES.

(1) *In General*. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.

(1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense*. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(2) 否认--针对实质内容作出回应。否认必须公平地回应指控的实质内容。

(3) 概括否认与具体否认。善意打算否认诉答文书的全部指控--包括管辖依据--的一方当事人，可以通过概括否认为之。不打算否认全部指控的一方当事人，必须具体否认指定的指控，或者概括否认除明确承认者之外的全部指控。

(4) 否认指控的一部分。善意打算仅否认指控一部分的一方当事人，必须承认真实的部分并否认其余部分。

(5) 缺乏知识或信息。缺乏足以形成关于指控真实性之确信的知识或信息的一方当事人，必须如此陈述，该陈述具有否认的效力。

(6) 未予否认的后果。除与损害赔偿金额有关的指控外，如果需要诉答文书回应且该指控未被否认，则该指控视为被承认。如果不需要诉答文书回应，则指控视为被否认或已被规避。

(c) 肯定性抗辩。

(1) 一般规定。在回应诉答文书时，当事人必须积极声明任何排除或积极抗辩，包括：

- 和解与清偿；
- 仲裁与裁决；
- 风险承担；
- 共同过失；
- 胁迫；
- 禁止反言；
- 对价失败；
- 欺诈；
- 违法性；
- 工友过失致伤；
- 迟延履行抗辩
- 许可；
- 付款；
- 免除；
- 既判力；
- 防止欺诈法；
- 诉讼时效；以及
- 弃权。

(2) 错误指定。如果一方当事人错误地将抗辩指定为反诉，或将反诉指定为抗辩，法院在正义要求的情况下，必须将该诉答文书视为已正确指定，并可为如此处理施加条件。

(d) 诉答应简洁直接；替代性陈述；不一致性。

(1) 一般规定。每项主张必须简单、简洁且直接。不要求技术性格式。

(2) 请求或抗辩的替代性陈述。一方当事人可以替代性地或假设性地提出两项或两项以上的请求或抗辩陈述，可以载于单一诉项或抗辩中，也可以分别载明。如果一方当事人作出替代性陈述，只要其中任何一项陈述充分，该诉答文书即为充分。

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 9. Pleading Special Matters

(a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) CONDITIONS PRECEDENT. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) TIME AND PLACE. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.

(h) ADMIRALTY OR MARITIME CLAIM.

(1) *How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. §1292(a)(3).

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987;

(3) 不一致的请求或抗辩。一方当事人可以提出其拥有的尽可能多的独立请求或抗辩，无论是否一致。

(e) 解释诉状。对诉状的解释必须以实现公正为目的。

(1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效；2010年4月28日修正，2010年12月1日生效。)

规则 9. 诉辩特殊事项

(a) 诉讼能力或授权；法律存在。

(1) 一般规定。除为表明法院具有管辖权而需要外，诉答文书无需主张：

(A) 当事人的起诉或被诉能力；

(B)一方以代表身份起诉或被起诉的权限；或

(C) 被列为当事方的人员组织协会的法律存在。

(2) 提出上述问题。为提出上述任何问题，一方当事人必须通过具体否认为之，且必须陈述属于该当事人特有知识的任何支持性事实。

(b) 欺诈或错误；心理状态。在主张欺诈或错误时，当事人必须详细陈述构成欺诈或错误的具体情形。恶意、意图、明知及其他心理状态可以概括主张。

(c) 先决条件。在诉答先决条件时，概括主张所有先决条件均已发生或已履行即为充分。但在否认某项先决条件已发生或已履行时，当事人必须详细陈述。

(d) 官方文件或官方行为。在诉答官方文件或官方行为时，主张该文件系合法签发或该行为系合法作出即为充分。

(e) 判决。在诉答国内或外国法院、司法或准司法裁判机构、委员会或官员的判决或裁决时，仅需诉答该判决或裁决，无需表明作出该判决或裁决的管辖权。

(f) 时间和地点。在检验诉答文书的充分性时，关于时间或地点的主张具有实质性。

(g) 特殊损害。如主张某项特殊损害，必须具体列明。

(h) 海事或海商索赔。

(1) 如何指定。如果一项救济请求属于海事或海商管辖范围，同时又基于其他理由属于法院的标的物管辖权范围，则诉答文书可以为规则 14(c)、38(e) 和 82 以及《海事或海商请求及资产没收诉讼补充规则》之目的，将该请求指定为海事或海商请求。仅可在海事或海商管辖范围内审理的请求，无论是否如此指定，均为上述目的之海事或海商请求。

(2) 为上诉之指定。包含本款(h)范围内海事或海商请求的案件，属于28 U.S.C.1292(a)(3)意义上的海事案件。

(1966年2月28日修正，1966年7月1日生效；1967年12月4日修正，1968年7月1日生效；1970年3月30日修正，1970年7月1日生效；1987年3月2日修正，1987年8月1日生效；

Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 10. Form of Pleadings

(a) CAPTION; NAMES OF PARTIES. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) PARAGRAPHS; SEPARATE STATEMENTS. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) ADOPTION BY REFERENCE; EXHIBITS. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

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

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

1997年4月11日修正，1997年12月1日生效；2006年4月12日修正，2006年12月1日生效；2007年4月30日修正，2007年12月1日生效。）

规则 10. 诉状的形式

(a) 标题；当事人名称。每份诉答文书必须设有标题，载明法院名称、文书名称、案卷编号及规则7(a)的指定。起诉状的名称必须列明所有当事人；其他诉答文书的名称在列明各方第一位当事人后，可以概括指称其他当事人。

(b) 段落；分别陈述。当事人必须以编号段落陈述其请求或抗辩，每段在切实可行的范围内限于单一组事实情形。后续诉答文书可以按编号引用先前诉答文书中的段落。如这样做有助于明晰，每一项基于独立交易或事件的请求--以及除否认外的每一项抗辩--必须分别以独立项或抗辩陈述。

(c) 以引用方式采纳；附件。诉答文书中的陈述可以通过引用同一诉答文书其他部分或任何其他诉答文书或动议中的内容予以采纳。作为诉答文书附件的书面文书副本，就一切目的而言均构成该诉答文书的一部分。

(2007年4月30日修订，2007年12月1日生效。）

规则 11. 签署诉状、动议及其他文件；陈述-向法院提交陈述；制裁

(a) 签名。每份诉答文书、书面动议和其他文件必须由至少一名在案律师以该律师的名义签名--或者，如果当事人无律师代理，则由当事人本人签名。文件必须载明签名人的地址、电子邮件地址和电话号码。除非某规则或法规另有明确规定，诉答文书无需经核实或附具宣誓书。法院必须剔除未签名的文件，除非在提请该律师或当事人注意后该遗漏被迅速补正。

(b) 向法院作出的陈述。通过向法院提交诉答文书、书面动议或其他文件--无论是通过签署、提交、递交还是事后主张--律师或未委托律师的当事人即证明：经在具体情形下进行合理调查后，据其本人所知、所获信息及所信：

(1) 该文件并非出于任何不当目的而提交，例如骚扰、造成不必要的拖延或无谓增加诉讼成本；

(2) 请求、抗辩及其他法律主张有现行法律依据，或有非轻率的论据支持对现行法律进行扩展、修改或推翻，或支持确立新法律；

(3) 事实主张有证据支持，或者如经特别指明，在获得进一步调查或证据开示的合理机会后很可能有证据支持；以及

(4) 对事实主张的否认有证据支持，或者如经特别指明，系合理基于信念或缺乏信息。

(c) SANCTIONS.

(1) *In General*. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions*. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative*. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction*. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions*. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order*. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

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:

(c) 制裁。

(1) 一般规定。如经通知和合理的回应机会后，法院认定违反规则11(b)，法院可以对违反该规则或应对该违反行为负责的任何律师、律师事务所或当事人施加适当的制裁性措施。除例外情形外，律师事务所必须对其合伙人、律师助理或员工实施的违反行为承担连带责任。

(2) 制裁性措施动议。制裁性措施动议必须与其他任何动议分开提出，并且必须描述据称违反规则 11(b) 的具体行为。该动议必须依据规则 5 送达，但如果在送达后 21 天内或法院设定的其他时间内，被质疑的文书、主张、抗辩、论点或否认被撤回或适当纠正，则不得提交或呈交法院。如有正当理由，法院可判给胜诉方因该动议而发生的合理费用，包括律师费。

(3) 法院依职权。法院可以自行命令律师、律师事务所或当事人说明理由，为何命令中具体描述的行为未违反规则 11(b)。

(4) 制裁性措施的性质。依本规则施加的制裁性措施必须限于足以遏制该行为或处境类似之他人实施可比行为再次发生者为限。制裁性措施可以包括非金钱性指令；向法院缴纳罚款的命令；或者，如果依动议施加且为有效遏制所必需，则包括命令向动议方支付因违规直接导致的合理律师费及其他费用的部分或全部。

(5) 金钱性制裁性措施的限制。法院不得施加金钱性制裁性措施：

(A) 针对被代表方违反规则 11(b)(2)；或

(B) 依职权施加，除非法院在对将要被制裁的当事人或其律师提出的请求自愿撤诉或和解之前，已根据规则11(c)(3)发出说明理由令。

(6) 命令的要求。施加制裁性措施的命令必须描述受制裁的行为并解释制裁性措施的依据。

(d) 不适用于证据开示。本规则不适用于规则26至37项下的披露和证据开示请求、回应、异议及动议。

(1983年4月28日修正，1983年8月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 12. 抗辩与异议：提出时间与方式；动-
就诉答文书作出判决的动议；合并动议；放弃抗辩；审前听证

(a) 送达回应性诉状的时间。

(1) 一般规定。除非本规则或联邦法律另有规定时间，送达回应性诉答文书的时间如下：

(A) A defendant must serve an answer:
(i) within 21 days after being served with the summons and complaint; or
(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.
(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.
(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity*. The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers or Employees Sued in an Individual Capacity*. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) *Effect of a Motion*. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:
(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or
(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(A) 被告必须送达答辩状：
(i) 在收到传票和起诉状送达后 21 天内；或
(ii) 如该当事人已根据规则4(d)及时放弃送达，则在放弃送达请求发出后60日内，或如该请求系向美国任何司法辖区以外的被告发出，则在发出后90日内。

(B) 当事人必须在收到载有反请求或交叉请求的诉答文书送达后21日内送达对该反请求或交叉请求的答辩状。

(C) 当事人必须在收到要求答复的命令后21天内送达对答辩状的答复，除非该命令另有规定期限。

(2) 美国及其机构、官员或雇员以官方身份被诉。美国、美国机构，或仅以官方身份被诉的美国官员或雇员，必须在向美国检察官送达后60日内，就起诉状、反请求或交叉请求送达答辩状。

(3) 美国官员或雇员以个人身份被诉。因与代表美国履行职务相关的作为或不作为而以个人身份被诉的美国官员或雇员，必须在向该官员或雇员送达或向美国检察官送达后60日内(以较晚者为准)，就起诉状、反请求或交叉请求送达答辩状。

(4) 动议的效力。除法院另行设定时间外，依本规则送达动议按如下方式改变上述期限：

(A) 如果法院驳回该动议或将对其处理推迟至庭审，则应答诉答文书必须在收到法院行动通知后14天内送达；或

(B) 如果法院准许要求更明确陈述的动议，则应答诉答文书必须在更明确陈述送达后14天内送达。

(b) 如何提出抗辩。对任何诉答文书中救济请求的每一项抗辩，在需要应答诉答文书时，均必须在应答诉答文书中提出。但当事人可以通过动议提出下列抗辩：

(1) 缺乏事项管辖权；
(2) 缺乏属人管辖权；(3) 审判地不当；(4) 传票程序不充分；(5) 送达程序不充分；
(6) 未能陈述可据以给予救济的请求；

和
(7) 未根据规则19追加当事人。

主张上述任何抗辩的动议，如果允许应答诉答文书，则必须在诉答之前提出。如果诉答文书提出了不要求应答诉答文书的救济请求，对方当事人可以在庭审时对该请求提出任何抗辩。在应答诉答文书或动议中与一项或多项其他抗辩或异议合并提出，不构成对任何抗辩或异议的放弃。

(c) 就诉答文书作出判决的动议。诉答程序终结后--但须足够早以免延误庭审--当事人可以动议就诉答文书作出判决。

(d) RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) MOTION FOR A MORE DEFINITE STATEMENT. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) JOINING MOTIONS.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions*. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived*. A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987;

(d) 在诉状之外陈述事项的结果。如果，

在依据规则12(b)(6)或12(c)提出的动议中，如果向法院提交了诉答文书之外的材料且法院未予排除，则该动议必须作为依据规则56提出的简易判决动议处理。必须给予各方当事人合理机会提交与该动议相关的所有材料。

(e) 要求更明确陈述的动议。当事人可以就允许提出回应性诉答文书但其内容如此含糊或歧义以致该当事人无法合理准备回应的诉答文书，动议要求作出更明确的陈述。该动议必须在提交回应性诉答文书之前提出，并且必须指出所投诉的缺陷和所期望的细节。如果法院命令作出更明确的陈述，而该命令未在通知该命令后 14 天内或在法院设定的时间内被遵守，法院可以剔除该诉答文书或发出任何其他适当的命令。

(f) 删除动议。法院可以从诉答文书中删除不充分的抗辩或任何冗余、无关紧要、不适当或诽谤性内容。法院可以依下列方式行动：

(1) 自行；或

(2) 依当事人提出的动议，在回应该诉答文书之前，或者如果不允许回应，则在收到该诉答文书送达后21天内。

(g) 合并动议。

(1) 合并的权利。依本规则提出的动议可以与本规则允许的任何其他动议合并提出。

(2) 对进一步动议的限制。除规则 12(h)(2)或(3)另有规定外，依本规则提出动议的一方当事人不得再依本规则提出另一项动议，以提出该当事人本可提出但遗漏于其先前动议中的抗辩或异议。

(h) 放弃与保留某些抗辩。

(1) 部分抗辩何时视为放弃。一方当事人通过下列行为放弃规则 12(b)(2)-(5)所列的任何抗辩：

(A) 在规则12(g)(2)所述情形下将其遗漏于动议之外；或

(B) 未能：(i) 依据本规则以动议提出；或(ii) 将其纳入应答诉答文书或规则15(a)(1)当然允许的修改中。

(2) 其他抗辩何时提出。未提出可获得救济的请求、未依规则 19(b)追加必要当事人，或未提出对请求的法律抗辩，可以在下列情形提出：

(A) 在规则7(a)允许或命令的任何诉答文书中；(B) 通过依据规则12(c)提出的动议；或(C) 在庭审时。

(3) 缺乏事项管辖权。如果法院在任何时候认定其缺乏事项管辖权，法院必须驳回诉讼。

(i) 审前听审。如果当事人提出动议，规则12(b)(1)-(7)所列的任何抗辩--无论是在诉答文书中提出还是通过动议提出--以及依据规则12(c)提出的动议，均必须在庭审前听审并裁决，除非法院命令推迟至庭审。

(经1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；

Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 13. Counterclaim and Crossclaim

(a) COMPULSORY COUNTERCLAIM.

(1) *In General*. A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions*. The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) PERMISSIVE COUNTERCLAIM. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) RELIEF SOUGHT IN A COUNTERCLAIM. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) COUNTERCLAIM AGAINST THE UNITED STATES. These rules do not expand the right to assert a counterclaim—or to claim a credit—against the United States or a United States officer or agency.

(e) COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) [ABROGATED.]

(g) CROSSCLAIM AGAINST A COPARTY. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) JOINING ADDITIONAL PARTIES. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) SEPARATE TRIALS; SEPARATE JUDGMENTS. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

1993年4月22日修正，1993年12月1日生效；2000年4月17日修正，2000年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

规则 13. 反请求与交叉请求

(a) 强制反诉。

(1) 一般规定。诉答文书必须将诉答人在送达时对对方当事人享有的下列请求作为强制反请求提出，如果该请求：

(A) 产生于作为对方当事人请求标的的交易或事件；且

(B) 不要求追加法院无法对其取得管辖权的另一方当事人。

(2) 例外。如果符合以下情形，起诉人无需陈述该主张：

(A) 在诉讼开始时，该请求是另一未决诉讼的标的；或

(B) 对方当事人通过扣押或其他未就该请求对诉答人确立属人管辖权的程序起诉其请求，且诉答人未依据本规则提出任何反请求。

(b) 任意反请求。诉答文书可以将任何非强制性的请求作为对对方当事人的反请求提出。

(c) 反请求中寻求的救济。反请求无需减少或抵销对方当事人所寻求的救济。反请求可以请求金额超过或性质不同于对方当事人所寻求救济的救济。

(d) 针对美国的反诉。这些规则确实不得扩大针对美国或美国官员或机构提出反请求--或主张抵销--的权利。

(e) 反诉在诉答后成熟或取得。该法院可以允许一方当事人提交补充诉答文书，主张该当事人在送达先前诉答文书之后到期或取得的反请求。

(f) [已废止。]

(g) 对共同当事人的交叉请求。诉答文书可以载明一方当事人对共同当事人的任何请求作为交叉请求，如果该请求产生于作为原诉讼或反请求标的的交易或事件，或者如果该请求与作为原诉讼标的的任何财产有关。交叉请求可以包括一项请求，即共同当事人对交叉请求人承担或可能承担针对交叉请求人在诉讼中所主张的全部或部分请求的责任。

(h) 追加当事人。规则 19 和规则 20 管辖在反请求或交叉请求中追加当事人。

(i) 分别审理；分别判决。如果法院根据规则 42(b) 命令分别审理，则法院在拥有管辖权的情况下，可以根据规则 54(b) 对反请求或交叉请求作出判决，即使对方当事人的请求已被驳回或以其他方式解决。

(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1963 年 1 月 21 日修订，1963 年 7 月 1 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效。）

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.

(2) *Third-Party Defendant's Claims and Defenses*. The person served with the summons and third-party complaint—the ''third-party defendant'':

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant*. The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately*. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty*. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(6) *Third-Party Complaint In Rem*. If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the ''summons'' includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.

(b) WHEN A PLAINTIFF MAY BRING IN A THIRD PARTY. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(c) ADMIRALTY OR MARITIME CLAIM.

(1) *Scope of Impleader*. If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a third-party plaintiff, bring in a third-party defendant who

规则 14. 第三方诉讼

(a) 当被告方可以引入第三方时。

(1) 传票和起诉状的送达时间。防御方可以作为第三方原告，向对其所涉请求的全部或部分负有或可能负有责任的非当事人送达传票和起诉状。但第三方原告如果在送达其原始答辩状后超过14日才提出第三方起诉状，必须通过动议获得法院许可。

(2) 第三方被告的请求和抗辩。被送达传票和第三方起诉状的人--即"第三方被告":

(A) 必须根据规则 12 对第三方原告的请求提出任何抗辩；

(B) 必须根据规则 13(a) 对第三方原告提出任何反请求，并可以根据规则 13(b) 对第三方原告提出任何反请求，或根据规则 13(g) 对另一第三方被告提出任何交叉请求；

(C) 可以对原告提出第三方原告对原告请求所拥有的任何抗辩；以及

(D) 还可以对原告提出由原告对第三方原告的请求所涉交易或事件引起的任何请求。

(3) 原告对第三方被告的请求。原告可以对第三方被告主张由作为原告对第三方原告请求之标的的交易或事件所产生的任何请求。第三方被告随后必须提出规则 12 项下的任何抗辩和规则 13(a)项下的任何反请求，并可以提出规则 13(b)项下的任何反请求或规则 13(g)项下的任何交叉请求。

(4) 请求删除、分离或分开审理的动议。任何当事人均可动议请求删除第三方请求、将其分离或分开审理。

(5) 第三方被告对非当事人的请求。第三方被告可以依本规则对对其所涉任何请求的全部或部分负有或可能负有责任的非当事人提起诉讼。

(6) 对物第三方起诉状。如果属于海事或海商管辖范围，第三方起诉状可以是对物的。在此情形下，本规则中提及"传票"包括扣押令，提及被告或第三方原告在适当情况下包括依补充规则 C(6)(a)(i)对被扣押财产主张权利的人。

(b) 当原告可以引入第三方时。当如果对原告提出请求，原告可以在本规则允许被告追加第三方的情况下追加第三方。

(c) 海事或海商索赔。

(1) 追加第三人的范围。如果原告依规则 9(h)主张海事或海商请求，被告或依补充规则 C(6)(a)(i)主张权利的人可以作为第三方原告，引入符合下列情形的第三方被告：

may be wholly or partly liable—either to the plaintiff or to the third-party plaintiff—for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.

(2) *Defending Against a Demand for Judgment for the Plaintiff*. The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

(b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial*. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) RELATION BACK OF AMENDMENTS.

(1) *When an Amendment Relates Back*. An amendment to a pleading relates back to the date of the original pleading when:

该责任可能是对原告或对第三方原告的--基于替代救济、分担或其他理由，且源于同一交易、事件或系列交易或事件。

(2) 对抗原告的判决请求。第三方原告可以请求作出有利于原告、针对第三方被告的判决。在此情形下，第三方被告必须依规则 12 既对原告的请求、也对第三方原告的请求进行抗辩；诉讼的进行如同原告同时起诉了第三方被告和第三方原告。

(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1963 年 1 月 21 日修订，1963 年 7 月 1 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2000 年 4 月 17 日修订，2000 年 12 月 1 日生效；2006 年 4 月 12 日修订，2006 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效。)

规则 15. 修改后的和补充的诉状

(a) 审判前修正案。

(1) 当然修改。当事人可以在下列期限内当然修改其诉答文书一次：

(A) 送达后21天内，或

(B) 如果该诉答文书是需要回应诉答文书的诉答文书，则在送达回应诉答文书后 21 天内，或在送达规则 12(b)、(e) 或 (f) 项下的动议后 21 天内，以较早者为准。

(2) 其他修改。在所有其他情况下，一方当事人只有在对方当事人书面同意或法院许可的情况下才能修改其诉答文书。在正义要求时，法院应当自由给予许可。

(3) 回应时间。除法院另有命令外，对修改后的诉答文书的任何必要回应，必须在回应原始诉答文书的剩余时间内，或在修改后的诉答文书送达后14天内作出，以较晚者为准。

(b) 审判期间和审判后的修正。

(1) 基于审判中的异议。如果在审判中，一方当事人提出异议，认为证据不在诉答文书所提出的争点范围内，法院可以允许修改诉答文书。当成文修改有助于呈现案件实体问题，且提出异议的一方未能使法院确信该证据会损害其在实体问题上的诉讼或抗辩时，法院应当自由地允许修改。法院可以准予延期，以便提出异议的一方能够应对该证据。

(2) 经同意审理的问题。当诉答文书未提出的问题经当事人明示或默示同意而审理时，必须在所有方面视同已在诉答文书中提出。当事人可以随时动议--甚至在判决之后--修改诉答文书使其与证据相符并提出未诉答的问题。但未作修改不影响该问题审理的结果。

(c) 修正案关系回溯。

(1) 修正溯及既往。对诉答文书的修正溯及至原始诉答文书之日，当：

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) SUPPLEMENTAL PLEADINGS. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As amended Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Pub. L. 102–198, §11(a), Dec. 9, 1991, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PURPOSES OF A PRETRIAL CONFERENCE. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

(b) SCHEDULING.

(1) *Scheduling Order.* Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(A) 规定可适用的诉讼时效的法律允许追溯效力；

(B) 该修正提出了一项请求或抗辩，该请求或抗辩源于原诉答文书中列明或试图列明的行为、交易或事件；或

(C)该修正变更了当事人或变更了对之提出请求的当事人的名称，如果规则 15(c)(1)(B) 得到满足，并且，在规则 4(m) 规定的送达传票和起诉书的期间内，拟通过修正被引入的当事人：

(i) 收到了关于该诉讼的通知，使其在实体抗辩中不会受到损害；且

(ii) 知道或应当知道，若非关于适当当事人身份的錯誤，该诉讼本会对其提起。

(2) 对美国的通知。当美国或美国官员或机构通过修正被追加为被告时，如果在该规定期间内，诉讼文书已送达或邮寄给美国检察官或美国检察官指定人、美国司法部长，或该官员或机构，则规则 15(c)(1)(C)(i) 和 (ii) 的通知要求即得到满足。

(d) 补充诉答文书。经动议和合理通知，法院可以基于公正条件，允许一方当事人送达补充诉答文书，列明在待补充诉答文书日期之后发生的任何交易、事件或事项。即使原诉答文书在陈述请求或抗辩方面存在瑕疵，法院也可以允许补充。法院可以命令对方当事人在指定时间内对补充诉答文书作出诉答。

(经 1963 年 1 月 21 日修正，1963 年 7 月 1 日生效；1966 年 2 月 28 日修正，1966 年 7 月 1 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；1991 年 4 月 30 日修正，1991 年 12 月 1 日生效；Pub.L.102-198,11(a),1991 年 12 月 9 日，105 Stat.1626;1993 年 4 月 22 日修正，1993 年 12 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

规则 16. 审前会议；日程安排；管理

(a) 审前会议的目的。在任何诉讼中，法院可以命令律师和任何无代理当事人出席一次或多次审前会议，目的如下：

(1) 加快处理该诉讼；

(2)确立早期和持续的控制，使案件不会因缺乏管理而被拖延；

(3) 抑制浪费性的审前活动；(4) 通过更充分的准备提高审判质量；以及

(5) 促进和解。

(b) 排期。

(1) 日程安排令。除地方规则豁免的诉讼类别外，地区法官--或在地方规则授权时的治安法官--必须签发日程安排令：

(A) 在收到当事人根据规则 26(f) 提交的报告后；或

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) *Time to Issue*. The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) *Contents of the Order*.

(A) *Required Contents*. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents*. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

(4) *Modifying a Schedule*. A schedule may be modified only for good cause and with the judge's consent.

(c) ATTENDANCE AND MATTERS FOR CONSIDERATION AT A PRETRIAL CONFERENCE.

(1) *Attendance*. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) *Matters for Consideration*. At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(B) 在日程安排会议上与当事人的律师和任何无代理当事人协商后。

(2) 签发时间。法官必须在切实可行的范围内尽快签发日程安排令，但除非法官认定有正当理由延迟，法官必须在任何被告被送达起诉状后 90 天内或任何被告出庭后 60 天内(以较早者为准)签发。

(3) 命令的内容。

(A) 必要内容。日程安排令必须限制追加其他当事人、修改诉答文书、完成证据开示和提交动议的时间。

(B) 允许的内容。排期命令可以：

(i) 修改规则 26(a) 和 26(e)(1) 项下披露的时间安排；

(ii) 修改证据开示的范围；

(iii) 规定电子存储信息的披露、证据开示或保全；

(iv) 包括当事人为在信息产生后主张特权或作为审判准备材料的保护而达成的任何协议，包括根据《联邦证据规则》502 达成的协议；

(v) 指示在就证据开示相关命令提出动议之前，动议人必须请求与法院进行会议；

(vi) 设定审前会议和开庭审理的日期；和

(vii) 包括其他适当事项。

(4) 修改日程安排。日程安排仅可因正当理由并经法官同意而修改。

(c) 审前会议的出席与审议事项。

(1) 出席。有律师代理的当事人必须授权其至少一名律师就合理预期可在审前会议上讨论的所有事项作出约定和自认。如适当，法院可要求当事人或其代表出席或以其他方式合理可联系到，以考虑可能的和解。

(2) 审议事项。在任何审前会议上，法院可审议以下事项并采取适当行动：

(A) 形成和简化争点，并消除无意义的请求或抗辩；

(B) 如必要或可取，修正诉答文书；(C) 获得关于事实和文件的自认和约定以避免不必要的证明，并事先就可采性作出裁定；

(D) 避免不必要的证明和累积证据，并限制根据《联邦证据规则》702 使用证言；

(E) 确定根据规则 56 进行简易裁决的适当性和时机；

(F) 控制和安排证据开示，包括影响规则 26 和规则 29 至 37 项下披露和证据开示的命令；

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a magistrate judge or a master;

(I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) PRETRIAL ORDERS. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) FINAL PRETRIAL CONFERENCE AND ORDERS. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) SANCTIONS.

(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)–(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

(G) 确定证人和文件，安排任何审前简报的提交和交换，并设定进一步会议和审判的日期；

(H) 将事项提交治安法官或主事官处理；

(I) 在法规或地方规则授权时，和解案件并使用特别程序协助解决争议；

(J)确定审前命令的形式和内容；

(K) 处理待决动议；

(L) 对可能涉及复杂问题、多方当事人、疑难法律问题或不寻常证明问题的潜在困难或旷日持久的诉讼采取特别程序进行管理；

(M) 依据规则 42(b) 就某一请求、反请求、交叉请求、第三方请求或特定问题命令分别审理；

(N) 命令在审理早期即可管理的问题上出示证据，该问题根据证据可能成为依据规则 50(a) 作出法律问题判决或依据规则 52(c) 作出部分事实判决的基础；

(O) 对出示证据所允许的时间设定合理限制；以及

(P) 以其他方式促进诉讼的公正、迅速和经济处理。

(d) 审前命令。在本规则下的任何会议之后，法院应当发布命令，载明所采取的行动。该命令控制诉讼的进程，除非法院对其进行修改。

(e) 最终审前会议及命令。法院可以举行最终审前会议以制定审理计划，包括促进证据采纳的计划。该会议必须在合理范围内尽可能接近审理开始时举行，且必须由将为每一方进行审理的至少一名律师以及任何无律师代理的当事人出席。法院仅可为防止明显不公而修改最终审前会议后发布的命令。

(f) 制裁。

(1) 一般规定。经动议或依职权，法院可发出任何公正的命令，包括规则 37(b)(2)(A)(ii)-(vii) 所授权的命令，如果一方当事人或其律师：

(A) 未出席日程安排会议或其他审前会议；

(B) 实质上未做好准备参加--或未善意参加--该会议；或

(C) 未遵守日程安排或其他审前命令。

(2) 施加费用和成本。作为任何其他制裁性措施的替代或补充，法院必须命令该方、其律师或两者支付因任何不遵守本规则而产生的合理费用--包括律师费--除非该不遵守具有实质性正当理由或其他情况使得判给费用不公正。

(经 1983 年 4 月 28 日修订，1983 年 8 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2006 年 4 月 12 日修订，2006 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2015 年 4 月 29 日修订，2015 年 12 月 1 日生效。)

TITLE IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) REAL PARTY IN INTEREST.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;
(B) an administrator;
(C) a guardian;
(D) a bailee;
(E) a trustee of an express trust;
(F) a party with whom or in whose name a contract has been made for another's benefit; and
(G) a party authorized by statute.

(2) *Action in the Name of the United States for Another's Use or Benefit.* When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) MINOR OR INCOMPETENT PERSON.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;
(B) a committee;
(C) a conservator; or
(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

第四条当事人

规则 17. 原告与被告；行为能力；公职人员

(a) 真实利益方。

(1) 一般指定。诉讼必须以真实利害关系人的名义提起。以下人员可以自己的名义起诉，而无需合并为其利益而提起诉讼的人：

(A) 遗嘱执行人；
(B)管理人；(C)监护人；(D)
受托保管人；
(E) 明示信托的受托人；
(F) 为他人利益而与其订立合同或以其名义订立合同的当事人；以及
(G) 由法规授权的一方。

(2) 以美国名义为他人使用或利益提起的诉讼。当联邦法规如此规定时，为他人使用或利益提起的诉讼必须以美国名义提起。

(3) 真实利害关系人的合并。法院不得以未以真实利害关系人名义提起诉讼为由驳回诉讼，直至在提出异议后，已给予真实利害关系人合理时间以批准、合并或替代进入诉讼。在批准、合并或替代后，诉讼继续进行，如同最初由真实利害关系人提起一样。

(b) 起诉或被诉的能力。起诉或被诉的能力确定如下：

(1)对于非以代表身份行事的个人，依该个人住所地法律；

(2) (1)对于公司而言，依据其组织成立所依据的法律；以及

(3)对于所有其他当事人，依法院所在地州的法律，但以下除外：

(A) 根据该州法律不具有此种能力的合伙或其他非法人团体，可以其通用名称起诉或被诉，以执行美国宪法或法律下存在的实体权利；以及

(B) 28 U.S.C.754 和 959(a) 管辖由美国法院指定的接管人在美国法院起诉或被诉的能力。

(c) 未成年人或无行为能力人。

(1) 有代表人。以下代表人可代表未成年人或无行为能力人起诉或辩护：

(A) 一般监护人；(B) 保佐人；
(C) 保护人；或(D) 类似的受托
人。

(2) 无代表人。没有正式指定代表人的未成年人或无行为能力人可由诉讼代理人或诉讼监护人起诉。法院必须指定诉讼监护人--或签发其他适当命令--以保护在诉讼中无代表的未成年人或无行为能力人。

(d) PUBLIC OFFICER'S TITLE AND NAME. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Pub. L. 100–690, title VII, §7049, Nov. 18, 1988, 102 Stat. 4401; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 18. Joinder of Claims

(a) IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order*. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue*. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(d) 公职人员的职务和姓名。以官方身份起诉或被诉的公职人员可以官方职务而非姓名指定，但法院可命令添加该官员的姓名。

(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1948 年 12 月 29 日修订，1949 年 10 月 20 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；1988 年 4 月 25 日修订，1988 年 8 月 1 日生效；Pub.L.100-690, title VII,7049, 1988 年 11 月 18 日， 102 Stat.4401;2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 18. 诉讼请求的合并

(a) 一般规定。提出请求、反请求、交叉请求或第三方请求的当事人，可以将其对对方当事人拥有的尽可能多的请求作为独立或备位请求合并。

(b) 或有请求的合并。当事人可以合并两项请求，即使其中一项取决于另一项的处理结果；但法院只能依据当事人相对的实体权利给予救济。特别是，原告可以提出金钱请求和撤销对该原告具有欺诈性的转让的请求，而无需首先获得金钱判决。

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 19. 必要当事人合并

(a) 如可行，应合并的当事人。

(1) 必要当事人。受送达程序约束且其合并不会剥夺法院事项管辖权的人必须作为当事人合并，如果：

(A) 在该人缺席的情况下，法院无法在现有当事人之间给予完全救济；或

该人主张与诉讼标的有关的利益，且其处境使得在该人缺席的情况下处理该诉讼可能：

(B)

(i) 实际上损害或妨碍该人保护该利益的能力；或

(ii) 因该利益而使现有当事人面临承担双重、多重或其他不一致义务的重大风险。

(2) 法院命令合并。如果某人未被按要求合并，法院必须命令该人成为当事人。拒绝作为原告合并的人可被列为被告，或在适当情况下，被列为非自愿原告。

(3) 审判地。如果被追加的当事人对审判地提出异议，且追加该当事人将导致审判地不适当，法院必须驳回该当事人。

(b) 追加不可行时。如果按要求应当追加的人无法被追加，法院必须确定在公平和良心上，诉讼是否应在现有当事人之间继续进行，还是应当被驳回。法院应考虑的因素包括：

(1)在该人缺席的情况下作出的判决可能对该人或现有当事人造成偏见的程度；

(2) 在多大程度上可以通过以下方式减轻或避免任何偏见：

(A) protective provisions in the judgment;
(B) shaping the relief; or
(C) other measures;
(3) whether a judgment rendered in the person's absence would be adequate; and
(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) PLEADING THE REASONS FOR NONJOINDER. When asserting a claim for relief, a party must state:
(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and
(2) the reasons for not joining that person.

(d) EXCEPTION FOR CLASS ACTIONS. This rule is subject to Rule 23.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 20. Permissive Joinder of Parties

(a) PERSONS WHO MAY JOIN OR BE JOINED.
(1) *Plaintiffs*. Persons may join in one action as plaintiffs if:
(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
(B) any question of law or fact common to all plaintiffs will arise in the action.
(2) *Defendants*. Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:
(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
(B) any question of law or fact common to all defendants will arise in the action.
(3) *Extent of Relief*. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

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

(A) 判决中的保护性条款；
(B) 塑造救济；或(C) 其他措施；
(3)在该人缺席的情况下作出的判决是否充分；以及
(4)如果诉讼因未追加当事人而被驳回，原告是否会有充分的救济。

(c) 诉答未追加当事人的理由。当事人在提出救济请求时，必须陈述：
(1)任何按要求应当追加但未被追加的人的姓名(如果知道)；以及
(2) 不加入该人的理由。

(d) 规则 23.1 的例外--集体诉讼。本规则受规则 23.

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 20. 当事人的任意合并

(a) 可加入或可被加入的人。
(1)原告。如果：(A) 他们就同一交易、事件或一系列交易或事件，或由此产生的救济权利，共同、分别或选择性地主张任何权利；且
(B) 诉讼中将产生对所有原告共同的任何法律或事实问题，则数人可以在一项诉讼中作为原告合并参加。
(2) 被告。如果符合以下条件，数人--以及受海事对物程序约束的船舶、货物或其他财产--可以在一项诉讼中作为被告合并参加：
(A) 就同一交易、事件或一系列交易或事件，或由此产生的救济权利，对他们共同、分别或选择性地主张任何权利；且
(B) 诉讼中将产生对所有被告共同的任何法律或事实问题。
(3) 救济范围。原告和被告均无需对获得或抗辩所有请求的救济具有利害关系。法院可根据其权利判给一名或多名原告判决，并根据其责任判一名或多名被告败诉。

(b) 保护性措施。法院可以发布命令--包括分开审理的命令--以保护当事人免受因将当事人对其不主张请求且该人也不对当事人主张请求的人纳入诉讼而产生的骚扰、拖延、费用或其他偏见。

(经 1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 21. 当事人的错误合并与未合并

当事人的错误合并不是驳回诉讼的理由。法院可以随时根据动议或自行以公正条件追加或剔除当事人。法院也可以分开审理对某当事人的任何请求。

(2007年4月30日修订，2007年12月1日生效。)

Rule 22. Interpleader

(a) GROUNDS.

(1) *By a Plaintiff*. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant*. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) RELATION TO OTHER RULES AND STATUTES. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by 28 U.S.C. §§1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 23. Class Actions

(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) TYPES OF CLASS ACTIONS. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

规则 22. 互诉

(a) G ROUNDS.

(1) 由原告提出。对可能使原告承担双重或多重责任的请求，可将相关主体作为被告合并，并要求其进行互诉。即使存在以下情形，为互诉而进行的合并仍属适当：

(A) 各主张人的主张，或其主张所依据的权利名义，缺乏共同来源，或者相互对立且独立而非相同；或

(B) 原告对任何或全部主张人的责任予以全部或部分否认。

(2) 由被告提出。面临类似责任的被告可通过交叉请求或反请求寻求互诉。

(b) 与其他规则和制定法的关系。本规则补充--而非限制--规则 20 所允许的当事人合并。本规则提供的救济是对 28 U.S.C.1335、1397 和 2361 所提供救济的补充--而非取代或限制。依据上述制定法提起的诉讼必须依照本规则进行。

(1948 年 12 月 29 日修正，1949 年 10 月 20 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效。)

规则 23. 集体诉讼

(a) 前提条件。集团的一名或多名成员只有在以下条件下，才能作为代表当事人代表全体成员起诉或被诉：

(1) 该群体人数众多，以至于将所有成员合并诉讼不可行；

(2) 存在适用于该集体的共同法律或事实问题；

(3) 代表当事人的主张或抗辩是集团主张或抗辩的典型；且

(4) 代表当事人将公平且充分地保护集团的利益。

(b) 集团诉讼的类型。如果满足规则 23(a) 且符合以下条件，则可以维持集团诉讼：

(1) 由个别集团成员分别起诉或被诉将产生以下风险：

(A) 针对个别集团成员作出的不一致或不同的裁判，将对反对集团的当事人确立不相容的行为标准；

或

(B) 针对个别集团成员作出的裁判，实际上将对非该个别裁判当事人的其他成员的利益具有决定性，或实质上损害或妨碍其保护自身利益的能力；

(2) 反对集团的当事人已以普遍适用于集团的理由作为或不作为，因而就整个集团而言，最终的禁令救济或相应的宣告性救济是适当的；或

(3) 法院认定，集团成员共同的法律或事实问题优先于仅影响个别成员的任何问题，且集团诉讼在公平且高效地裁判该争议方面优于其他可用方法。与上述认定相关的事项包括：

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES.

(1) *Certification Order*.

(A) *Time to Issue*. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel*. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order*. An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice*.

(A) *For (b)(1) or (b)(2) Classes*. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes*. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment*. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues*. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(A) 集团成员在个别控制分别起诉或抗辩方面的利益；

(B) 集团成员已经提起或针对其提起的、与该争议有关的任何诉讼的范围和性质；

(C) 在特定法院集中审理该等主张的可取性或不可取性；以及

(D) 管理集体诉讼可能遇到的困难。

(c) 认证命令；通知集团成员；判决；问题集团；子集团。

(1) 认证令。

(A) 作出裁定的时间。在某人作为集团代表起诉或被诉后切实可行的最早时间，法院必须通过命令裁定是否将该诉讼认证为集团诉讼。

(B) 界定集团；指定集团律师。认证集团诉讼的命令必须界定集团及集团的请求、争点或抗辩，并必须依据规则 23(g) 指定集团律师。

(C) 变更或修改命令。准予或拒绝集团认证的命令可在最终判决前予以变更或修改。

(2) 通知。

(A) 针对 *(b) (1)* 或 *(b) (2)* 类集团。对于依据规则 23(b)(1) 或 (b)(2) 认证的任何集团，法院可指示向该集团发出适当通知。

针对 *(b) (3)* 类集团。对于依据规则 23(b)(3) 认证的任何集团，法院必须向集团成员指示在具体情况下切实可行的最佳通知，包括向通过合理努力能够识别的所有成员发出个别通知。该通知必须以平实、易于理解的语言清楚、简明地说明：

(B)

(i) 诉讼的性质；(ii) 所认证集团的定义；(iii) 集团主张、问题或抗辩；(iv) 集团成员如愿意可以通过律师出庭；(v) 法院将把请求排除的任何成员排除出集团；(vi) 请求排除的时间和方式；以及(vii) 依据规则 23(c)(3) 集团判决对成员的约束效力。

(3) 判决。无论是否有利于集团，集团诉讼中的判决必须：

(A) 对于依据规则 23(b)(1) 或 (b)(2) 认证的任何集团，包括并描述法院认定属于集团成员的人；以及

(B) 对于依据规则 23(b)(3) 认证的任何集团，包括并指明或描述规则 23(c)(2) 通知所指向的、未请求排除的、且法院认定属于集团成员的人。

(4) 特定问题。在适当情况下，可以就特定问题作为集团诉讼提起或维持诉讼。

(5) *Subclasses*. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) CONDUCTING THE ACTION.

(1) *In General*. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders*. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(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.

(5) 子集团。在适当情况下，可以将集团划分为若干子集团，每个子集团均依本规则作为集团对待。

(d) 进行诉讼。

(1) 一般规定。在依本规则进行的诉讼中，法院可以发布命令，以：

(A) 确定诉讼进程，或规定措施以防止在出示证据或进行辩论时出现不当重复或复杂化；

要求--为保护集团成员并公平地进行诉讼--向部分或全部集团成员发出适当通知，内容涉及：

(B) (i) 诉讼中的任何步骤；(ii) 拟议的判决范围；或(iii) 成员表明其是否认为代表公平且充分、介入并提出请求或抗辩、或以其他方式加入诉讼的机会；

(C) 对代表当事人或参加人施加条件；

(D) 要求修改诉答文书以删除关于代表缺席人员的指控，并要求诉讼相应进行；或

(E) 处理类似的程序性事项。

(2) 命令的合并与修改。依据规则 23(d)(1) 作出的命令可不时予以变更或修改，并可与依据规则 16 作出的命令合并。

(e) 和解、自愿撤诉或妥协。该

经认证的集团的请求、争点或抗辩，只有在法院批准的情况下方可和解、自愿撤诉或妥协。以下程序适用于拟议的和解、自愿撤诉或妥协：

(1)法院必须以合理方式向将受该方案约束的所有集团成员发出指示通知。

(2)如果该方案将约束集团成员，法院只有在举行听证并认定其公平、合理且充分后，方可批准。

(3)寻求批准的当事人必须提交声明，指明与该方案相关的任何协议。

(4)如果该集团诉讼先前依规则 23(b)(3) 获得认证，法院可以拒绝批准和解，除非该和解为先前有机会请求排除但未请求排除的个别集团成员提供新的请求排除机会。

(5)任何集团成员均可对该方案提出异议，如果该方案依本款(e)需要法院批准；异议只有在法院批准的情况下方可撤回。

(f) 上诉。如果在上诉许可申请于命令作出后 14 日内向巡回区书记官提出，上诉法院可以准许对依本规则准予或拒绝集团诉讼认证的命令提起上诉。上诉不中止地区法院的诉讼程序，除非地区法官或上诉法院另有命令。

(g) CLASS COUNSEL.

(1) *Appointing Class Counsel*. Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel*. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel*. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel*. Class counsel must fairly and adequately represent the interests of the class.

(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

(g) C LASS C OUNSEL.

(1) 指定集团律师。除制定法另有规定外，认证集团的法院必须指定集团律师。在指定集团律师时，法院：

(A) 必须考虑：

(i) 律师在识别或调查诉讼中潜在请求方面所做的工作；

(ii) 律师处理集团诉讼、其他复杂诉讼以及诉讼中所主张类型请求的经验；

(iii) 律师对适用法律的了解；以及

(iv) 律师将为代表该集体投入的资源；

(B) 可以考虑与律师公平且充分代表集团利益的能力相关的任何其他事项；

(C) 可以命令潜在的集团律师就与任命相关的任何主题提供信息，并提出律师费及非应税费用的条件；

(D) 可以在任命命令中纳入关于依规则 23(h) 裁定律师费或非应税费用的条款；以及

(E)可以就该任命作出进一步命令。

(2) 指定集团律师的标准。当一名申请人寻求被指定为集团律师时，法院只有在申请人符合规则 23(g)(1) 和 (4) 的要求时方可指定该申请人。如有一名以上符合条件的申请人寻求指定，法院必须指定最能代表集团利益的申请人。

(3) 临时律师。法院可以在决定是否将诉讼认证为集团诉讼之前，指定临时律师代表拟议集团行事。

(4) 集团律师的职责。集团律师必须公平、充分地代表集团的利益。

(h) 律师费及非应税费用。在经认证的集团诉讼中，法院可以裁定法律或当事人协议授权的合理律师费及非应税费用。以下程序适用：

(1)裁定请求必须依规则 54(d)(2) 以动议方式提出，受本款(h)规定的约束，并在法院设定的时间提出。动议通知必须送达所有当事人，对于集团律师提出的动议，还必须以合理方式向集团成员发出。

(2)集团成员或被要求付款的当事人可以对该动议提出异议。

(3)法院可以举行听证，并必须依规则 52(a) 认定事实并陈述其法律结论。

(4)法院可以依规则 54(d)(2)(D) 的规定，将有关裁定金额的问题交由特别主事官或治安法官处理。

（1966年2月28日修订，1966年7月1日生效；1987年3月2日、1987年8月1日生效；1998年4月24日、1998年12月1日生效；2003年3月27日、2003年12月1日生效；2007年4月30日、2007年12月1日生效；2009年3月26日、2009年12月1日生效。）

Rule 23.1. Derivative Actions

(a) PREREQUISITES. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) PLEADING REQUIREMENTS. The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) SETTLEMENT, DISMISSAL, AND COMPROMISE. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

规则 23.1. 派生诉讼

(a) 前提条件。当公司或非法人 association 的一名或多名股东或成员提起派生诉讼，以强制执行公司或 association 可以适当主张但未能强制执行的权利时，本规则适用。如果表明原告不能公平、充分地代表在强制执行公司或 association 权利方面处于类似地位的股东或成员的利益，则不得维持该派生诉讼。

(b) 认罪要求。起诉书必须经过核实，并且必须：

(1)主张原告在所诉交易发生时是股东或成员，或者原告的股份或成员资格后来依法转移给原告；

(2)主张该诉讼并非为授予法院本来缺乏的管辖权而进行的合谋诉讼；以及

(3) 具体说明：

(a) 原告为从董事或同等权力机构处获得所期望的行动而作出的任何努力，以及在必要时从股东或成员处作出的任何努力；以及

(B) 未采取该行动或未作出努力的原因。

(c) 和解、撤诉与妥协。派生诉讼只有在法院批准的情况下才可以和解、自愿撤诉或妥协。拟议和解、自愿撤诉或妥协的通知必须按照法院命令的方式向股东或成员发出。

(1966年2月28日增补，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 23.2. 涉及非法人社团的诉讼

本规则适用于由非法人 association 的成员作为集体提起的诉讼，或针对该等成员作为集体提起的诉讼，其方式是指定某些成员作为代表当事人。只有在表明这些当事人将公平、充分地保护 association 及其成员的利益时，才可以维持该诉讼。在进行诉讼时，法院可以发布与规则 23(d) 相对应的任何适当命令，和解、自愿撤诉或妥协的程序必须与规则 23(e) 中的程序相对应。

规则 24. 诉讼参加

(a) 法定介入权。经及时动议，法院必须允许符合以下条件的任何人介入：

(1) 依据联邦成文法被赋予无条件介入权；或

(2) 主张与作为诉讼标的的财产或交易有关的利益，且其所处地位使得对诉讼的处理实际上可能损害或妨碍动议人保护其利益的能力，除非现有当事人充分代表该利益。

(b) PERMISSIVE INTERVENTION.

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency*. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice*. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 25. Substitution of Parties

(a) DEATH.

(1) *Substitution if the Claim Is Not Extinguished*. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties*. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service*. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) INCOMPETENCY. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) TRANSFER OF INTEREST. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(b) 许可性干预。

(1) 一般规定。经及时动议，法院可以允许符合以下条件的任何人介入：

(A) 依据联邦法律被赋予有条件介入权；或

(B) 拥有与主诉讼共享共同法律问题或事实问题的请求或抗辩。

(2) 由政府官员或机构提出。经及时动议，如一方当事人的请求或抗辩基于以下事项，法院可准许联邦或州政府官员或机构参加诉讼：

(A) 由该官员或机构执行的法规或行政命令；或

(B) 根据该制定法或行政命令发布或订立的任何法规、命令、要求或协议。

(3) 迟延或损害。在行使其裁量权时，法院必须考虑参加诉讼是否会不当迟延或损害对原当事人权利的裁判。

(c) 通知与诉答文书要求。介入动议必须按照规则 5 的规定向当事人送达。该动议必须说明介入的理由，并附有一份诉答文书，列明寻求介入所依据的请求或抗辩。

(1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2006年4月12日修正，2006年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 25. 当事人的变更

(a) 死亡。

(1) 请求未消灭时的替代。如一方当事人死亡且请求未消灭，法院可命令由适当当事人替代。替代动议可由任何当事人或死者的承继人或代表提出。如未在送达注明死亡的声明后 90 days 内提出动议，则必须驳回由死者提出或针对死者提出的诉讼。

(2) 在其余当事人之间继续进行。一方当事人死亡后，如寻求执行的权利仅存续于其余当事人或仅针对其余当事人，诉讼不中止，而是为其余当事人的利益或针对其余当事人继续进行。死亡情况应记录在案。

(3) 送达。替代动议连同听证通知必须按照规则 5 的规定向当事人送达，并按照规则 4 的规定向非当事人送达。注明死亡的声明必须以相同方式送达。送达可以在任何司法区进行。

(b) 无行为能力。如果当事人变为无行为能力，法院可以经动议允许由该当事人的代表继续诉讼或针对该代表继续诉讼。该动议必须按照规则 25(a)(3) 的规定送达。

(c) 利益转让。如果利益被转让，诉讼可以由原当事人继续或针对原当事人继续，除非法院经动议命令受让人替代进入诉讼或与原当事人合并。该动议必须按照规则 25(a)(3) 的规定送达。

(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(d) 公职人员；死亡或离职。一项法

当以官方身份作为当事人的公职人员在诉讼待决期间死亡、辞职或以其他方式停止任职时，诉讼不中止。该官员的继任者自动替代为当事人。此后的程序应以替代当事人的名义进行，但任何不影响当事人实体权利的姓名错误必须不予考虑。法院可以随时命令替代，但缺少此种命令不影响替代。

(1948年12月29日修正，1949年10月20日生效；1961年4月17日修正，1961年7月19日生效；1963年1月21日修正，1963年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

第五条披露与证据开示

规则 26. 披露义务；发现程序的一般规定

(a) 必要披露。

(1) 初始披露。

一般规定。除规则 26(a)(1)(B) 豁免或法院另有约定或命令外，当事人必须不等待证据开示请求而向其他当事人提供：

(A)

(i) 每个可能拥有可开示信息的个人的姓名，以及如果已知，其地址和电话号码--连同该信息的主题--披露方可能用以支持其请求或抗辩，除非该使用仅用于弹劾；

(ii) 披露方占有、保管或控制且可能用以支持其请求或抗辩的所有文件、电子存储信息和有形物的副本--或按类别和地点的描述，除非该使用仅用于弹劾；

(iii) 披露方主张的每类损害赔偿的计算--披露方还必须按照规则 34 的规定提供每项计算所依据的文件或其他证据材料以供查阅和复制，除非享有特权或受披露保护，包括与所受伤害的性质和程度有关的材料；以及

(iv) 按照规则 34 的规定供查阅和复制的任何保险协议，根据该协议，保险业务可能负有责任以满足诉讼中可能判决的全部或部分款项，或就为满足判决而支付的款项进行赔偿或补偿。

免于初始披露的程序。以下程序免于初始披露：

(B)

(i) 基于行政记录进行审查的诉讼；(ii) 因联邦制定法产生的对物没收诉讼；

(iii) 人身保护令申请或任何其他质疑刑事定罪或量刑的程序；

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures—In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures—For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) *Disclosure of Expert Testimony.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(iv) 由美国、州或州下属行政区羁押中的人在没有律师的情况下提起的诉讼；

(v) 旨在执行或撤销行政传票或大陪审团传票的诉讼；

(vi) 美国为追回福利付款而提起的诉讼；

(vii) 美国为收取由美国担保的学生贷款而提起的诉讼；

(viii) 附属于另一法院程序的辅助程序；以及

(ix) 执行仲裁裁决的诉讼。

(C) 初始披露的时间--一般规定。当事人必须在当事人依据规则 26(f) 进行会商之时或之后 14 天内作出初始披露，除非当事人以合意或法院命令另行确定时间，或者除非一方当事人在会商期间提出异议，主张初始披露在本诉讼中不适当，并在拟议的证据开示计划中载明该异议。法院在就该异议作出裁定时，必须确定应作出何种披露(如有)，并必须确定披露的时间。

(D) 初始披露的时间--针对较晚被送达或合并的当事人。在规则 26(f) 会议之后首次被送达或以其他方式合并的当事人，必须在被送达或合并后 30 days 内作出初始披露，除非经约定或法院命令另行确定时间。

(E) 初始披露的依据；不可接受的借口。当事人必须基于当时合理可获得的信息作出初始披露。当事人不得因尚未充分调查案件、或因质疑另一方当事人披露的充分性、或因另一方当事人尚未作出披露而免于作出披露。

(2) 专家证言的披露。

(A) 一般规定。除规则 26(a)(1) 要求的披露外，当事人还必须向其他当事人披露其可能在庭审中依据《联邦证据规则》702、703 或 705 出示证据的任何证人的身份。

(B) 必须提供书面报告的证人。除另有约定或法院另有命令外，如证人是为在案件中提供专家证言而受聘或专门雇用的人，或是作为当事人雇员其职责通常涉及提供专家证言的人，则该披露必须附有由该证人准备并签署的书面报告。该报告必须包含：

(i) 对证人将表达的所有意见及其依据和理由的完整陈述；

(ii) 证人形成该意见时所考虑的事实或数据；

(iii) 任何用于总结或支持这些内容的附件；

(iv) 证人的资格，包括过去 10 年内撰写的所有出版物的清单；

(v) 过去 4 年内该证人在庭审中或通过庭外取证作为专家作证的所有其他案件的清单；以及

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report*. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) *Pretrial Disclosures*.

(A) *In General*. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections*. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made—except for one under Federal Rule of Evidence 402 or 403—is waived unless excused by the court for good cause.

(4) *Form of Disclosures*. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(vi) 关于本案中为研究和作证所支付报酬的陈述。

(C)不提供书面报告的证人。除另有约定或法院另有命令外，如证人无须提供书面报告，则该披露必须说明：

(i) 证人预期依据《联邦证据规则》702、703 或 705 出示证据的主题事项；以及

(ii) 证人预期作证所依据的事实和意见的摘要。

披露专家证言的时间。当事人必须按法院命令的时间和顺序作出这些披露。除约定或法院命令外，披露必须按以下时间作出：

(D)

(i) 至少在庭审预定日期或案件准备就绪可供庭审之日前 90 天；或

(ii) 如果该证据仅用于反驳或驳斥另一方当事人依据规则 26(a)(2)(B) 或 (C) 就同一主题事项指明的证据，则在另一方当事人披露后 30 天内。

(E) 补充披露。当事人必须在规则 26(e) 要求时补充这些披露。

(3) 审前披露。

一般规定。除规则 26(a)(1) 和 (2) 要求的披露外，当事人必须向其他当事人提供并迅速提交以下关于其可能在庭审中出示的证据(仅用于弹劾的证据除外)的信息：

(A)

(i) 每位证人的姓名，以及此前未提供的地址和电话号码--分别指明当事人预期出庭的证人和在必要时可能传唤的证人；

(ii) 指明当事人预期通过庭外取证出示其证言的证人，以及(如未以速记方式记录)该庭外取证相关部分的笔录；以及

(iii) 指明每份文件或其他物证，包括其他证据的摘要--分别指明当事人预期提供的项目和必要时可能提供的项目。

(B) 审前披露的时间；异议。除非法院另有命令，这些披露必须在审判前至少 30 天作出。在披露作出后 14 天内，除非法院另行确定时间，当事人可以送达并迅速提交下列异议清单：对另一方当事人依据规则 26(a)(3)(A)(ii) 指定的庭外取证笔录依据规则 32(a) 使用的任何异议；以及对依据规则 26(a)(3)(A)(iii) 指明的材料的可采性可能提出的任何异议及其理由。未如此提出的异议--除依据《联邦证据规则》402 或 403 提出的异议外--即视为放弃，除非法院因正当理由予以豁免。

(4) 披露的形式。除法院另有命令外，规则 26(a) 项下的所有披露必须以书面形式作出、签署并送达。

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General*. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on Frequency and Extent*.

(A) *When Permitted*. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information*. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required*. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) *Trial Preparation: Materials*.

(A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without

(b) 证据开示范围与限制。

(1) 范围--一般规定。除非法院命令另有限制，证据开示的范围如下：当事人可以就任何与任何当事人的请求或抗辩相关的、且与案件需要相称的非特权事项获取证据开示，同时考虑诉讼中所涉问题的重要性、争议金额、当事人对相关信息的相对获取能力、当事人的资源、证据开示在解决问题方面的重要性，以及拟议证据开示的负担或费用是否超过其可能带来的利益。属于该证据开示范围的信息无须在证据上可采纳即可被开示。

(2) 频率与范围的限制。

(A) 何时允许。法院可通过命令变更本规则中关于庭外取证和书面询问数量的限制，或规则 30 项下庭外取证时长的限制。法院还可通过命令或地方规则限制规则 36 项下请求的数量。

(B) 对电子存储信息的具体限制。当事人无须就当事人指明因过度负担或费用而并非合理可获取的来源的电子存储信息提供证据开示。在强制证据开示或申请保护令的动议中，被要求开示的当事人必须证明该信息因过度负担或费用而并非合理可获取。如作出该证明，法院仍可在请求方证明正当理由并考虑规则 26(b)(2)(C) 的限制后，命令从该等来源进行证据开示。法院可以规定证据开示的条件。

(C)何时要求。经动议或依职权，如果法院认定下列情形，则必须限制本规则或地方规则原本允许的证据开示的频率或范围：

(i) 所寻求的证据开示不合理地累积或重复，或可从其他更方便、负担更小或费用更低的来源获得；

(ii) 寻求证据开示的当事人已有充分机会通过本案中的证据开示获得该信息；或

(iii) 拟议的证据开示超出规则 26(b)(1) 所允许的范围。

(3) 审判准备：材料。

文件和有形物。通常，当事人不得发现由另一方当事人或其代表(包括另一方当事人的律师、顾问、保证人、补偿人、保险人或代理人)为预期诉讼或审判而准备的文件和有形物。但除规则 26(b)(4) 另有规定外，如符合以下情形，可发现这些材料：

(A)

(i) 它们根据规则 26(b)(1) 可通过其他方式被开示；以及

(ii) 该当事人表明其准备案件对这些材料有实质性需要，且在不

undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure*. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous Statement*. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts*.

(A) *Deposition of an Expert Who May Testify*. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses*. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) *Expert Employed Only for Trial Preparation*. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

过度困难，以其他方式获取其实质等同物。

(B) 防止披露的保护。如法院命令发现这些材料，必须防止披露当事人律师或其他代表关于该诉讼的心理印象、结论、意见或法律理论。

(C先前陈述。任何当事人或其他人均可经请求且无需满足所要求的证明，获得其本人关于该诉讼或其主题事项的先前陈述。如果该请求被拒绝，该人可申请法院命令，规则 37(a)(5) 适用于费用的裁定。先前陈述为下列之一：

(i) 该人已签署或以其他方式采纳或认可的书面陈述；或

(ii) 同期速记、机械、电子或其他记录--或其转录件--实质逐字记载该人的口头陈述。

(4) 审判准备：专家。

(A) 可能作证的专家的庭外取证。当事人可对任何已被指明为可能在审判中提出意见的专家进行庭外取证。如规则 26(a)(2)(B) 要求该专家提供报告，则只能在提供报告后进行庭外取证。

(B) 对报告草稿或披露的审判准备保护。规则 26(b)(3)(A) 和 (B) 保护规则 26(a)(2) 要求提供的任何报告或披露的草稿，无论草稿以何种形式记录。

(C对当事人律师与专家证人之间通信的审判准备保护。规则 26(b)(3)(A) 和 (B) 保护当事人律师与任何须依据规则 26(a)(2)(B) 提供报告的证人之间的通信，无论通信形式如何，但以下范围的通信除外：(i) 涉及专家研究或证言的报酬；(ii) 指明当事人律师提供且专家在形成拟表达意见时考虑的事实或数据；或 (iii) 指明当事人律师提供且专家在形成拟表达意见时所依赖的假设。

仅为审判准备而聘用的专家。通常情况下，一方不得通过书面质询或庭外取证，发现另一方为预期诉讼或为审判做准备而留用或特别聘用、且预计不会在审判中作为证人传唤的专家所知晓的事实或所持有的意见。但一方仅在下列情况下方可为之：(i) 依照规则 35(b) 的规定；或 (ii) 在表明存在例外情形、致使该方通过其他方式无法就同一主题获取事实或意见时。

(D)

(E) *Payment*. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials*.

(A) *Information Withheld*. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced*. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) PROTECTIVE ORDERS.

(1) *In General*. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

付费。除非会导致明显不公，法院必须要求寻求证据开示的当事人：

(E)

(i) 就根据规则 26(b)(4)(A) 或 (D) 回应证据开示所花费的时间向专家支付合理费用；以及

(ii) 对于根据 (D) 进行的证据开示，还应向另一方支付其在获取专家事实和意见过程中合理发生的费用和开支的公平份额。

(5) 主张特权或保护审判准备材料。

(A) 信息保留。当一方以信息享有特权或属于审判准备材料保护范围为由，保留原本可被披露的信息时，该方必须：

(i) 明确提出该主张；以及 (ii) 描述未提供或未披露的文件、通信或有形物的性质--并且以不泄露本身享有特权或受保护的信息的方式作出描述，使其他当事人能够评估该主张。

(B) 所出示的信息。如证据开示中出示的信息受特权或作为开庭准备材料的保护主张约束，提出该主张的一方可通知任何收到该信息的当事人该主张及其依据。收到通知后，一方必须迅速返还、隔离或销毁指定的信息及其持有的任何副本；在主张解决之前不得使用或披露该信息；如该方在收到通知前已披露该信息，必须采取合理步骤取回该信息；并可迅速将信息密封提交法院以裁定该主张。出示方必须在主张解决之前保存该信息。

(c) 保护令

(1) 一般规定。一方或任何被要求提供证据开示的人，可在诉讼待决的法院申请保护令--或者，对于与庭外取证有关的事项，可替代性地在庭外取证将进行的地区法院申请。该动议必须包括一项证明，证明动议方已善意地与其他受影响方协商或试图协商，以努力在不经法院行动的情况下解决争议。法院可基于正当理由，发出命令保护一方或某人免受烦扰、尴尬、压迫或过度负担或费用，包括以下一项或多项：

(A) 禁止披露或开示；

(B) 指明披露或证据开示的条款，包括时间和地点或费用分配；

(C) 规定不同于寻求证据开示的当事人所选方法的证据开示方法；

(D) 禁止对某些事项进行询问，或将披露或证据开示的范围限制于某些事项；

(E) 指定在证据开示进行期间可以到场的人员；

(F)要求将证言笔录密封，且仅在法院命令下才可开启；

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery*. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses*. Rule 37(a)(5) applies to the award of expenses.

(d) TIMING AND SEQUENCE OF DISCOVERY.

(1) *Timing*. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) *Early Rule 34 Requests*.

(A) *Time to Deliver*. More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:

(i) to that party by any other party, and

(ii) by that party to any plaintiff or to any other party that has been served.

(B) *When Considered Served*. The request is considered to have been served at the first Rule 26(f) conference.

(3) *Sequence*. Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) SUPPLEMENTING DISCLOSURES AND RESPONSES.

(1) *In General*. A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) CONFERENCE OF THE PARTIES; PLANNING FOR DISCOVERY.

(1) *Conference Timing*. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling

(G) 要求商业秘密或其他保密的调研、开发或商业信息不得被披露，或仅以特定方式披露；以及

(H) 要求各方同时将指定文件或信息以密封信封提交，由法院指示开封。

(2) 命令进行证据开示。如果保护令动议被全部或部分驳回，法院可以基于公正条件，命令任何一方或任何人提供或允许证据开示。

(3) 费用裁定。规则 37(a)(5) 适用于费用裁定。

(d) 发现的时间与顺序。

(1) 时间。在各方按规则 26(f) 要求进行协商之前，任何一方不得从任何来源寻求证据开示，但根据规则 26(a)(1)(B) 豁免初始披露的程序除外，或经本规则、当事人约定或法院命令授权的情形除外。

(2) 规则 *34* 早期请求。

(A) 交付时间。在向一方送达传票和起诉状后超过21天，根据规则34提出的请求可以交付：

(i) 向该方由任何其他方，且

(ii) 由该方送达至任何原告或任何其他已被送达的当事方。

(B) 视为送达的时间。该请求被视为在首次规则26(f)会议时已送达。

(3) 顺序。除非各方约定或法院为各方及证人的便利及司法利益另有命令：

(A) 发现方法可按任何顺序使用；和

(B) 一方的证据开示不要求任何其他方延迟其证据开示。

(e) 补充披露与回应。

(1) 一般规定。已根据规则 26(a) 作出披露的当事人--或已对质询书、文件提交请求或自认请求作出回应的当事人--必须补充或更正其披露或回应：

(A) 如果该当事人得知披露或回应在某一实质方面不完整或不正确，且额外的或更正的信息未在证据开示过程中或以书面形式另行告知其他各方，则应及时补充或更正；或

(B) 经法院命令。

(2) 专家证人。对于其报告必须根据规则 26(a)(2)(B) 披露的专家，当事人的补充义务既及于报告中包含的信息，也及于专家在庭外取证期间提供的信息。对此类信息的任何增补或变更必须在当事人根据规则 26(a)(3) 应进行审前披露时予以披露。

(f) 缔约方会议；证据开示规划。

(1) 协商时间。除根据规则 26(a)(1)(B) 豁免初始披露的程序或法院另有命令外，各方必须尽快协商--且在任何情况下至少于日程安排

conference is to be held or a scheduling order is due under Rule 16(b).

(2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(4) *Expedited Schedule.* If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:

(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) SIGNING DISCLOSURES AND DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS.

(1) *Signature Required; Effect of Signature.* Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney

会议即将举行，或根据规则 16(b) 日程安排令即将到期。

(2) 会议内容；当事人的责任。在协商中，当事人必须考虑其请求和抗辩的性质和依据以及迅速和解或解决案件的可能性；作出或安排作出规则 26(a)(1) 所要求的披露；讨论有关保存可开示信息的任何问题；并制定拟议的证据开示计划。在案件中出庭的律师记录在案的律师和所有未由律师代理的当事人共同负责安排会议、本着诚信尝试就拟议的证据开示计划达成一致，并在会议后 14 天内向法院提交概述该计划的书面报告。法院可以命令当事人或律师亲自出席会议。

(3) 证据开示计划。证据开示计划必须载明各方对以下事项的意见和建议：

(A) 对规则 26(a) 项下披露的时间、形式或要求应作何变更，包括说明初始披露已于何时作出或将于何时作出；

(B) 可能需要进行证据开示的主题、证据开示应于何时完成，以及证据开示应分阶段进行还是应限于或集中于特定问题；

(C) 关于电子存储信息的披露、证据开示或保存的任何问题，包括其应被提交的形式；

(D) 关于特权主张或作为审判准备材料的保护主张的任何问题，包括--如果各方就提交后主张这些权利的程序达成一致--是否请求法院将其协议纳入根据《联邦证据规则》502 作出的命令中；

(E) 对根据本规则或地方规则施加的证据开示限制应作何变更，以及应施加哪些其他限制；以及

(F) 法院应根据规则 26(c) 或规则 16(b) 和 (c) 发布的任何其他命令。

(4) 加速日程。如为遵守其针对规则 16(b) 会议的加速日程而有必要，法院可通过地方规则：

(A) 要求各方的协商在日程安排会议举行或根据规则 16(b) 应发出日程安排命令之前少于 21 天进行；以及

(B) 要求概述证据开示计划的书面报告在各方协商后少于 14 天内提交，或免除各方提交书面报告的义务，并允许其在规则 16(b) 会议上口头报告其证据开示计划。

(g) 签署披露及证据开示请求、回应和异议。

(1) 要求签名；签名的效力。根据规则26(a)(1)或(a)(3)作出的每项披露以及每项证据开示请求、回应或异议，必须由至少一名律师签名

of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign*. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification*. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 27. Depositions to Perpetuate Testimony

(a) BEFORE AN ACTION IS FILED.

(1) *Petition*. A person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

以该律师本人名义签名--或由当事人亲自签名(如无代理)--并必须载明签名人的地址、电子邮件地址和电话号码。通过签名，律师或当事人证明，据其在合理查询后形成的知识、信息和信念，尽其所知：

(A) 就披露而言，其在作出时是完整和正确的；以及

(B) 就发现请求、答复或异议而言，系：

(i) 与本规则一致，并有现行法律或为扩展、修改或推翻现行法律或确立新法律而提出的非轻率论点作为依据；

(ii) 并非出于任何不正当目的，例如骚扰、造成不必要的拖延或无谓增加诉讼成本；以及

(iii) 既非不合理，也非过度负担或昂贵，考虑到案件的需要、案件中先前的证据开示、争议金额以及诉讼中所涉问题的重要性。

(2) 未签名的后果。其他当事人没有义务对未签名的披露、请求、回应或异议采取行动，直至其被签名；且法院必须将其剔除，除非在遗漏被提请该律师或当事人注意后迅速补交签名。

(3) 对不当证明的制裁性措施。如果证明在没有实质性正当理由的情况下违反本规则，法院应根据动议或自行对签署人、签署人代为行事的当事人或两者施加适当的制裁性措施。制裁性措施可以包括命令支付因违规而产生的合理费用，包括律师费。（经1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1970年3月30日修正，1970年7月1日生效；1980年4月29日修正，1980年8月1日生效；1983年4月28日修正，1983年8月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2000年4月17日修正，2000年12月1日生效；2006年4月12日修正，2006年12月1日生效；2007年4月30日修正，2007年12月1日生效；2010年4月28日修正，2010年12月1日生效；2015年4月29日修正，2015年12月1日生效。）

规则 27. 为保存证言而进行的庭外取证

(a) 在提起诉讼之前。

(1) 申请。希望就美国法院可审理的任何事项保全证言的人，可以向预期被对方当事人居住地的地区法院提交一份经核实的申请。该申请必须请求作出命令，授权申请人以保全其证言为目的对所列名的人员进行庭外取证。该申请必须以申请人的名义命名，并须表明：

(A) 申请人预期将成为美国法院可审理的诉讼的一方当事人，但目前不能提起该诉讼或促使该诉讼被提起；

(B) 预期诉讼的主题事项及申请人的利益；

(C) 申请人希望通过拟议证言确立的事实以及保全该证言的理由；

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(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.

(3) *Order and Examination*. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition*. A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district-court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) PENDING APPEAL.

(1) *In General*. The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) *Motion*. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order*. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.

(c) PERPETUATION BY AN ACTION. This rule does not limit a court's power to entertain an action to perpetuate testimony.

(D) 申请人预期为对方当事人的姓名或描述及其地址(在已知范围内)；以及

(E) 每名证人的姓名、地址及预期证言的实质内容。

(2) 通知和送达。在听证日期前至少 21 天，申请人必须向每一预期不利当事人送达申请书副本和载明听证时间和地点的通知。通知可以按照规则 4 规定的方式在地区或州内或外送达。如果无法以合理勤勉向预期不利当事人完成该送达，法院可以命令以公告或其他方式送达。法院必须指定一名律师代表未按照规则 4 规定的方式被送达的人，并在未被送达的人没有其他代理的情况下交叉询问该宣誓证人。如果任何预期不利当事人是未成年人或无行为能力人，则适用规则 17(c)。

(3) 命令和询问。如果法院确信保全证言可以防止司法失败或迟延，法院必须签发命令，指定或描述可以进行庭外取证的人，明确询问的主题事项，并说明庭外取证将以口头方式还是书面质询方式进行。此后可以按照本规则进行庭外取证，法院可以签发类似于规则 34 和规则 35 所授权的命令。在本规则中，本规则对诉讼待决法院的提及，就本规则而言，指庭外取证申请书提交地的法院。

(4) 使用庭外取证。为保全证言而进行的庭外取证，可在任何后来提起的、涉及同一标的的地区法院诉讼中根据规则32(a)使用，只要该庭外取证或是依据本规则进行的，或虽非如此进行，但在其进行地所在州的法院中本可作为证据采纳。

(b) 待决上诉。

(1) 一般规定。已作出判决的法院，如果上诉已被提起或仍可被提起，可以允许一方当事人对证人进行庭外取证以保全其证言，供该法院进一步程序中使用。

(2) 动议。希望保全证言的当事人可以动议请求准许进行庭外取证，其通知和送达与诉讼系属于地区法院时相同。该动议必须表明：

(A) 每名证人的姓名、地址及预期证言的实质内容；以及

(B) 维持证词的理由。

(3) 法院命令。如果法院认定保全证言可能防止司法失败或迟延，法院可以准许进行庭外取证，并可以发出类似规则 34 和规则 35 所授权的命令。该庭外取证可以像系属于地区法院的诉讼中所进行的任何其他庭外取证一样进行和使用。

(c) 通过诉讼保全。本规则不限制法院受理保全证言诉讼的权力。

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 28. Persons Before Whom Depositions May Be Taken

(a) WITHIN THE UNITED STATES.

(1) *In General*. Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) *Definition of ''Officer.''* The term ''officer'' in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) IN A FOREIGN COUNTRY.

(1) *In General*. A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a ''letter rogatory'';

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission*. A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a Request, Notice, or Commission*. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed ''To the Appropriate Authority in [name of country].'' A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence*. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) DISQUALIFICATION. A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 1, 2007, eff. Dec. 1, 2007.)

(1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；1971年3月1日修正，1971年7月1日生效；1987年3月2日修正，1987年8月1日生效；2005年4月25日修正，2005年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 28. 可以进行笔录证言的官员

(a) 在美国境内。

(1) 一般规定。在美国境内或受美国管辖的领地或岛屿属地内，庭外取证必须在以下人员面前进行：

(A) 经联邦法律或取证地法律授权主持宣誓的官员；或

(B) 由诉讼待决地法院指定主持宣誓和录取证言的人员。

(2) "官员"的定义。规则 30、31 和 32 中的"官员"一词包括根据本规则由法院任命或根据规则 29(a) 由当事人指定的人员。

(b) 在外国。

(1) 一般规定。证言笔录可在外国尝试：

(A) 根据适用的条约或公约；

(B)根据请求书，无论是否标题为"调查委托书"；

(C) 经通知，在经联邦法律或取证地法律授权主持宣誓的人员面前；或

(D) 在经法院委任主持任何必要宣誓并录取证言的人员面前。

(2) 签发请求书或委托书。请求书、委托书或两者均可签发：

(A)在提出申请并发出通知后，按适当条件；以及

(B) 无需证明以其他方式进行庭外取证不可行或不方便。

(3) 请求书、通知或委托书的形式。当根据条约或公约使用请求书或任何其他方式时，必须按照该条约或公约规定的形式加注标题。请求书可以致"致[国家名称]的适当当局"。庭外取证通知或委托书必须按姓名或描述性头衔指定取证所在其面前进行的人员。

(4) 请求书--证据的采纳。为回应请求书而获得的证据不必仅因其不是逐字记录、证言未经宣誓或任何类似的偏离在美国境内进行庭外取证的要求而被排除。

(c) 取消资格。庭外取证不得在以下人员面前进行：任何当事人的亲属、雇员或律师；与任何当事人的律师有亲属关系或受雇于该律师的人员；或对诉讼有经济利益的人员。

(1970年3月30日修正，1970年7月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

(As amended Mar. 30, 1970, eff. July 1, 1970; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 30. Depositions by Oral Examination

(a) WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.

(1) *Notice in General*. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents*. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

规则 29. 关于开示程序的约定

除法院另有命令外，当事人可以约定：

(a) 庭外取证可在任何时间、任何地点、经任何通知、以规定的方式在任何人员面前进行--在此情况下，其使用方式与任何其他庭外取证相同；以及

(b) 其他规范或限制证据开示的程序可予以修改--但延长任何形式证据开示时间的约定，如果会妨碍完成证据开示、听证动议或审判所设定的时间，必须经法院批准。

(1970年3月30日修正，1970年7月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 30. 口头询问取证

(a) 何时可以采取证言笔录。

(1) 无需许可。当事人可通过口头提问对任何人(包括当事人)进行庭外取证，无需法院许可，但规则 30(a)(2) 另有规定的除外。被取证人的出庭可通过规则 45 下的传票强制。

(2) 经许可。当事人必须获得法院许可，且法院必须在符合规则 26(b)(1) 和 (2) 的范围内授予许可：

(A) 如果当事人未约定进行该证言录取
以及：

(i) 该庭外取证将导致原告、被告或第三方被告根据本规则或规则 31 进行的庭外取证超过 10 次；

(ii) 证言人已在该案中作证；或

(iii) 当事人寻求在规则 26(d) 规定的时间之前进行庭外取证，除非当事人在通知中附支持事实证明被取证人预计将在该时间之后离开美国且无法在本国接受询问；

或

(B) 如果证言人正在监狱服刑。

(b) 关于取证通知；其他正式要求。

(1) 一般通知。希望以口头问题对某人进行庭外取证的当事人必须向其他各方发出合理的书面通知。通知必须说明庭外取证的时间和地点，以及(如已知)被取证人的姓名和地址。如果姓名未知，通知必须提供足以识别该人或该人所属于的特定类别或群体的概括描述。

(2) 出示文件。如果要向被取证人送达附证件传票，则传票中列明的指定出示材料必须在通知或附件中列出。向当事人被取证人发出的通知可附有根据规则 34 要求在庭外取证时出示文件和有形物的请求。

(3) *Method of Recording.*

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;
(ii) the date, time, and place of the deposition;
(iii) the deponent's name;
(iv) the officer's administration of the oath or affirmation to the deponent; and
(v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(3) 记录方法。

(A) 通知中载明的方法。发出庭外取证通知的当事人必须在通知中说明记录证言的方法。除法院另有命令外，证言可以通过音频、视听或速记方式记录。发出通知的当事人承担记录费用。任何当事人均可安排转录庭外取证。

(B) 附加方法。经事先通知被取证人和其他当事人，任何当事人可指定除原始通知中规定的方法之外的另一种记录证言的方法。该当事人承担附加记录或转录的费用，除非法院另有命令。

(4) 通过远程方式。当事人可以约定--或法院可以基于动议命令--通过电话或其他远程方式进行庭外取证。就本规则及规则 28(a)、37(a)(2) 和 37(b)(1) 而言，庭外取证在被取证人回答问题的地方进行。

(5) 高级管理人员的职责。

(A) 庭外取证之前。除当事人另有约定外，庭外取证必须在根据规则 28 任命或指定的人员面前进行。该人员必须以记录在案的陈述开始庭外取证，其中包括：

(i) 该官员的姓名和办公地址；

(ii) 庭外取证的日期、时间和地点；(iii) 被取证人的姓名；(iv) 该官员对被取证人主持宣誓或确认；以及

(v) 所有在场人员的身份。

(B) 进行庭外取证；避免失真。如果庭外取证以非速记方式记录，该人员必须在每个记录介质单元开始时重复规则 30(b)(5)(A)(i) -(iii) 中的事项。被取证人和律师的外貌或举止不得通过记录技术而失真。

(C) 庭外取证之后。庭外取证结束时，该人员必须在记录中声明庭外取证已完成，并必须载明律师就笔录或记录及证物的保管或任何其他相关事项所作的任何约定。

(6) 致组织的通知或传票。在其通知或传票中，一方当事人可以指定公共或私人公司、合伙企业、协会、政府机构或其他实体作为庭外取证对象，并且必须合理详细地描述拟审查的事项。被指定的组织随后必须指定一名或多名高级职员、董事或管理代理人，或指定同意代表其作证的其他人员；并且可以列明每名被指定人员将就哪些事项作证。传票必须告知非当事方组织其作出此项指定的义务。被指定人员必须就组织所知或合理可获得的信息作证。本款(6)不排除通过本规则允许的任何其他程序进行庭外取证。

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS.

(1) *Examination and Cross-Examination*. The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections*. An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions*. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

(1) *Duration*. Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction*. The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit*.

(A) *Grounds*. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order*. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses*. Rule 37(a)(5) applies to the award of expenses.

(c) 询问与交叉询问；询问记录；异议；书面问题。

(1) 询问和交叉询问。对被取证人的询问和交叉询问按照《联邦证据规则》在审判时的方式进行，但规则 103 和 615 除外。在使被取证人宣誓或确认后，该人员必须按照规则 30(b)(3)(A) 指定的方法记录证言。证言必须由该人员亲自或由在该人员在场并指导下行事的人员记录。

(2) 异议。在审查时提出的异议--无论是对证据、对一方当事人的行为、对官员的资格、对进行庭外取证的方式，还是对庭外取证的任何其他方面--必须记录在案，但审查仍继续进行；证言在保留任何异议的情况下取得。异议必须以简洁、非辩论性和非暗示性的方式陈述。只有在为保护特权、执行法院命令的限制或根据规则 30(d)(3) 提出动议所必需时，才可以指示庭外取证对象不予回答。

(3) 通过书面问题参与。当事人可以不参与口头询问，而是将书面问题密封于信封中送达发出庭外取证通知的当事人，后者必须将其交付给该人员。该人员必须向被取证人提出这些问题并逐字记录答案。

(d) 持续时间；制裁；终止或限制的动议。

(1) 时长。除非另有约定或法院另有命令，庭外取证限于一天 7 小时。如为公平询问证人所需，或证人、其他人或任何其他情况妨碍或拖延询问，法院必须允许按照规则 26(b)(1) 和 (2) 延长时间。

(2) 制裁性措施。对于妨碍、拖延或阻挠对证人进行公平询问的人，法院可对其施加适当的制裁性措施--包括任何当事人产生的合理费用和律师费。

(3) 终止或限制动议。

(A) 理由。在庭外取证期间的任何时候，证人或者当事人可以以取证系出于恶意或者以不合理地烦扰、羞辱或压迫证人或者当事人的方式进行为理由，动议终止或限制取证。该动议可以在诉讼系属的法院或者进行庭外取证的法院提出。如果提出异议的证人或者当事人如此要求，庭外取证必须暂停，暂停时间为取得命令所需的时间。

(B) 命令。法院可以命令终止庭外取证，或者按照规则 26(c) 的规定限制其范围和方式。如果终止，只有在诉讼系属的法院作出命令后才能恢复庭外取证。

(C) 费用裁定。规则 37(a)(5) 适用于费用裁定。

(e) REVIEW BY THE WITNESS; CHANGES.

(1) *Review; Statement of Changes*. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate*. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRANSCRIPT OR RECORDING; FILING.

(1) *Certification and Delivery*. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked ''Deposition of [witness's name]'' and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things*.

(A) *Originals and Copies*. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals*. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording*. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing*. A party who files the deposition must promptly notify all other parties of the filing.

(g) FAILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for

(e) 证人复核；变更。

(1) 审阅；变更声明。在被取证人或其他当事人在庭外取证完成前提出请求时，必须允许被取证人在该人员通知其笔录或记录可供使用后 30 天内：

(A) 审查文字记录或录音；以及

(B) 如果形式或者实质上有变更，签署一份列明变更及作出变更理由的声明。

(2) 该人员证明书中指明的变更。该人员必须在规则 30(f)(1) 规定的证明书中注明是否请求了审阅，如已请求，则必须附上被取证人在 30 天期间内所作的任何变更。

(f) 证明与交付；证物；笔录或者录音的副本；提交。

(1) 认证与交付。主持官必须书面证明证人已依法宣誓，且庭外取证准确记录了证人的证言。该证明必须随庭外取证记录一并提交。除法院另有命令外，主持官必须将庭外取证密封于载明诉讼名称并标注"[证人姓名]的庭外取证"的信封或包装中，并必须迅速送交安排制作笔录或录音的律师。该律师必须将其存放在可保护其免遭丢失、毁坏、篡改或变质的条件下。

(2) 文件与有形物品。

原件和副本。为在庭外取证期间供查阅而提交的文件和有体物，经当事人请求，必须为识别目的加以标记并附于庭外取证。任何当事人均可查阅和复制它们。但提交它们的人如欲保留原件，该人可以：

(A)

(i) 提供副本以供标记、附于庭外取证并随后作为原件使用--在给予所有当事人通过将副本与原件比对以核验副本的公平机会之后；或者

(ii) 在原件被标记后给予所有当事人查阅和复制原件的公平机会--在此情形下，原件可以如同附于庭外取证一样使用。

(B) 关于原件的命令。任何当事人均可动议请求命令，在案件最终处理前将原件附于庭外取证。

(3) 笔录或记录的副本。除另有约定或法院另有命令外，该人员必须保留以速记方式进行的庭外取证的速记笔记或以其他方法进行的庭外取证的记录副本。在支付合理费用后，该人员必须向任何当事人或被取证人提供笔录或记录的副本。

(4) 提交通知。提交庭外取证的当事人必须及时将提交事宜通知所有其他当事人。

(g) 未出席宣誓作证或未送达传票；前-

费用。预期将进行庭外取证而亲自或者通过律师到场的当事人，可以就以下事项追偿合理费用：

attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July 1, 1970; Mar. 1, 1971, eff. July 1, 1971; Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 31. Depositions by Written Questions

(a) WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d); or

(B) if the deponent is confined in prison.

(3) *Service; Required Notice*. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization*. A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties*. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) DELIVERY TO THE OFFICER; OFFICER'S DUTIES. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

出庭，包括律师费，若通知方未能
做到以下事

(1) 出席并进行宣誓证言；或

(2) 向非当事人证人送达传票，而该证人因此未到场。

（经1963年1月21日修订，1963年7月1日生效；1970年3月30日修订，1970年7月1日生效；1971年3月1日修订，1971年7月1日生效；1972年11月20日修订，1975年7月1日生效；1980年4月29日修订，1980年8月1日生效；1987年3月2日修订，1987年8月1日生效；1993年4月22日修订，1993年12月1日生效；2000年4月17日修订，2000年12月1日生效；2007年4月30日修订，2007年12月1日生效；2015年4月29日修订，2015年12月1日生效。）

规则 31. 书面质询取证

(a) 何时可以采取证言笔录。

(1) 无需许可。当事人可以通过书面问题对任何人(包括当事人)进行庭外取证，无需法院许可，但规则 31(a)(2) 另有规定的除外。证人的到场可以通过规则 45 规定的传票强制。

(2) 经许可。当事人必须获得法院许可，且法院必须在符合规则 26(b)(1) 和 (2) 的范围内授予许可：

(A) 如果当事人未约定进行该证言录取
以及：

(i) 该庭外取证将导致原告、被告或者第三方被告根据本规则或者规则 30 进行的庭外取证超过 10 次；

(ii) 证言人已在该案中作证；或

(iii) 该当事人寻求在规则 26(d) 规定的时间之前进行庭外取证；或者

(B) 如果证言人正在监狱服刑。

(3) 送达；所需通知。希望以书面问题对某人进行庭外取证的当事人必须将问题送达每一其他当事人，并附一份通知，在已知的情况下载明取证对象的姓名和地址。如果姓名未知，通知必须提供足以识别该人或该人所隶属的特定类别或群体的概括描述。通知还必须载明主持庭外取证的主持官的姓名或描述性职务以及地址。

(4) 向组织提出的问题。公共或私人公司、合伙企业、协会或政府机构可以按照规则 30(b)(6) 通过书面问题进行庭外取证。

(5) 其他当事人的问题。其他当事人向被取证人提出的任何问题必须按以下方式送达所有当事人：交叉问题，在收到通知和直接问题送达后 14 天内；再直接问题，在收到交叉问题送达后 7 天内；再交叉问题，在收到再直接问题送达后 7 天内。法院可以基于正当理由延长或缩短这些期限。

(b) 交付给官员；官员的职责。该方
发出庭外取证通知的当事人必须向官员交付所送达的所有问题以及通知的副本。官员必须及时按照规则 30(c)、(e) 和 (f) 规定的方式着手：

(1) take the deponent's testimony in response to the questions;
(2) prepare and certify the deposition; and
(3) send it to the party, attaching a copy of the questions and of the notice.

(c) NOTICE OF COMPLETION OR FILING.
(1) *Completion*. The party who noticed the deposition must notify all other parties when it is completed.
(2) *Filing*. A party who files the deposition must promptly notify all other parties of the filing.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 32. Using Depositions in Court Proceedings

(a) USING DEPOSITIONS.
(1) *In General*. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:
(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;
(B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and
(C) the use is allowed by Rule 32(a)(2) through (8).
(2) *Impeachment and Other Uses*. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Federal Rules of Evidence.
(3) *Deposition of Party, Agent, or Designee*. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).
(4) *Unavailable Witness*. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:
(A) that the witness is dead;
(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;
(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;
(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or
(E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.
(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

(1) 询问证人以回应问题录取证言；
(2) 准备并认证该证言笔录；以及
(3) 将其送交该当事人，并附上问题副本和通知副本。

(c) 完成或提交通知。
(1) 完成。发出庭外取证通知的当事人必须在取证完成时通知所有其他当事人。
(2) 提交。提交庭外取证的当事人必须及时将提交一事通知所有其他当事人。

(1970年3月30日修正，1970年7月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效；2015年4月29日修正，2015年12月1日生效。)

规则 32. 在法院诉讼中使用笔录证言

(a) 使用笔录证言。
(1) 一般规定。在听证或审判中，庭外取证的全部或部分可依以下条件用于对抗一方当事人：
(A) 该当事人在庭外取证进行时在场或有代表出席，或已收到关于该取证的合理通知；
(B) 其使用范围限于：若证人在场并作证，根据联邦证据规则该证言本可采纳；且
(C) 该使用为规则 32(a)(2) 至(8)所允许。
(2) 弹劾和其他用途。任何当事人均可使用庭外取证来反驳或弹劾被取证人作为证人提供的证言，或用于《联邦证据规则》允许的任何其他目的。
(3) 当事人、代理人或指定人的庭外取证。对方当事人可以为任何目的使用当事人或任何在庭外取证时为该当事人的官员、董事、管理代理人或根据规则 30(b)(6) 或 31(a)(4)的指定人的庭外取证。
(4) 证人无法出庭。如法院认定以下情形，当事人可为任何目的使用证人的庭外取证，无论该证人是否为当事人：
(A) 证人已经死亡；
(B) 该证人距听证或审判地超过100英里或在美国境外，但显示该证人缺席系由提供庭外取证的当事人促成的除外；
(C) 该证人因年龄、疾病、体弱或监禁而无法出席或作证；
(D) 提供庭外取证的当事人无法通过传票促使该证人出席；或
(E) 经动议和通知，存在特殊情形使得允许使用该庭外取证为可取--符合司法利益并适当顾及公开法庭上现场证言的重要性。
(5) 使用限制。
(A) 短通知下进行的庭外取证。庭外取证不得用于对抗以下当事人：该当事人收到少于 14 天的庭外取证通知后，及时根据规则 26(c)(1)(B) 动议请求保护令，要求不进行庭外取证或在不同时间或地点进行--且

this motion was still pending when the deposition was taken.

(B) *Unavailable Deponent; Party Could Not Obtain an Attorney*. A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using Part of a Deposition*. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party*. Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) *Deposition Taken in an Earlier Action*. A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.

(b) OBJECTIONS TO ADMISSIBILITY. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) FORM OF PRESENTATION. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) WAIVER OF OBJECTIONS.

(1) *To the Notice*. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the Officer's Qualification*. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

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

(A) *Objection to Competence, Relevance, or Materiality*. An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) *Objection to an Error or Irregularity*. An objection to an error or irregularity at an oral examination is waived if:

在录取证言时，该动议仍处于待决状态。

(B) 被取证人无法出席；当事人无法获得律师。未经法院许可根据规则 30(a)(2)(A)(iii) 的无法出席规定进行的庭外取证，不得用于对抗以下当事人：该当事人证明在收到通知时，尽管尽了勤勉努力，仍无法获得律师在庭外取证中代表其。

(6) 使用庭外取证的一部分。如果当事人仅将庭外取证的一部分作为证据提出，对方当事人可以要求提出者引入在公平上应与所引入部分一并考虑的其他部分，任何当事人也可以自行引入任何其他部分。

(7) 替换当事人。根据规则 25 替换当事人不影响使用先前进行的庭外取证的权利。

(8) 在先前诉讼中进行的庭外取证。在任何联邦或州法院诉讼中合法进行并(如要求)提交的庭外取证，可以在相同当事人或其代表或利益继承人之间涉及相同标的的后续诉讼中使用，其程度与在后续诉讼中进行相同。先前进行的庭外取证也可以按照《联邦证据规则》的允许使用。

(b) 对可采纳性的异议。除规则 28(b) 和 32(d)(3) 另有规定外，在听证或审判中，可对引入任何若证人在场并作证则不可采纳的庭外取证证言提出异议。

(c) 呈现形式。除法院另有命令外，当事人必须提供其提供的任何庭外取证证言的笔录，但亦可向法院提供非笔录形式的证言。经任何当事人请求，在陪审团审判中为除弹劾外的任何目的提供的庭外取证证言，如可获得，必须以非笔录形式呈现，除法院基于正当理由另有命令外。

(d) 对异议的放弃。

(1) 对通知的异议。对庭外取证通知中的错误或不规范的异议，除非及时以书面形式送达发出通知的当事人，否则视为放弃。

(2) 对该人员资格的异议。基于庭外取证所在其面前进行的人员不合格的异议，如未在以下情况下提出，则视为放弃：

(A) 在证言录取开始之前；或

(B) 在知悉不合格事由后或经合理勤勉本可知悉后及时提出。

(3) 关于录取证言。

(A) 对能力、相关性或实质性的异议。对证人的能力--或对证言的能力、相关性或实质性的异议--不因未在庭外取证之前或期间提出而视为放弃，除非该异议的理由在当时本可被纠正。

(B) 对错误或不规范的异议。对口头询问中的错误或不规范的异议视为放弃

如果

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(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.

(4) *To Completing and Returning the Deposition*. An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(As amended Mar. 30, 1970, eff. July 1, 1970; Nov. 20, 1972, eff. July 1, 1975; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 33. Interrogatories to Parties

(a) IN GENERAL.

(1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) ANSWERS AND OBJECTIONS.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(i) 其涉及庭外取证的方式、问题或回答的形式、宣誓或确认、当事人的行为，或其他在当时本可被纠正的事项；且

(ii) 该异议未在证言笔录制作期间及时提出。

(C) 对书面问题的异议。对规则 31 项下书面问题形式的异议，如未在提交答复问题的期限内以书面形式向提交该问题的当事人送达，则视为放弃；如该问题为再交叉询问问题，则如未在收到该问题后 7 日内以书面形式送达，视为放弃。

(4) 对完成和返还庭外取证笔录的异议。对记录官如何转录证言--或如何准备、签署、认证、盖章、背书、发送或以其他方式处理庭外取证笔录--的异议，除非在错误或不规范为人所知或经合理勤勉本可为人所知后及时提出排除动议，否则视为放弃。

(1970年3月30日修正，1970年7月1日生效；1972年11月20日修正，1975年7月1日生效；1980年4月29日修正，1980年8月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 33. 向当事人提出的质询书

(a) 一总则。

(1) 数量。除另有约定或法院另有命令外，一方当事人可向任何其他当事人送达不超过25项书面质询，包括所有独立子部分。准予送达额外书面质询的许可，可在符合规则 26(b)(1) 和 (2) 的范围内授予。

(2) 范围。书面质询可涉及依规则 26(b) 可查询的任何事项。书面质询不因其要求就与事实或法律对事实的适用有关的意见或主张而当然受到异议，但法院可命令该书面质询无需答复，直至指定的证据开示完成，或直至审前会议或某一其他时间。

(b) 答复与异议。

(1) 回应方。质询必须予以回答：

(A) 由其所针对的一方；或

(B) 如果该当事人是公共或私营企业、合伙企业、协会或政府机构，则由任何高级职员或代理人提供，该高级职员或代理人必须向该当事人提供可获得的资料。

(2) 答复时间。答复方必须在收到书面质询送达后 30 日内送达其答复及任何异议。更短或更长的时间可依规则 29 约定或由法院命令确定。

(3) 答复每项书面质询。每项书面质询，在未被提出异议的范围内，必须在宣誓下以书面形式分别且完整地答复。

(4) 异议。对书面质询提出异议的理由必须具体说明。未在及时提出的异议中陈述的任何理由均视为放弃，除非法院基于正当理由免除该未陈述的责任。

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) USE. An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) OPTION TO PRODUCE BUSINESS RECORDS. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) IN GENERAL. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) PROCEDURE.

(1) *Contents of the Request*. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections*.

(A) *Time to Respond*. The party to whom the request is directed must respond in writing within 30 days after being

(5) 签名。作出答复的人必须在答复上签名，提出异议的律师必须在任何异议上签名。

(c) 使用。对书面质询的答复可在联邦证据规则允许的范围内使用。

(d) 选择提供企业记录。如果对书面质询的答复可以通过检查、审计、汇编、摘录或摘要当事人的企业记录(包括电子存储信息)来确定，并且如果推导或查明该答复的负担对双方实质上相同，则答复方可以通过以下方式答复：

(1)指明必须查阅的记录，其详细程度足以使提出质询的当事人能够像答复方一样便捷地找到并识别这些记录；以及

(2)给予提出质询的当事人合理的机会检查和审计这些记录，并制作副本、汇编、摘录或摘要。

(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1970 年 3 月 30 日修订，1970 年 7 月 1 日生效；1980 年 4 月 29 日修订，1980 年 8 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2006 年 4 月 12 日修订，2006 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2015 年 4 月 29 日修订，2015 年 12 月 1 日生效。)

规则 34. 制作文件、电子存储信息，及有形物品，或进入土地，以供查阅及其他目的

(a) 一般规定。当事人可以向任何其他当事人送达规则 26(b) 范围内的请求：

(1)出示并允许请求方或其代表检查、复制、测试或取样答复方占有、保管或控制的下列物品：

(A) 任何指定的文件或电子存储信息--包括文字、图纸、图表、图形、照片、录音、图像及其他数据或数据汇编--存储于任何介质中，信息可以直接从中获取，或在必要时经答复方转换为合理可用的形式后获取；或

(B) 任何指定的有形物品；或

(2)允许进入答复方占有或控制的指定土地或其他财产，以便请求方可以检查、测量、勘测、拍摄、测试或取样该财产或其上的任何指定物体或操作。

(b) 程序。

(1) 请求的内容。请求：

(A) 必须以合理的特定性描述每一项或每一类待检查的物品；

(B) 必须指明检查及执行相关行为的合理时间、地点和方式；以及

(C) 可以指明电子存储信息出示的形式。

(2) 答复与异议。

(A) 答复时间。文件提交请求所指向的当事人必须在收到送达后 30 日内以书面形式答复

served or—if the request was delivered under Rule 26(d)(2)—within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) NONPARTIES. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 35. Physical and Mental Examinations

(a) ORDER FOR AN EXAMINATION.

(1) *In General.* The court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.

或者--如果请求是根据规则 26(d)(2) 送达的--在双方首次规则 26(f) 会议后 30 天内答复。经规则 29 约定或法院命令，可以缩短或延长该期限。

(B) 对每一项目的答复。对于每一项目或类别，答复必须要么声明将按要求允许查阅及相关活动，要么具体说明反对该请求的理由，包括原因。答复方可以声明其将提供文件或电子存储信息的副本，而不允许查阅。此后，提供必须在请求中指定的查阅时间或答复中指定的另一合理时间之前完成。

(C) 异议。异议必须说明是否基于该异议扣留任何答复材料。对请求一部分的异议必须指明该部分，并允许检查其余部分。

(D) 答复 *Electronically stored Information* 的文件提交请求。答复中可对请求的 Electronically stored Information 提交形式提出异议。如答复方对请求的形式提出异议--或如请求中未指定形式--该当事人必须说明其打算使用的形式。

提交文件或 *Electronically stored Information*。除非另有约定或法院另有命令，以下程序适用于提交文件或 Electronically stored Information:

(E)

(i) 当事人必须按照企业通常经营过程中保存文件的方式出示文件，或者必须组织并标注文件，使其与请求中的类别相对应；

(ii) 如果请求未指明出示电子存储信息的形式，当事人必须以其通常维护的形式或合理可用的形式出示；以及

(iii) 当事人无需以不止一种形式出示同一电子存储信息。

(c) 非当事人。按照规则 45 的规定，可以强制非当事人出示文件和有形物品或允许检查。

（经1946年12月27日修订，1948年3月19日生效；1970年3月30日修订，1970年7月1日生效；1980年4月29日修订，1980年8月1日生效；1987年3月2日修订，1987年8月1日生效；1991年4月30日修订，1991年12月1日生效；1993年4月22日修订，1993年12月1日生效；2006年4月12日修订，2006年12月1日生效；2007年4月30日修订，2007年12月1日生效；2015年4月29日修订，2015年12月1日生效。）

规则 35. 身体和精神检查

(a) 检查令。

(1) 一般规定。诉讼待决地法院可以命令其精神或身体状况--包括血型--存在争议的当事人接受由适当许可或认证的检查人员进行的身体或精神检查。

The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order*. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) EXAMINER'S REPORT.

(1) *Request by the Party or Person Examined*. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents*. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party*. After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege*. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report*. The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope*. This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Pub. L. 100–690, title VII, §7047(b), Nov. 18, 1988, 102 Stat. 4401; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 36. Requests for Admission

(a) SCOPE AND PROCEDURE.

(1) *Scope*. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless

法院拥有同等权力，命令一方当事人将其羁押或受其法律控制的人提交检查。

(2) 动议与通知；命令的内容。该命令：

(A) 只能基于有正当理由的动议，并在通知所有当事人及被检查人后作出；且

(B) 必须明确检查的时间、地点、方式、条件与范围，以及将实施检查的人员。

(b) 审查员报告。

(1) 被检查方当事人或人的请求。申请检查的当事人必须应请求向请求人交付检查人报告的副本，连同对同一状况的所有先前检查的类似报告。该请求可由检查命令所针对的当事人或由被检查人提出。

(2) 内容。检查人的报告必须采用书面形式，并必须详细列明检查人的发现，包括诊断、结论及任何测试的结果。

(3) 动议方的请求。在交付报告后，申请检查的当事人可以请求--并有权从检查命令所针对的当事人处获得--对同一状况的所有先前或后续检查的类似报告。但如保管或控制被检查人的当事人证明其无法获得该等报告，则无需由其交付。

(4) 特权的放弃。被检查方通过请求并获得检查人报告，或通过对检查人进行庭外取证，即放弃其在该诉讼或涉及同一争议的任何其他诉讼中可能享有的、关于对同一状况的所有检查的证言的任何特权。

(5) 未交付报告。法院可依动议命令--以公正条件--一方当事人交付检查报告。如未提供报告，法院可排除检查人在庭审中的证言。

(6) 范围。本(b)款同样适用于经当事人协议进行的检查，除非协议另有规定。本款不排除根据其他规则获取检查人报告或对检查人进行庭外取证。(1970年3月30日修订，1970年7月1日生效；1987年3月2日修订，1987年8月1日生效；Pub.L.100-690，第七编，7047(b),1988年11月18日，102 Stat.4401;1991年4月30日修订，1991年12月1日生效；2007年4月30日修订，2007年12月1日生效。)

规则 36. 要求承认

(a) S 范围和程序。

(1) 范围。一方可以向任何其他方送达书面请求，仅就本待决诉讼而言，要求其承认属于规则 26(b)(1) 范围内的任何事项的真实性，涉及

做到以

(A)事实、法律对事实的适用，或对二者的意见；以及

(B) 任何所述文件的真实性。

(2) 形式；文件副本。每项事项必须分别载明。要求承认文件真实性的请求必须附有该文件的副本，除非

it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to Respond; Effect of Not Responding*. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) *Answer*. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections*. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection*. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General*. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

该文件已经或已经以其他方式提供或可供查阅和复制。

(3) 答复时间；未答复的后果。除非被请求方在送达后30日内向请求方送达针对该事项的书面答复或异议，并由该方或其律师签署，否则该事项视为承认。答复的较短或较长时间可依规则29约定，或由法院命令确定。

(4) 答复。如果某一事项未被承认，答复必须具体地否认该事项，或者详细说明答复方为何无法如实承认或否认该事项。否认必须公平地回应事项的实质内容；当诚信要求一方对答复加以限定或仅否认某一事项的一部分时，答复必须指明所承认的部分，并对其余部分加以限定或否认。答复方只有在声明其已进行合理查询且其所知或可随时获得的信息不足以使其承认或否认时，才可以主张缺乏知识或信息作为未能承认或否认的理由。

(5) 异议。必须陈述对请求提出异议的理由。一方不得仅以该请求提出了需要审理的实质性争点为理由提出异议。

(6) 关于答复或异议充分性的动议。请求方可以提出动议以确定答复或异议的充分性。除非法院认定异议正当，否则必须命令送达答复。在认定答复不符合本规则时，法院可以命令视为该事项已被自认，或命令送达修正后的答复。法院可以将最终决定推迟至审前会议或审判前的特定时间。规则 37(a)(5) 适用于费用裁定。

(b) 承认的效力；撤回或修改承认。A

根据本规则承认的事项具有终局确定性，除非法院基于动议允许撤回或修正该承认。在遵守规则 16(e) 的前提下，如果撤回或修正有助于案件实体问题的呈现，且法院不认为这会损害请求方在实体问题上维持或抗辩该诉讼，法院可以允许撤回或修正。根据本规则作出的承认不构成用于任何其他目的的承认，且不得在任何其他程序中被用来对抗该方。(1946年12月27日修正，1948年3月19日生效；1970年3月30日修正，1970年7月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 37. 未作出披露或未配合证据开示；制裁性措施

(a) 强制披露或开示的动议令

(1) 一般规定。在通知其他各方和所有受影响人员后，一方可以动议要求作出强制披露或证据开示的命令。该动议必须包括一项证明，说明动议方已善意地与未能作出披露或证据开示的人员或一方协商或试图协商，以努力在不诉诸法院行动的情况下获得该披露或证据开示。

(2) *Appropriate Court*. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) *Specific Motions*.

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) *Related to a Deposition*. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Disclosure, Answer, or Response*. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders*.

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing)*. If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied*. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(2) 适当的法院。向一方发出的命令动议必须在诉讼待决的法院提出。向非当事人发出的命令动议必须在证据开示正在或将要进行的法院提出。

(3) 特定动议。

(A) 强制披露。如果一方未能作出规则26(a)所要求的披露，任何其他方均可动议强制披露并请求适当的制裁性措施。

强制证据开示答复。寻求证据开示的一方可以动议要求作出答复、指定、出示或检查的命令。该动议可在下列情况下提出：

(B)

(i) 证人在规则 30 或 31 下被提问时未能作答；

(ii) 公司或其他实体未能根据规则 30(b)(6) 或 31(a)(4) 作出指定；

(iii) 一方未能回答根据规则 33 提交的质询；或

(iv) 一方未能出示文件，或未能答复将允许查阅--或未能允许查阅--如规则 34 所要求。

(C) 与庭外取证相关。在进行口头庭外取证时，提问方可以在动议要求命令之前完成或休庭。

(4) 回避性或未完整的披露、答复或回应。就本款(a)而言，回避性或未完整的披露、答复或回应必须视为未能披露、答复或回应。

(5) 费用支付；保护令。

(A)

如果动议获准(或披露或证据开示在提出后提供)。如果动议获准--或者如果披露或所请求的证据开示是在动议提出后提供的--法院必须在给予陈述意见的机会后，要求其行为导致该动议必要的当事方或庭外取证证人、建议该行为的当事方或律师、或两者，支付动议方因提出该动议而发生的合理费用，包括律师费。但在以下情况下，法院不得命令支付该费用：(i) 动议方在未诉诸法院行动的情况下善意尝试获取披露或证据开示之前即提出了动议；(ii) 对方的不披露、答复或异议具有实质正当理由；或 (iii) 其他情况使得费用裁定不公正。

(B) 如果动议被驳回。如果动议被驳回，法院可以发出规则 26(c) 授权的任何保护令，并且必须在给予陈述意见的机会后，要求动议方、提出动议的律师、或两者，支付反对该动议的当事方或庭外取证证人因反对该动议而发生的合理费用，包括律师费。但如果动议具有实质正当理由或其他情况使得费用裁定不公正，法院不得命令支付该费用。

(C) *If the Motion Is Granted in Part and Denied in Part*. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions Sought in the District Where the Deposition Is Taken*. If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought in the District Where the Action Is Pending*.

(A) *For Not Obeying a Discovery Order*. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination*. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses*. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement*. If a party fails to provide information or identify a witness as required by Rule 26(a) or

(C) 如果动议部分获准、部分被驳回。如果动议部分获准、部分被驳回，法院可以发出规则26(c)授权的任何保护令，并可以在给予陈述意见的机会后，分摊动议的合理费用。

(b) 未遵守法院命令。

(1) 在庭外取证地进行地寻求的制裁性措施。如果进行证据开示地的法院命令庭外取证证人宣誓或回答某一问题而该证人未遵守，该未遵守行为可被视为藐视法庭。如果与庭外取证相关的动议被移送至诉讼待决地法院，且该法院命令庭外取证证人宣誓或回答某一问题而该证人未遵守，该未遵守行为可被视为对进行证据开示地法院或诉讼待决地法院的藐视。

(2) 在诉讼待决地区寻求制裁。

(A) 因不遵守证据开示命令。如果一方或该方的管理人员、董事或管理代理人--或依规则30(b)(6)或31(a)(4)指定的证人--未能遵守提供或允许证据开示的命令，包括依规则26(f)、35或37(a)作出的命令，审理该诉讼的法院可以发出进一步的公正命令。这些命令可以包括下列各项：

(i) 指示将命令所涵盖的事项或其他指定事实视为就诉讼而言已确立，如胜诉方所主张；

(ii) 禁止不服从的一方支持或反对指定的请求或抗辩，或禁止在证据中引入指定事项；

(iii) 删除诉状的全部或部分内容；

(iv) 中止进一步程序，直至该命令得到遵守；

(v) 全部或部分驳回诉讼或程序；

(vi) 对不服从命令的一方作出缺席判决；或

(vii) 将不遵守任何命令(除接受身体或精神检查的命令外)视为藐视法庭。

(B) 因未提供人员接受检查。如果一方未能遵守规则35(a)要求其提供另一人接受检查的命令，法院可以发出规则37(b)(2)(A)(i)-(vi)所列的任何命令，除非不服从的一方证明其无法提供该另一人。

(C) 费用支付。作为上述命令的替代或补充，法院必须命令不服从的一方、为该方提供建议的律师或两者支付因该不服从行为引起的合理费用，包括律师费，除非该不服从行为具有实质正当理由或其他情况使得判给费用不公正。

(c) 未披露、未补充先前答复或未承认。

(1) 未能披露或补充。如果一方未能提供规则26(a)所要求的信息或指明证人，或

(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).

(2) *Failure to Admit*. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General*.

(A) *Motion; Grounds for Sanctions*. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) *Certification*. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act*. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because

(e) 要求的信息或指明证人，该方不得使用该信息或证人在动议、听证或审判中提供证据，除非该未能披露具有实质正当理由或无害。作为该制裁性措施的补充或替代，法院在动议后并给予陈述意见的机会后：

(A) 可以命令支付因该未能披露造成的合理费用，包括律师费；

(B) 可告知陪审团该方未能提供证据；以及

(C) 可以施加其他适当的制裁性措施，包括规则 37(b)(2)(A)(i)-(vi) 中列出的任何命令。

(2) 未能承认。如果一方未能承认规则36所请求的事项，且请求方后来证明文件真实或事项属实，请求方可以动议要求未能承认的一方支付为作出该证明而产生的合理费用，包括律师费。法院必须如此命令，除非：

(A) 该请求根据规则 36(a) 被认定为可提出异议；(B) 寻求的承认不具有实质重要性；

(C) 未能承认的一方有合理理由相信其在该事项上可能胜诉；或

(D) 未予承认还有其他正当理由。

(d) 当事人未能出席其本人的庭外取证、送达对质询书的答复，或未能回应检查请求。

(1) 一般规定。

动议；制裁性措施的理由。诉讼待决地法院可以基于动议命令制裁性措施，如果：(i) 当事方或当事方的高级职员、董事或管理代理人--或根据规则 30(b)(6) 或 31(a)(4) 指定的人--在收到适当通知后，未能出席其庭外取证；或 (ii) 当事方在根据规则 33 被适当送达质询书或根据规则 34 被适当送达检查请求后，未能送达其答复、异议或书面回应。

(A)

(B) 认证。因未能答复或回应而提出的制裁性措施动议必须包含一项认证，证明动议提出方已善意地与未采取行动的一方进行协商或试图协商，以在不诉诸法院行动的情况下获得答复或回应。

(2) 未能行为的不可接受借口。规则37(d)(1)(A)所述的不行为不得以所寻求的证据开示具有可异议性为由而获得免责，除非不行为的一方有依规则26(c)提出的保护令动议尚待处理。

(3) 制裁性措施的类型。制裁性措施可以包括规则37(b)(2)(A)(i)-(vi)所列的任何命令。作为这些制裁性措施的替代或补充，法院必须要求不行为的一方、为该方提供建议的律师或两者支付因该不行为引起的合理费用，包括律师费，除非该不行为具有实质正当理由或其他情况使得判给费用不公正。

(e) 未保存电子存储信息。

如果本应在预期或进行诉讼时予以保全的电子存储信息因以下原因丢失

a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) FAILURE TO PARTICIPATE IN FRAMING A DISCOVERY PLAN. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Pub. L. 96–481, §205(a), Oct. 21, 1980, 94 Stat. 2330, eff. Oct. 1, 1981; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 29, 2015, eff. Dec. 1, 2015.)

TITLE VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(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.

(d) WAIVER; WITHDRAWAL. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) ADMIRALTY AND MARITIME CLAIMS. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

一方当事人未能采取合理步骤保全该信息，且该信息无法通过补充证据开示予以恢复或替代的，法院：

(1) 在认定另一方当事人因该信息丢失而受到损害时，可命令采取不超过消除该损害所必需的措施；或

(2) 仅在认定该当事人行为时具有剥夺另一方当事人在诉讼中使用该信息之意图的情况下，方可：

(A)推定丢失的信息对该当事人不利；

(B) 指示陪审团可以或必须推定该信息对该当事人不利；或

(C) 驳回诉讼或作出缺席判决。

(f) 未参与制定证据开示计划。如果

当事人或其律师未能依照规则 26(f) 的要求善意参与拟定和提交证据开示计划，法院在给予陈述意见的机会后，可要求该当事人或律师向任何其他当事人支付因该未能行为而产生的合理费用，包括律师费。(经 1948 年 12 月 29 日、1949 年 10 月 20 日生效；1970 年 3 月 30 日、1970 年 7 月 1 日生效；1980 年 4 月 29 日、1980 年 8 月 1 日生效；Pub.L.96-481,205(a),10 月

1980年12月21日，94 Stat. 2330，1981年10月1日生效；1987年3月2日，1987年8月1日生效；1993年4月22日，1993年12月1日生效；2000年4月17日，2000年12月1日生效；2006年4月12日，2006年12月1日生效；2007年4月30日，2007年12月1日生效；2013年4月16日，2013年12月1日生效；2015年4月29日，2015年12月1日生效。)

第六编审判

规则 38. 陪审团审判的权利；请求

(a) 权利保留。由《宪法》第七修正案所宣告的--或由联邦 statute 所规定的--陪审团审判权利，对各方当事人予以不可侵犯地保留。

(b)要求。对于任何依法有权由陪审团审理的争点，当事人可通过以下方式要求陪审团审判：

(1) 在针对该争点的最后一份诉答文书送达后 14 日内，向其他当事人送达书面要求--该要求可包含在诉答文书中；且

(2) 根据规则 5(d) 提交该要求。

(c) 指明争点。当事人在其要求中可指明其希望由陪审团审理的争点；否则，视为其已就所有可如此审理的争点要求陪审团审判。如果当事人仅就部分争点要求陪审团审判，任何其他当事人可在收到该要求送达后 14 日内，或在法院命令的更短时间内，就任何其他或全部可由陪审团审理的事实争点送达陪审团审判要求。

(d) 放弃；撤回。除非当事人的要求已适当送达并提交，否则该当事人放弃陪审团审判。适当的要求只有在各方当事人同意的情况下方可撤回。

(e) 海事和海商请求。本规则不创设就规则 9(h) 项下海事或海商请求中的争点进行陪审团审判的权利。

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 39. Trial by Jury or by the Court

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

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

Rule 40. Scheduling Cases for Trial

Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute.

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

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order

(经 1966 年 2 月 28 日、1966 年 7 月 1 日生效；1987 年 3 月 2 日、1987 年 8 月 1 日生效；1993 年 4 月 22 日、1993 年 12 月 1 日生效；2007 年 4 月 30 日、2007 年 12 月 1 日生效；2009 年 3 月 26 日、2009 年 12 月 1 日生效修订。)

规则 39. 陪审团审判或法院审判

(a)提出要求之时。当已依规则 38 要求陪审团审判时，该诉讼必须在案件登记簿上指定为陪审团诉讼。对所有如此要求的争点的审理必须由陪审团进行，除非：

(1) 各方当事人或其律师提交非陪审团审判的约定，或在记录中作此约定；或

(2) 法院基于动议或自行认定，就其中部分或全部争点不存在联邦陪审团审判权利。

(b) 未提出要求之时。未适当要求陪审团审判的争点由法院审理。但法院可基于动议，命令就任何本可要求陪审团审判的争点进行陪审团审判。

(c) 咨询性陪审团；经同意的陪审团审判。在依法无权由陪审团审理的诉讼中，法院基于动议或自行：

(1) 可借助咨询性陪审团审理任何争点；或(2) 经各方当事人同意，可由陪审团审理任何争点，其裁决的效力与陪审团审判本属权利事项时相同，除非该诉讼针对 United States 且联邦 statute 规定进行非陪审团审判。(经 2007 年 4 月 30 日、2007 年 12 月 1 日生效修订。)

规则 40. 安排案件开庭审理

各法院必须通过规则规定庭审排期。法院必须优先处理联邦 statute 赋予优先权的诉讼。(经 2007 年 4 月 30 日、2007 年 12 月 1 日生效修订。)

规则 41. 诉讼的驳回

(a) 自愿撤销。

(1) 由原告提交。

(A) 未经法院命令。受规则 23(e)、23.1(c) 约束，23.2 以及 66 和任何适用的联邦 statute，原告可通过提交以下文件而无需法院命令即撤回诉讼：

(i) 在对方当事人送达答辩状或即决判决动议之前的撤回通知；或

(ii) 由所有已出庭当事人签署的撤诉协议。

(B) 效力。除非通知或约定另有说明，撤回不构成实体上的既判事项。但如果原告此前曾基于或包含同一请求撤回任何联邦或州法院诉讼，则撤回通知具有实体裁判的效力。

(2) 依法院命令；效力。除规则 41(a)(1) 另有规定外，仅在法院认为适当的条件下，依法院命令方可应原告请求驳回诉讼。如果被告在收到原告的驳回动议送达之前已提出反请求诉答文书，则只有在反请求可以留待独立裁决的情况下，方可不顾被告的反对而驳回诉讼。除非该命令

states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 42. Consolidation; Separate Trials

(a) CONSOLIDATION. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) SEPARATE TRIALS. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 43. Taking Testimony

(a) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.

除另有规定外，依本款(2)作出的驳回不影响实体权利。

(b) 非自愿撤回；效力。如果原告未能推进诉讼或未能遵守本规则或法院命令，被告可动议撤回诉讼或对其提出的任何请求。除非撤回命令另有说明，依本款 (b) 作出的撤回以及非依本规则作出的任何撤回--除因缺乏管辖权、审判地不当或未能依规则 19 合并当事人者外--具有实体裁判的效力。

(c) 驳回反诉、交叉诉讼或第三方

请求。本规则适用于任何反请求、交叉请求或第三方请求的撤回。请求人依规则 41(a)(1)(A)(i) 作出的自愿撤回必须：

(1) 在答辩性诉答文书送达之前作出；或(2) 如无答辩性诉答文书，则在听证或庭审中提交证据之前作出。

(d) 先前已撤回诉讼的费用。如果此前曾在任何法院撤回诉讼的原告，针对同一被告提交基于或包含同一请求的诉讼，法院：

(1) 可命令原告支付该先前诉讼的全部或部分费用；且

(2) 可中止诉讼程序，直至原告遵守为止。

(经 1946 年 12 月 27 日、1948 年 3 月 19 日生效；1963 年 1 月 21 日、1963 年 7 月 1 日生效；1966 年 2 月 28 日、1966 年 7 月 1 日生效；1967 年 12 月 4 日、1968 年 7 月 1 日生效；1987 年 3 月 2 日、1987 年 8 月 1 日生效；1991 年 4 月 30 日、1991 年 12 月 1 日生效；2007 年 4 月 30 日、2007 年 12 月 1 日生效修订。)

规则 42. 合并；分开审理

(a) 合并。如果法院审理的案件涉及共同的法律或事实问题，法院可以：

(1) 参加听证或审判，以处理诉讼中任何或所有争议事项；

(2) 合并诉讼；或

(3) 发布任何其他命令以避免不必要的成本或延误。

(b) 分开审理。为便利、避免偏见或为加速和节约，法院可以命令对一个或多个独立争点、请求、交叉请求、反请求或第三方请求进行分开审理。在命令分开审理时，法院必须保留任何联邦陪审团审判权利。

(1966年2月28日修正，1966年7月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 43. 采证

(a) 公开法庭。在审判时，证人的证言必须在公开法庭上取得，除非联邦法规、联邦证据规则、本规则或最高法院采纳的其他规则另有规定。在有令人信服的情况下的正当理由并采取适当保障措施的情况下，法院可以允许通过来自不同地点的同步传输在公开法庭上提供证言。

(b) 以郑重声明代替宣誓。当本规则要求宣誓时，郑重的声明即可满足要求。

(c) EVIDENCE ON A MOTION. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) INTERPRETER. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972, and Dec. 18, 1972, eff. July 1, 1975; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 44. Proving an Official Record

(a) MEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(c) 动议中的证据。当动议依赖于记录之外的事实时，法院可以基于宣誓书审理该事项，或全部或部分基于口头证言或庭外取证审理该事项。

(d) 翻译人员。法院可以指定其选择的翻译人员；确定由法律规定提供的资金或由一方或多方支付的合理报酬；并将该报酬作为诉讼费用征收。

(1966年2月28日修正，1966年7月1日生效；1972年11月20日和1972年12月18日修正，1975年7月1日生效；1987年3月2日修正，1987年8月1日生效；1996年4月23日修正，1996年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 44. 证明官方记录

(a) 证明手段。

(1) 国内记录。以下各项证明一份官方记录--或其中的一项记载--该记录在其他方面可采纳且保存在美国、任何州、地区或联邦自治领地，或受美国行政或司法管辖的任何领土内：

(A) 记录的正式公布；或

由对该记录享有法定保管权的官员--或该官员的副手--核证的真实副本，并附有该官员享有保管权的证明书。该证明书必须在盖章下作出：

(B)

(i) 由记录保存地所在地区或政治分区内具有记录管辖权的法院法官作出；或

(ii) 由在记录保存地所在地区或政治分区内拥有公章和官方职责的任何公职人员作出。

(2) 外国记录。

一般规定。以下各项证明一份外国官方记录--或其中的一项记载--该记录在其他方面可采纳：

(A) (i) 该记录的官方出版物；或(ii) 由授权人员核证的记录--或其副本--并附有真实性的最终认证或美国与记录所在国均为缔约方的条约或公约下的认证。

(B) 真实性的最终认证。最终认证必须证明见证人或任何外国官员的签名和官方职位的真实性，该外国官员的真实性证书与见证有关，或与见证有关的真实性证书链中。最终认证可由美国大使馆或公使馆的秘书作出；由美国总领事、副领事或领事代理人作出；或由派驻或认可于美国的外国国家的外交或领事官员作出。

(C其他证明方式。如果各方均有合理机会调查外国记录的真实性和准确性，法院可基于正当理由，采取以下任一方式：

(i) 接受未经最终认证的经证明副本；或

(ii) 允许该记录通过经核证的摘要加以证明，无论是否附有最终认证。

(b) LACK OF A RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) OTHER PROOF. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Nov. 20, 1972, eff. July 1, 1975; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents.*

(A) *Requirements—In General.* Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action and its civil-action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(d) and (e).

(B) *Command to Attend a Deposition—Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(b) 记录缺失。一份书面声明，表明经勤勉检索指定记录后未发现具有特定内容的记录或记载，可作为证明该记录中不包含此类记录或记载的证据予以采纳。对于国内记录，该声明必须根据规则44(a)(1)进行鉴证。对于外国记录，该声明必须符合(a)(2)(C)(ii)的规定。

(c) 其他证明。一方可以通过法律授权的任何其他方法证明官方记录--或其中的记载或记载的缺失。

(1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 44.1. 外国法的确定

打算提出关于外国法律问题的当事人必须通过诉答文书或其他书面形式发出通知。在确定外国法律时，法院可以考虑任何相关的材料或来源，包括证言，无论是否由当事人提交或根据联邦证据规则可采纳。法院的确定必须被视为对法律问题的裁决。(1966年2月28日添加，1966年7月1日生效；1972年11月20日修正，1975年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 45. 传票

(a) 一总则。

(1) 形式和内容。

要求--一般规定。每份传票必须：(i) 注明签发该传票的法院；(ii) 注明诉讼名称及其民事案件编号；

(A)

(iii) 命令每个被送达人在指定的时间和地点执行以下事项：出席并作证；出示该人占有、保管或控制的指定文件、电子存储信息或有形物品；或允许检查场所；以及

(iv) 列出规则 45(d) 和 (e) 的文本。

(B) 要求出席庭外取证的命令--记录方法通知。要求出席庭外取证的传票必须载明记录证言的方法。

(C) 合并或分离出示或允许检查的命令；指定电子存储信息的形式。出示文件、电子存储信息或有形物或允许检查场所的命令可包含在命令出席庭外取证、听证或审判的传票中，也可在单独的传票中列出。传票可指定电子存储信息出示的形式或多种形式。

(D) 要求提交的命令；包含的义务。传票中要求提交文件、电子存储信息或有体物的命令，要求响应人允许对材料进行检查、复制、测试或取样。

(2) *Issuing Court*. A subpoena must issue from the court where the action is pending.

(3) *Issued by Whom*. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

(4) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) SERVICE.

(1) *By Whom and How; Tendering Fees*. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

(2) *Service in the United States*. A subpoena may be served at any place within the United States.

(3) *Service in a Foreign Country*. 28 U.S.C. §1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service*. Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) PLACE OF COMPLIANCE.

(1) *For a Trial, Hearing, or Deposition*. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery*. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.

(1) *Avoiding Undue Burden or Expense; Sanctions*. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the

(2) 签发法院。传票必须从诉讼待决的法院签发。

(3) 由谁签发。书记官必须向请求的当事人签发已签名但其余空白的传票。该当事人必须在送达前填写完毕。如果律师获准在签发法院执业，该律师也可以签发并签署传票。

(4) 送达前通知其他当事人。如果传票要求在审判前提交文件、电子存储信息或有体物或检查场所，则在向传票指向的人送达之前，必须向每一当事人送达通知和传票副本。

(b) 服务。

(1) 由谁及如何送达；费用支付。任何年满 18 岁且非当事人的人均可送达传票。送达传票要求向指定人交付副本，并且如果传票要求该人出席，则须支付 1 天出席费和法定里程费。当传票代表美国或其任何官员或机构签发时，无需支付费用和里程费。

(2) 在美国境内送达。传票可在美国境内任何地方送达。

(3) 在外国送达。28 U.S.C.1783 管辖向在外国境内的美国国民或居民签发和送达传票。

(4) 送达证明。在必要时，证明送达需要向签发法院提交一份声明，载明送达日期和方式以及被送达人的姓名。该声明必须由送达人核证。

(c) 履行地

(1) 针对审判、听证或庭外取证。传票仅可按以下方式命令某人出席审判、听证或庭外取证：

(A) 在该人居住、受雇或经常亲自处理业务的地点100英里范围内；或

(B) 在该人居住、受雇或经常亲自处理业务的州内，如果该人

(i) 是当事人或当事人的高级职员；或(ii) 被命令出席审判且不会产生实质性费用。

(2) 其他证据开示。传票可以命令：

(A) 在该人居住、受雇或经常亲自处理业务的地点100英里范围内的地点出示文件、电子存储信息或有形物品；以及

(B) 在受检查场所进行的场所检查。

(d) 保护受传票约束的人员；执行。

(1) 避免不当负担或费用；制裁性措施。负责签发和送达传票的当事人或律师必须采取合理措施，避免对受传票约束的人施加不当负担或费用。法院

district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

必须执行此项义务，并对未遵守的当事人或律师施加适当的制裁性措施--其中可包括误工损失和合理的律师费。

(2) 出示材料或允许查阅的命令。

(A) 无需亲自到场。被命令提交文件、电子存储信息或有体物，或允许检查场所的人，无需亲自到提交或检查地点，除非同时被命令出席庭外取证、听证或审判。

异议。被命令出示文件或有形物品或允许检查的人可以向传票中指定的当事人或律师送达书面异议，反对检查、复制、测试或采样任何或所有材料，或反对检查场所--或反对以请求的形式或多种形式出示电子存储信息。异议必须在遵守指定时间或传票送达后14天之前送达。如果提出异议，以下规则适用：(i) 在任何时候，在通知被命令人的情况下，送达方可以动议要求遵守地所在地区的法院作出强制出示或检查的命令。(ii) 这些行为只能按照命令的指示要求，并且命令必须保护既不是当事人也不是当事人官员的人免受因遵守而产生的重大费用。

(B)

(3) 撤销或修改传票。

何时必须。经及时动议，合规所需地区的法院必须撤销或修改符合以下情形的传票：

(A) (i) 未允许合理时间合规；(ii) 要求某人在规则45(c)规定的地理范围之外合规；(iii) 要求披露享有特权或其他受保护的事项，且无例外或放弃适用；或(iv) 使某人承受不当负担。

何时允许。为保护受传票约束或影响的人，合规所需地区的法院可经动议撤销或修改传票，如果该传票要求：

(B)

(i) 披露商业秘密或其他保密的研究、开发或商业信息；或

(ii) 披露未受聘专家的意见或信息，该意见或信息未描述争议中的具体事件，且源于非经当事人请求的专家研究。

(C) 指定条件作为替代。在规则 45(d)(3)(B) 所述情形下，法院可以不撤销或修改传票，而是命令在指定条件下出席或提交，如果送达方：

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information:

(A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection*.

(A) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court

(i) 表明对证言或材料有实质性需要，且无法在不造成不当困难的情况下以其他方式满足；以及

(ii) 确保被传唤人获得合理补偿。

(e) D 回应传票的义务。

(1) 提交文件或电子存储信息。以下程序适用于提交文件或电子存储信息：

(A) 文件。响应传票出示文件的人必须按文件在正常业务过程中的保存方式出示，或必须组织和标注文件以对应要求中的类别。

(B) 未指定电子存储信息提交形式。如果传票未指定电子存储信息的提交形式，响应人必须以其通常维护的形式或合理可用的形式提交。

(C) 电子存储信息仅以一种形式提交。响应人无需以多于一种形式提交相同的电子存储信息。

(D) 不可访问的电子存储信息。响应人无需提供来自其认定为因不当负担或成本而无法合理访问的来源的电子存储信息的证据开示。在强制证据开示或保护令的动议中，响应人必须证明该信息因不当负担或成本而无法合理访问。如果作出该证明，法院仍可命令从此类来源进行证据开示，如果请求方证明有正当理由，并考虑规则 26(b)(2)(C) 的限制。法院可指定证据开示的条件。

(2) 主张特权或保护。

扣留信息。依据享有特权或受审判准备材料保护的主张而扣留被传票要求的信息的人必须：

(A) (i) 明确提出该主张；以及(ii) 描述被扣留文件、通信或有形物品的性质，其方式在不披露本身享有特权或受保护的信息的情况下，使当事人能够评估该主张。

(B) 出示的信息。如果为回应传票而出示的信息受特权主张或作为审判准备材料的保护主张的约束，提出该主张的人可以通知任何收到该信息的当事人该主张及其依据。收到通知后，当事人必须迅速返还、隔离或销毁指定的信息及其持有的任何副本；在主张得到解决之前，不得使用或披露该信息；如果当事人在收到通知之前已披露该信息，必须采取合理步骤取回该信息；并且可以迅速将信息密封提交法院

for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) TRANSFERRING A SUBPOENA-RELATED MOTION. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.

(g) CONTEMPT. The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 16, 2013, eff. Dec. 1, 2013.)

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 47. Selecting Jurors

(a) EXAMINING JURORS. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) PEREMPTORY CHALLENGES. The court must allow the number of peremptory challenges provided by 28 U.S.C. §1870.

(c) EXCUSING A JUROR. During trial or deliberation, the court may excuse a juror for good cause.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

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).

向合规所需地区的法院提出，以裁定该主张。出示信息的人必须保存该信息直至主张得到解决。

(f) 移送与传票相关的动议。当法院要求遵守地未发出传票，如果受传票约束的人同意或法院认定存在特殊情况，则可将本规则下的动议移送至发出传票的法院。然后，如果受传票约束的人的律师获准在动议提出地法院执业，该律师可以作为发出传票法院的官员提交文件并就动议出庭。为执行其命令，发出传票的法院可将命令移送至动议提出地法院。

(g) 藐视。合规所需地区的法院--以及在动议被移送后，签发法院--可对已被送达但无充分理由未遵守传票或相关命令的人处以藐视。

(经1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；1970年3月30日修正，1970年7月1日生效；1980年4月29日修正，1980年8月1日生效；1985年4月29日修正，1985年8月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2005年4月25日修正，2005年12月1日生效；2006年4月12日修正，2006年12月1日生效；2007年4月30日修正，2007年12月1日生效；2013年4月16日修正，2013年12月1日生效。)

规则 46. 对裁定或命令提出异议

对裁定或命令无需正式例外。当请求或作出裁定或命令时，当事人只需说明其希望法院采取的行动或所异议的行动，以及请求或异议的理由。未提出异议不损害在裁定或命令作出时没有机会提出异议的当事人。

规则 47. 遴选陪审员

(a) 询问陪审员。法院可允许当事人或其律师询问候选陪审员，或由法院自行询问。如果法院询问陪审员，必须允许当事人或其律师进行其认为适当的进一步询问，或必须自行提出其认为适当的当事人的额外问题。

(b) 无因回避。法院必须允许28 U.S.C.1870规定的无因回避次数。

(c) 免除陪审员。在审判或评议期间，法院可因正当理由免除陪审员。

(1966年2月28日修正，1966年7月1日生效；1991年4月30日修正，1991年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 48. 陪审员人数；裁决；投票

(a) 陪审员人数。陪审团必须至少由 6 名且不超过 12 名成员组成，且每名陪审员必须参与裁决，除非依规则 47(c) 被免除。

(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.

(As amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 49. Special Verdict; General Verdict and Questions

(a) SPECIAL VERDICT.

(1) *In General*. The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions*. The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted*. A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) GENERAL VERDICT WITH ANSWERS TO WRITTEN QUESTIONS.

(1) *In General*. The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and Answers Consistent*. When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) *Answers Inconsistent with the Verdict*. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(b) 裁决。除非当事人另有约定，裁决必须一致作出，且必须由至少 6 名成员组成的陪审团作出。

(c) 逐个询问。裁决作出后但在陪审团解散前，法院必须应一方当事人的请求，或可自行决定，逐个询问陪审员。如果询问显示缺乏一致性或缺乏当事人约定的陪审员人数的同意，法院可以指示陪审团进一步评议，或命令重新审理。

(1991年4月30日修正，1991年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 49. 特别裁决；一般裁决与问题

(a) 特别裁决。

(1) 一般规定。法院可以要求陪审团仅就每一事实争点以特别书面认定的形式作出特别裁决。法院可以通过以下方式这样做：

(A) 提交可用绝对性或其它简短回答的书面问题；

(B) 提交根据诉答文书和证据可适当作出的特别认定的书面表格；

或

(C) 使用法院认为适当的任何其他方法。

(2) 指示。法院必须给予必要的指示和解释，使陪审团能够就每一提交的争点作出认定。

(3) 未提交的问题。当事人放弃就诉答文书或证据提出但未提交陪审团的任何事实问题由陪审团审判的权利，除非该当事人在陪审团退席前要求将其提交陪审团。如果当事人未要求提交，法院可对该问题作出认定。如果法院未作出认定，则视为已作出与其对特别裁决的判决相一致的认定。

(b) 附书面问题答复的一般裁决。

(1) 一般规定。法院可以向陪审团提交一般裁决表格，连同陪审团必须裁决的一项或多项事实争点的书面问题。法院必须给予必要的指示和解释，使陪审团能够作出一般裁决并书面回答该等问题，且必须指示陪审团两者均须为之。

(2) 裁决与答复一致。当一般裁决与答复一致时，法院必须批准根据裁决和答复作出的适当判决，以便依规则 58 登记。

(3) 答复与裁决不一致。当答复彼此一致但一项或多项与一般裁决不一致时，法院可以：

(A) 不顾一般裁决，批准依规则 58 登记根据回答作出的适当判决；

(B)指示陪审团进一步考虑其答复和裁决；或

(C) order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict*. When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

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

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General*. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion*. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(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:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *In General*. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling*. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in

(C) 命令重新审理。

(4) 答复彼此不一致且与裁决不一致。当答复彼此不一致且一项或多项也与一般裁决不一致时，不得作出判决；相反，法院必须指示陪审团进一步考虑其答复和裁决，或必须命令重新审判。

(1963年1月21日修正，1963年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 50. 陪审团审判中的法律问题判决；相关动重新审理动议；附条件裁定

(a) 作为法律问题的判决。

(1) 一般规定。如果在陪审团审判中一方当事人已就某一争点获得充分陈述的机会，且法院认定合理的陪审团不会有法律上充分的证据基础就该争点作出有利于该方当事人的认定，法院可以：

(A) 解决针对该当事方的问题；以及

(B) 就该方当事人提出的、根据控制性法律只有在该争点上作出有利认定才能维持或抗辩的请求或抗辩，批准对其作出作为法律问题的判决的动议。

(2) 动议。作为法律问题的判决的动议可以在案件提交陪审团之前的任何时间提出。该动议必须指明所寻求的判决以及使动议人有权获得该判决的法律和事实。

(b) 重新提出审判后的动议；替代性动议

重新审判。如果法院未批准根据规则 50(a) 作为法律问题作出的判决动议，则视为法院已将诉讼提交陪审团，但须由法院稍后裁决该动议提出的法律问题。在判决登记后 28 天内--或者如果该动议涉及未由裁决裁定的陪审团问题，则在陪审团解散后 28 天内--动议人可提交重新提出的作为法律问题的判决动议，并可包括根据规则 59 提出的重新审判的替代或联合请求。在裁决重新提出的动议时，法院可以：

(1) 如果陪审团作出了裁断，允许根据该裁断作出判决；

(2) 命令重新审理；或

(3) 指示依法作出判决。

(c) 批准重新提出的动议；对重新审理动议的附条件裁定。

(1) 一般规定。如果法院批准重新提出的作为法律问题的判决动议，它还必须通过对如果判决后来被撤销或推翻是否应批准重新审理作出裁定，来对任何重新审理动议作出附条件裁定。法院必须说明附条件批准或驳回重新审理动议的理由。

(2) 附条件裁定的效力。附条件准许重新审判动议不影响判决的终局性；如果判决被撤销，重新审判必须进行，除非上诉法院另有命令。如果重新审判动议被附条件驳回，被上诉人可主张以下方面的错误

that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(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.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) REQUESTS.

(1) *Before or at the Close of the Evidence*. At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) *After the Close of the Evidence*. After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) INSTRUCTIONS. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) OBJECTIONS.

(1) *How to Make*. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) *When to Make*. An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

该驳回存在错误；如果判决被推翻，案件必须按上诉法院的命令进行。

(d) 败诉方提出重新审理动议的时限。任何动议

由被作出作为法律问题的判决的当事人依规则 59 提出的重新审理动议，必须不迟于判决登记后 28 天内提出。

(e) 驳回依法判决动议；

上诉推翻。如果法院驳回作为法律问题的判决动议，胜诉方可以作为被上诉人主张，如果上诉法院认定初审法院驳回该动议存在错误，其有权获得重新审理。如果上诉法院推翻判决，它可以命令重新审理、指示初审法院裁定是否应批准重新审理，或指示登记判决。

(1963年1月21日修正，1963年7月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；1995年4月27日修正，1995年12月1日生效；2006年4月12日修正，2006年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 51. 对陪审团的指示；异议；保留主张错误的

(a) 请求。

(1) 在证据提交之前或结束时。在证据提交结束时或法院命令的任何更早合理时间，当事人可以提交并向每一其他当事人提供其希望法院作出的陪审团指示的书面请求。

(2) 在证据提交结束后。在证据提交结束后，当事人可以：

(A) 就法院此前设定的提出请求时间之前无法合理预见的问题提出指示请求；以及

(B) 经法院许可，就任何问题提出逾期指示请求。

(b) 指示。法院：

(1) 必须在指示陪审团之前以及陪审团最终辩论之前，将其拟议的指示和拟议对请求采取的行动告知各方；

(2) 必须在指示和辩论进行之前，给予各方在记录上且于陪审团听证之外提出异议的机会；以及

(3) 可在陪审团解散前的任何时间指示陪审团。

(c) 异议。

(1) 如何提出。对某项指示或未给予某项指示提出异议的当事人，必须在记录上提出异议，明确说明所异议的事项及异议的理由。

(2) 何时提出。异议符合及时性要求，如果：

(A)一方根据规则 51(b)(2) 提供的异议机会提出异议；或

(B) 一方在该异议机会之前未被告知某项指示或对某项请求采取的行动，且该方在获悉该指示或请求将被作出或已被作出、或被拒绝后立即提出异议。

(d) ASSIGNING ERROR; PLAIN ERROR.

(1) *Assigning Error*. A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) *Plain Error*. A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007.)

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

(a) FINDINGS AND CONCLUSIONS.

(1) *In General*. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *For a Motion*. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings*. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support*. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings*. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(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.

(c) JUDGMENT ON PARTIAL FINDINGS. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

(d) 分配错误；明显错误。

(1) 分配错误。当事人可以主张以下错误：

(A) 实际作出的指示中存在错误，且该方已适当提出异议；或

(B) 未作出某项指示，且该方已适当请求作出该指示，并且--除非法院在记录上以终局裁定驳回该请求--也已适当提出异议。

(2) 明显错误。法院可以考虑指示中未按规则 51(d)(1) 的要求予以保留的明显错误，前提是该错误影响实质性权利。

(经 1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2003 年 3 月 27 日修订，2003 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 52. 法院的事实认定与法律结论；部分事实性判决初步认定

(a) 调查结果与结论。

(1) 一般规定。在无陪审团或有咨询陪审团的情况下就事实进行审理的诉讼中，法院必须特别认定事实并单独陈述其法律结论。认定与结论可以在证据调查结束后在记录上陈述，也可以载于法院提交的意见书或判决备忘录中。判决必须依规则 58 作出。

(2) 对于中间禁令。在准予或拒绝中间禁令时，法院同样必须说明支持其裁定的认定和结论。

(3) 对于动议。法院在依据规则 12 或 56 对动议作出裁定时，无需说明认定或结论；除非本规则另有规定，对任何其他动议作出裁定时亦无需说明。

(4) 主事官认定的效力。主事官的认定，在法院采纳的范围内，必须视为法院的认定。

(5) 质疑证据支持。当事人此后可以质疑支持认定的证据是否充分，无论该当事人是否请求作出认定、对认定提出异议、动议修改认定或动议作出部分认定。

(6) 撤销认定。事实认定，无论基于口头证据还是其他证据，除非明显错误，不得被撤销，且复审法院必须适当尊重初审法院判断证人可信度的机会。

(b) 修改或补充认定。在判决作出后 28 日内提出的当事人动议中，法院可以修改其认定--或作出补充认定--并可以相应修改判决。该动议可以与依规则 59 提出的重新审理动议一并提出。

(c) 部分认定后的判决。在非陪审团审理中，如果一方就某一争点已被充分听取意见，且法院就该争点作出不利于该方的认定，则法院可以就该方的一项请求或抗辩作出判决，而根据控制性法律，该请求或抗辩只有在就该争点作出有利认定的情况下才能成立或予以驳回。但是，法院可以拒绝作出任何判决，直至证据提交完毕。基于部分认定的判决必须得到规则 52(a) 所要求的事实认定和法律结论的支持。

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 53. Masters

(a) APPOINTMENT.

(1) *Scope*. Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) *Disqualification*. A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. §455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) *Possible Expense or Delay*. In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) ORDER APPOINTING A MASTER.

(1) *Notice*. Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) *Contents*. The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) *Issuing*. The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. §455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending*. The order may be amended at any time after notice to the parties and an opportunity to be heard.

（经1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1983年4月28日修正，1983年8月1日生效；1985年4月29日修正，1985年8月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；1995年4月27日修正，1995年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

规则 53. 主事官

(a) 任命。

(1) 范围。除非制定法另有规定，法院只能为以下目的任命主事官：

(A) 履行当事人同意的职责；

(B) 在无需陪审团的情况下，主持审判程序并就待决事项作出或建议事实认定，前提是任命符合以下条件：

(i) 某些例外情形；或(ii) 需要进行会计或解决损害赔偿的复杂计算；或

(C) 处理该地区现有地区法官或治安法官无法有效及时处理的审前和审后事项。

(2) 回避。主事官不得与当事人、律师、诉讼或法院存在依 28 U.S.C.455 将要求法官回避的关系，除非当事人在主事官披露任何潜在的回避理由后，经法院批准同意该任命。

(3) 可能的费用或迟延。在指定主事官时，法院必须考虑将可能产生的费用加于当事人是否公平，并必须防止不合理的费用或迟延。

(b) 命令：指定主事官

(1) 通知。在任命主事官之前，法院必须给予当事人通知和陈述意见的机会。任何当事人均可推荐任命人选。

(2) 内容。任命令必须指示主事官以一切合理勤勉推进工作，并必须载明：

(A) 主事官的职责，包括任何调查或执行职责，以及依规则 53(c) 对主事官权力的任何限制；

(B) 主事官可以与法院或一方单方沟通的情形(如有)；

(C) 作为主事官活动记录予以保存和提交的材料性质；

(D) 审查主事官命令、事实认定和建议的时限、记录提交方法、其他程序及标准；以及

(E) 依据规则 53(g) 确定主事官报酬的依据、条款和程序。

(3) 签发。法院仅可在下列条件满足后签发该命令：

(A) 主事官提交宣誓书，披露是否存在依据 28 U.S.C.455 应予回避的任何理由；以及

(B) 如果披露了回避理由，当事人在法院批准下放弃该回避。

(4) 修改。该命令可在通知当事人并给予陈述意见机会后随时修改。

(c) MASTER'S AUTHORITY.

(1) *In General*. Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions*. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) MASTER'S ORDERS. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) MASTER'S REPORTS. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS.

(1) *Opportunity for a Hearing; Action in General*. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(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.

(3) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) *Reviewing Legal Conclusions*. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) *Reviewing Procedural Matters*. Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) COMPENSATION.

(1) *Fixing Compensation*. Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Payment*. The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(c) 主授权。

(1) 一般规定。除指定命令另有指示外，主事官可以：

(A) 规范所有程序；

(B) 采取一切适当措施，公正高效地履行所分配的职责；以及

(C) 在举行证据听证时，行使指定法院强制取得、采纳和记录证据的权力。

(2) 制裁性措施。主事官可通过命令对当事人施加规则 37 或 45 规定的任何非藐视制裁性措施，并可建议对当事人施加藐视制裁性措施以及对非当事人施加制裁性措施。

(d) 主事官的命令。发布命令的主事官必须将该命令提交存档，并迅速向每一方送达副本。书记官必须将该命令登记入案卷。

(e) 主事官的报告。主事官必须按指定命令的要求向法院报告。除法院另有命令外，主事官必须将报告提交存档，并迅速向每一方送达副本。

(f) 依据主事官命令、报告或建议采取的行动。

(1) 听证机会；一般处理。在对主事官的命令、报告或建议作出处理时，法院必须给予当事人通知和听证机会；可以接收证据；并可以采纳或确认、修改、全部或部分驳回或推翻，或附指示发回主事官。

(2) 提出异议或动议采纳或修改的期限。当事人可以在送达副本后 21 日内提出对主事官命令、报告或建议的异议，或提出采纳或修改的动议，除非法院另行设定时间。

(3) 审查事实认定。法院必须对主事官作出或建议的事实认定的所有异议进行重新审查，除非当事人经法院批准约定：

(A) 该认定将按明显错误标准进行审查；或

(B) 依据规则 53(a)(1)(A) 或 (C) 指定的主事官的事实认定将为终局。

(4) 审查法律结论。法院必须对主事官作出或建议的法律结论的所有异议进行重新审查。

(5) 审查程序事项。除非指定命令确立了不同的审查标准，法院仅可因滥用裁量权而撤销主事官对程序事项的裁定。

(g) 补偿。

(1) 确定报酬。在判决前或判决后，法院必须按指定命令中载明的依据和条款确定主事官的报酬，但法院可在通知并给予陈述意见机会后设定新的依据和条款。

(2) 付款。补偿金必须以下列任一方式支付：

(A) 由一方或多方；或

(B)从法院控制下的诉讼资金或标的物中。

(3) *Allocating Payment*. The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) APPOINTING A MAGISTRATE JUDGE. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) DEFINITION; FORM. ''Judgment'' as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(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.

(2) *Attorney's Fees*.

(A) *Claim to Be by Motion*. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion*. Unless a statute or a court order provides otherwise, the motion must:

(3) 分摊支付。法院必须在考虑争议的性质和金额、当事人的财力以及任何一方相较其他方对移交主事官负有更大责任的程度后，在各当事人之间分摊支付。临时分摊可予修改，以反映对案件实体的裁判。

(h) 指定治安法官。只有当将事项移交治安法官的命令声明该移交系依据本规则作出时，治安法官才受本规则约束。（经1966年2月28日修正，1966年7月1日生效；1983年4月28日修正，1983年8月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；2003年3月27日修正，2003年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

第七编判决

规则 54. 判决；费用

(a) 定义；形式。本规则中所使用的"判决"包括衡平法院判决以及可提起上诉的任何命令。判决不应包含诉答文书的陈述、主事官的报告或先前程序的记录。

(b) 对多项请求或涉及多个当事人的判决

合并。当一项诉讼提出不止一项救济请求--无论是作为请求、反请求、交叉请求还是第三方请求--或者当涉及多个当事人时，法院只有在明确认定不存在正当的迟延理由时，才可以指示对一项或多项但少于全部请求或当事人作出终局判决。否则，任何裁定或其他决定，无论其名称为何，只要它裁断的请求少于全部请求，或裁断的当事人权利和义务少于全部当事人，都不终结该诉讼中任何请求或当事人的诉讼，并且可以在对全部请求和全部当事人的权利和义务作出判决之前随时予以修改。

(c) 判决请求；应准予救济。缺席

判决在种类上不得不同于、在金额上不得超出诉答文书中所请求的内容。其他一切终局判决应给予每一方有权获得的救济，即使该方未在其诉答文书中请求该救济。

(d) 费用；律师费。

(1) 律师费以外的费用。除非联邦 statute、本规则或法院命令另有规定，律师费以外的费用应判给胜诉方。但对 United States、其官员及其机构的费用，仅可在法律允许的范围内判给。书记官可以在 14 日通知后核定费用。在随后 7 日内送达的动议，法院可以审查书记官的行为。

(2) 律师费。

(A) 以动议提出请求。律师费及相关非应税费用的请求必须以动议提出，除非实体法要求这些费用作为损害赔偿的要素在审理中证明。

(B) 动议的时限和内容。除非 statute 或法院命令另有规定，动议必须：

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings.* Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) *Exceptions.* Subparagraphs (A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. §1927.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 55. Default; Default Judgment

(a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) ENTERING A DEFAULT JUDGMENT.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(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—

(i) 应在判决登记后不迟于 14 天内提交；

(ii) 指明判决以及使动议方有权获得该裁定所依据的成文法、规则或其他理由；

(iii) 说明所寻求的金额或提供其合理估算；以及

(iv) 如果法院如此命令，披露关于就所主张的服务费用的任何协议的条款。

(C) 程序。在遵守规则 23(h) 的前提下，法院必须应一方当事人的请求，按照规则 43(c) 或 78 提供对抗性提交意见的机会。法院可以在收到关于服务价值的提交意见之前，先裁决费用责任问题。法院必须认定事实并按照规则 52(a) 的规定陈述其法律结论。

(D) 通过地方规则规定的特别程序；交由主事官或治安法官处理。法院可通过地方规则设立特别程序，以便在无需大量证据听证的情况下解决与费用相关的问题。此外，法院可将涉及服务价值的问题交由规则 53 项下的特别主事官处理，而不受规则 53(a)(1) 限制的约束，并可依据规则 72(b) 将律师费动议交由治安法官处理，视同处分性审前事项。

(E) 例外。 (A) 至 (D) 项不适用于作为违反本规则制裁性措施或作为 28 U.S.C.1927 项下制裁性措施的费用和开支请求。

（1946年12月27日修正，1948年3月19日生效；1961年4月17日修正，1961年7月19日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；2002年4月29日修正，2002年12月1日生效；2003年3月27日修正，2003年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

规则 55. 缺席；缺席判决

(a) 登记缺席。当被寻求作出肯定性救济判决的一方当事人未能提出答辩或以其他方式抗辩，且该未能通过宣誓书或其他方式得到证明时，书记官必须登记该当事人的缺席。

(b) 录入缺席判决。

(1) 由书记官作出。如果原告的请求是要求支付确定金额或可通过计算确定的金额，书记官--应原告的请求，并附上证明到期金额的宣誓书--必须就该金额及费用，对因未出庭而被缺席判决且既非未成年人也非无行为能力人的被告作出判决。

(2) 由法院作出。在所有其他情形下，该方必须向法院申请缺席判决。仅当未成年人或无行为能力人由已出庭的一般监护人、保护人或类似受托人代理时，方可对其作出缺席判决。如果被申请缺席判决的一方已亲自或通过代理人出庭，则该方或其代理人必须在听证前至少 7 日收到关于该申请的书面通知。法院可举行听证或进行移交--

preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) JUDGMENT AGAINST THE UNITED STATES. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 29, 2015, eff. Dec. 1, 2015.)

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) PROCEDURES.

(1) *Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence*. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited*. The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations*. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

保留任何联邦成文法上的陪审团审判权利--当为作出或实现判决而需要：

(A) 进行会计核算；

(B) 确定损害赔偿金额；

(C) 通过证据确立任何主张的真实性；或(D) 调查任何其他事项。

(c) 撤销缺席或缺席判决。该法院可因正当理由撤销缺席登记，并可依据规则 60(b) 撤销终局缺席判决。

(d) 针对美国的判决。只有在请求人通过使法院满意的证据确立救济请求或权利时，才可对美国、其官员或其机构作出缺席判决。

(经 1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效；2015 年 4 月 29 日修订，2015 年 12 月 1 日生效。)

规则 56. 简易判决

(a) 简易判决或部分简易判决动议--判决。一方当事人可提出简易判决动议，指明寻求简易判决的每一项请求或抗辩--或每一项请求或抗辩的部分。如果动议方表明对任何重大事实不存在真正的争议且动议方有权作为法律事项获得判决，法院应准予简易判决。法院应在记录中说明准予或驳回该动议的理由。

(b) 提出动议的时间。除非当地规则规定了不同的时间或法院另有命令，一方当事人可在所有证据开示结束后的 30 天之前的任何时间提出简易判决动议。

(c) 程序。

(1) 支持事实主张。主张某项事实不能或确实存在争议的一方，必须通过以下方式支持该主张：

(A) 引用记录中材料的特定部分，包括庭外取证、文件、电子存储信息、宣誓书或声明、约定(包括仅为该动议目的作出的约定)、自认、质询答复或其他材料；或

(B) 表明所引用的材料不能证明真正争议的不存在或存在，或表明对方当事人不能提出可采纳的证据来支持该事实。

(2) 对事实缺乏可采纳证据支持提出的异议。一方可以提出异议，主张为支持或反驳某项事实而引用的材料无法以可在证据中被采纳的形式呈现。

(3) 未引用的材料。法院只需考虑所引用的材料，但也可以考虑记录中的其他材料。

(4) 宣誓书或声明。用于支持或反对动议的宣誓书或声明必须基于个人知悉作出，列明可在证据中被采纳的事实，并表明宣誓人或声明人有资格就所述事项作证。

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. §2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.)

(d) 当非动议方无法获得事实时。如果非动议方通过宣誓书或声明表明，由于特定原因，其无法提出为证明其反对意见所必需的事实，法院可以：

(1) 推迟审议该动议或予以驳回；

(2) 允许有时间取得宣誓书或声明或进行证据开示；或

(3) 发布任何其他适当的命令。

(e) 未能适当支持或处理某一事实。如果一方当事人未能按照规则 56(c) 的要求适当支持某一事实主张或未能适当回应另一方当事人的事实主张，法院可以：

(1) 给予适当支持或处理该问题的机会事实；

(2) 将该事实视为无争议，以供审理该动议之用；

(3) 如果动议及支持材料--包括被视为无争议的事实--表明动议方有权获得简易判决，则准予简易判决；或

(4) 发布任何其他适当的命令。

(f) 独立于动议的判决。在发出通知并给予合理回应时间后，法院可以：

(1) 为准非动议方作出简易判决；(2) 基于当事人未提出的理由准予动议；或(3) 在向当事人指明可能不存在真正争议的重大事实后，自行考虑简易判决。

(g) 未能准予全部所请求的救济。如果法院未准予动议所请求的全部救济，法院可以作出命令，说明任何不存在真正争议的重大事实--包括损害赔偿项目或其他救济--并在案件中将该事实视为已确立。

(h) 一份以恶意提交的宣誓书或声明。如果满确信根据本规则提交的宣誓书或声明是出于恶意或仅为拖延而提交的，法院--在发出通知并给予合理回应时间后--可以命令提交方支付另一方因此产生的合理费用，包括律师费。违规的一方或律师也可能被判定藐视法庭或受到其他适当的制裁性措施。(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1963 年 1 月 21 日修订，1963 年 7 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效；2010 年 4 月 28 日修订，2010 年 12 月 1 日生效。)

规则 57. 确认判决

本规则管辖根据 28 U.S.C.2201 获得宣告性判决的程序。规则 38 和 39 管辖陪审团审判的请求。存在另一充分救济并不排除在其他方面适当的宣告性判决。法院可以命令对宣告性判决诉讼进行快速审理。

(经 1948 年 12 月 29 日修订，1949 年 10 月 20 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

Rule 58. Entering Judgment

(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) ENTERING JUDGMENT.

(1) *Without the Court's Direction*. Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) *Court's Approval Required*. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (b).

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 59. New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) *Grounds for New Trial*. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

规则 58. 登记判决

(a) 单独文件。每份判决和经修订的判决必须载于单独文件中，但对于处理以下动议的命令不要求单独文件：

(1) 依据规则 50(b) 请求判决；(2) 依据规则 52(b) 请求修改或作出补充认定；(3) 依据规则 54 请求律师费；(4) 依据规则 59 请求重新审理或变更或修改判决；或

(5) 以寻求规则 60 下的救济。

(b) 作出判决。

(1) 无需法院指示。除规则 54(b) 另有规定且法院另有命令外，书记官必须在以下情况下无需等待法院指示即迅速准备、签署并登记判决：

(A) 陪审团作出一般评断；

(B) 法院仅判给费用或一定数额的款项；或(C) 法院驳回所有救济请求。

(2) 需要法院批准。除规则 54(b) 另有规定外，法院必须在以下情况下迅速批准判决的形式，书记官必须迅速登记该判决：

(A) 陪审团作出特别裁决或附有对书面问题答复的一般裁决；或

(B)法院准予本细分(b)未描述的其他救济。

(c) 登记时间。就本规则而言，判决在下列时间登记：

(1) 如果无需单独文件，则在判决依据规则 79(a) 登记于民事案件登记簿时；或

(2) 如果需单独文件，则在判决依据规则 79(a) 登记于民事案件登记簿且下列事件中较早者发生时：

(A) 它载于单独文件中；或

(B) 自民事案件登记簿登记之日起已满150天。

(d) 登记请求。当事人可以请求按照规则 58(a) 的要求将判决载于单独文件中。

(e) 费用或律师费判给。通常情况下，不得为核定费用或判给律师费而延迟判决的登记，也不得延长上诉期限。但如果依据规则 54(d)(2) 及时提出律师费动议，法院可以在上诉通知提交并生效之前采取行动，命令该动议依据《联邦上诉程序规则》4(a)(4) 具有与规则 59 项下及时动议相同的效力。

(1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1963 年 1 月 21 日修订，1963 年 7 月 1 日生效；1993 年 4 月 22 日修订，1993 年 12 月 1 日生效；2002 年 4 月 29 日修订，2002 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 59. 重新审理；变更或修改判决

(a) 一总则。

(1) 重新审判的理由。法院可以基于动议，就全部或部分争点--并向任何一方--准予重新审判，具体如下：

(A) 在陪审团审理后，基于此前在联邦法院普通法诉讼中准许重新审理的任何理由；或

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial*. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(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.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 60. Relief from a Judgment or Order

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(B) 在非陪审团审理后，基于此前在联邦法院衡平法诉讼中准许重新听审的任何理由。

(2) 非陪审团审判后的进一步行动。在非陪审团审判后，法院可以基于重新审判的动议，在已登记判决的情况下撤销该判决，接受补充证言，修改事实认定和法律结论或作出新的事实认定和法律结论，并指示登记新的判决。

(b) 提出重新审理动议的时间。重新审理动议必须在判决登记后 28 日内提出。

(c) 送达宣誓书的时间。当重新审理动议基于宣誓书时，宣誓书必须随动议一并提交。对方当事人有 14 日时间在送达后提交反对宣誓书。法院可以允许提交答复宣誓书。

(d) 法院依职权或基于其他未
动议中。在判决登记后 28 日内，法院可以自行基于任何足以支持依当事人动议准许重新审理的理由命令重新审理。在给予当事人通知和陈述意见的机会后，法院可以基于动议中未载明的理由准许及时的重新审理动议。无论哪种情形，法院都必须在其命令中说明理由。

(e) 变更或修改判决的动议。变更或修改判决的动议必须在判决登记后 28 日内提出。

(1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；1995 年 4 月 27 日修订，1995 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效。）

规则 60. 对判决或命令的救济

(a) 基于笔误的更正；疏忽与
遗漏。法院可以在判决、命令或记录的其他部分发现书记官错误或因疏忽或遗漏而产生的错误时予以更正。法院可以基于动议或自行、在有或没有通知的情况下这样做。但在上诉已在上诉法院立案且尚待审理期间，此类错误只能经上诉法院许可才能更正。

(b) 基于终局判决、命令或
程序。基于动议和公正条件，法院可以基于下列理由免除当事人或其法定代理人受终局判决、命令或程序的约束：

(1) 错误、疏忽、意外或可原谅的过失；

(2) 新发现的证据，且经合理勤勉仍无法及时发现以依据规则 59(b) 提出重新审理动议；

(3) 对方当事人的欺诈(无论此前称为内在欺诈还是外在欺诈)、虚假陈述或不当行为；

(4) 判决无效；(5) 判决已获履行、免除或清偿；判决基于已被撤销或废止的先前判决；或前瞻性适用判决不再公平；或

(6) 任何其他足以支持救济的理由。

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

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

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:

(1) an interlocutory or final judgment in an action for an injunction or a receivership; or

(2) a judgment or order that directs an accounting in an action for patent infringement.

(b) STAY PENDING THE DISPOSITION OF A MOTION. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) INJUNCTION PENDING AN APPEAL. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms

(c) 动议的时机与效力。

(1) 时间。依据规则 60(b) 提出的动议必须在合理时间内提出--且基于理由(1)、(2)和(3)的，不得超过判决或命令登记之日或程序发生之日起一年。

(2) 对终局性的影响。该动议不影响判决的终局性，也不中止其执行。

(d) 给予救济的其他权力。本规则不限制法院下列权力：

(1) 受理独立的诉讼以免除当事人受判决、命令或程序的约束；

(2) 依据 28 U.S.C.1655 向未获人身通知的被告提供救济；或

(3) 撤销因欺诈法庭而作出的判决。

(e) 废除诉状与令状。以下各项予以废除：复审诉状、具有复审诉状性质的诉状，以及 coram nobis、coram vobis 和 audita querela 令状。

(经 1946 年 12 月 27 日修正，1948 年 3 月 19 日生效；1948 年 12 月 29 日修正，1949 年 10 月 20 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效。)

规则 61. 无害错误

除为实现正义所需外，在采纳或排除证据方面的任何错误--或法院或当事人所犯的任何其他错误--均不构成批准重新审理、撤销裁决或撤销、变更或以其他方式干扰判决或命令的理由。在诉讼的每一阶段，法院必须无视所有不影响任何当事人实体权利的错误和瑕疵。(经 2007 年 4 月 30 日修正，2007 年 12 月 1 日生效。)

规则 62. 执行判决程序的中止

(a) 自动中止；禁令、接管人-的例外

船舶及专利账目清算。除本规则另有规定外，在判决登记后 14 日届满之前，不得对该判决签发执行令，也不得采取执行该判决的程序。但除法院另有命令外，下列各项在登记后不予中止，即使已提起上诉：

(1) 禁令或接管诉讼中的中间判决或终局判决；或

(2) 在专利侵权诉讼中指示进行账目清算的判决或命令。

(b) 中止动议处置的停留。在适当情况下

对方当事人提供担保的条件，法院可在下列任何动议处理完毕之前中止判决的执行--或中止执行该判决的任何程序：

(1) 根据规则 50，作为法律问题的判决；

(2) 根据规则 52(b)，修改认定或要求补充认定；

(3) 根据规则 59，申请重新审理或变更或修改判决；或

(4) 根据规则 60，请求对判决或命令给予救济。

(c) 上诉期间的禁令。当对批准、解除或拒绝禁令的中间命令或终局判决提起的上诉尚待审理时，法院可以以保证金条件或其他条件暂停、变更、恢复或批准禁令，

that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

(1) by that court sitting in open session; or

(2) by the assent of all its judges, as evidenced by their signatures.

(d) STAY WITH BOND ON APPEAL. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, ITS OFFICERS, OR ITS AGENCIES. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) STAY IN FAVOR OF A JUDGMENT DEBTOR UNDER STATE LAW. If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) STAY WITH MULTIPLE CLAIMS OR PARTIES. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

以保障对方当事人的权利。如果被上诉的判决由法定的三名法官组成的地区法院作出，则该命令必须以下列方式之一作出：

(1) 由该法院公开开庭作出；或

(2) 经其全体法官同意，并以他们的签名作为证明。

(d) 上诉时提供担保的中止。如果提起上诉，上诉人可以通过 supersedeas 保证金获得中止，但规则 62(a)(1) 或 (2) 所述诉讼除外。保证金可以在提交上诉通知时或之后，或在获得准许上诉的命令之后提供。中止在法院批准保证金时生效。

(e) 在 United States 提出上诉期间，S TAY W ITHOUT B OND 其官员或其机构。当批准美国、其官员或其机构提起的上诉的中止，或批准联邦政府部门指示的上诉的中止时，法院不得要求上诉人提供保证金、义务或其他担保。

(f) 依州法律对判决债务人中止执行。如果根据法院所在州的法律，判决对判决债务人的财产构成留置权的，判决债务人有权获得州法院会给予的同等执行中止。

(g) 上诉法院的权力不受限制。本规则不限制上诉法院或其一名法官或大法官的下列权力：

(1) 在上诉尚待审理期间中止程序--或暂停、变更、恢复或批准禁令；或

(2) 发出命令以维持现状或即将作出的判决的效力。

(h) 涉及多个请求或当事人的中止。法院可以中止依据规则 54(b) 作出的终局判决的执行，直至其作出后续一项或多项判决，并可规定必要的条件，以保障被中止判决对其有利的当事人获得该判决的利益。

(经 1946 年 12 月 27 日修正，1948 年 3 月 19 日生效；1948 年 12 月 29 日修正，1949 年 10 月 20 日生效；1961 年 4 月 17 日修正，1961 年 7 月 19 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

规则 62.1. 对受禁止的救济申请的指示性裁定因待决上诉

(a) 上诉期间的救济。如果因已立案并尚待审理的上诉，法院无权批准而及时提出了救济动议，法院可以：

(1) 推迟审议该动议；

(2) 驳回该动议；或

(3) 声明如果上诉法院为此目的发回重审，其将批准该动议，或声明该动议提出了实质性问题。

(b) 通知上诉法院。如果地区法院声明其将批准该动议或该动议提出了实质性问题，动议人必须根据《联邦上诉程序规则》12.1 迅速通知巡回区书记官。

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

(As added Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

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

Rule 65. Injunctions and Restraining Orders

(a) PRELIMINARY INJUNCTION.

(1) *Notice*. The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) TEMPORARY RESTRAINING ORDER.

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss,

(c) 发回重审。如果上诉法院为此目的发回重审，地区法院可以对该动议作出裁定。(2009年3月26日增补，2009年12月1日生效。)

规则 63. 法官无法继续审理

如果主持听证或审判的法官无法继续审理，任何其他法官可以在证明其熟悉案卷并确定案件可以在不损害当事人利益的情况下完成审理后继续审理。在听证或非陪审团审判中，继任法官必须应一方当事人的请求，重新传唤其证言具有实质性且存在争议、并且可以在没有不当负担的情况下再次作证的任何证人。继任法官也可以重新传唤任何其他证人。

(经1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

第八编临时与最终救济

规则 64. 扣押人员或财产

(a) 州法律下的救济--一般规定。在诉讼开始时及整个诉讼过程中，根据法院所在州的法律规定可扣押人身或财产以确保潜在判决得以履行的每一种救济均可采用。但在适用范围内，联邦制定法优先。

(b) 特定种类的救济。本规则下可用的救济包括下列各项--无论其名称如何，也无论州程序是否要求独立诉讼：

- 逮捕；
- 扣押；
- 债权扣押；
- 返还原物之诉；
- 扣押；以及
- 其他相应或等效的救济措施。

(2007年4月30日修订，2007年12月1日生效。)

规则 65. 禁令与限制令

(a) 初步禁令

(1) 通知。法院只有在通知对方当事人后才能签发初步禁令。

(2) 将听证与实体审理合并。在开始初步禁令动议的听证之前或之后，法院可以提前进行实体审理并将其与听证合并。即使未命令合并，在动议中收到且可在审判中被采纳的证据也成为审判记录的一部分，无需在审判中重复。但法院必须保留任何一方由陪审团审判的权利。

(b) 临时限制令。

(1) 不经通知签发。只有在下列情况下，法院才可以不向对方当事人或其律师发出书面或口头通知而签发临时限制令：

(A) 宣誓书或经核实的起诉状中的具体事实清楚表明，即时且不可弥补的伤害、损失、

or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

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

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) OTHER LAWS NOT MODIFIED. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. §2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

或在对方当事人有机会陈述反对意见之前，申请人将遭受损害；以及

(B) 申请人的律师以书面形式证明为发出通知所作的任何努力，以及为何不应要求发出通知的理由。

(2) 内容；失效。每项未经通知发出的临时限制令必须说明其发出的日期和时间；描述损害并说明为何该损害不可弥补；说明为何该命令未经通知发出；并应及时提交至书记官办公室并记入记录。该命令在记入后法院设定的时间失效--不超过 14 天--除非在该时间之前，法院基于正当理由将其延长相同期限，或对方同意更长的延长期限。延长的理由必须记入记录。

(3) 加快初步禁令听证。如果该命令未经通知签发，初步禁令动议必须安排在尽可能最早的时间进行听证，优先于所有其他事项，但同类较早事项的听证除外。在听证中，获得该命令的一方必须继续进行该动议；如果该方不继续进行，法院必须撤销该命令。

(4) 撤销动议。在向未经通知获得该命令的一方发出 2 天通知后--或在法院设定的更短通知后--对方当事人可以出庭并动议撤销或修改该命令。法院随后必须按正义要求尽快审理和裁决该动议。

(c) 担保。法院只有在申请人提供法院认为适当金额的担保，用以支付被认定被错误地发出禁令或限制令的任何当事人所承受的费用和损害赔偿时，才可以签发初步禁令或临时限制令。美国、其官员及其机构无须提供担保。

(d) 各项禁令与限制令的内容与范围。

(1) 内容。每一项授予禁令的命令和每一项限制令必须：

(A)说明其发布的原因；(B)具体说明其条款；以及

(C) 以合理的详细程度--而非通过引用起诉状或其他文件--描述被限制或被要求的行为。

(2) 受约束的人。该命令仅约束以下通过亲自送达或其他方式收到实际通知的人：

(A) 双方；

(B)当事人的高级职员、代理人、受雇人、雇员和律师；以及

(C) 与规则 65(d)(2)(A)或(B)所述任何人积极协同或参与的其他人员。

(e) 其他法律不受修改。这些规则不修改以下内容：

(1) 与影响雇主和雇员的诉讼中的临时限制令或初步禁令有关的任何联邦法规；

(2) 28 U.S.C.2361，该条涉及互诉或具有互诉性质的诉讼中的初步禁令；或

(3) 28 U.S.C. §2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) COPYRIGHT IMPOUNDMENT. This rule applies to copyright-impoundment proceedings.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 65.1. Proceedings Against a Surety

Whenever these rules (including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions) require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 67. Deposit into Court

(a) DEPOSITING PROPERTY. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) INVESTING AND WITHDRAWING FUNDS. Money paid into court under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 30, 2007, eff. Dec. 1, 2007.)

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

(3) 28 U.S.C.2284，该条涉及必须由三名法官组成的地区法院审理和裁决的诉讼。

(f) 版权扣押。本规则适用于版权扣押程序。

(经1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；2001年4月23日修正，2001年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

每当本规则(包括《海事或海商索赔及资产没收补充规则》)要求或允许一方当事人提供担保，且担保通过一名或多名保证人的保证书或其他承诺提供的，每名保证人均服从法院管辖，并不可撤销地指定法院书记官作为其代理人，接收任何影响其在保证书或承诺项下责任的文书的送达。保证人的责任可经动议强制执行，无需另行提起诉讼。该动议及法院命令的任何通知可送达法院书记官，书记官必须迅速将每份副本邮寄给地址已知的每名保证人。

本规则管辖寻求任命接管人的诉讼，或接管人起诉或被诉的诉讼。但接管人或类似法院任命官员管理遗产的做法必须符合联邦法院的历史惯例或当地规则。已任命接管人的诉讼只能经法院命令驳回。(1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；2007年4月30日修正，2007年12月1日生效。)规则 67. 向法院交存

(a) 交存财产。如果所寻求的任何救济是金钱判决或一笔金钱或某种其他可交付物的处置，当事人--在通知所有其他当事人并经法院许可后--可以向法院交存全部或部分金钱或物品，无论该当事人是否主张其中的任何部分。交存方必须向书记官提交允许交存的命令副本。

(b) 资金的投资和提取。根据本规则向法院缴付的金钱必须按照 28 U.S.C.2041 和 2042 及任何类似法规进行交存和提取。该金钱必须存入有息账户或投资于法院批准的有息工具。

(经1948年12月29日修正，1949年10月20日生效；1983年4月28日修正，1983年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 68. 判决要约

(a) 发出要约；对已接受要约的判决。在至少在开庭日期前 14 天，进行抗辩的一方

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.

(b) UNACCEPTED OFFER. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(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.

(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 69. Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicable Procedure*. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery*. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. §2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. §118,[1] the judgment must be satisfied as those statutes provide.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 70. Enforcing a Judgment for a Specific Act

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

[1] Now editorially reclassified 2 U.S.C. 5503.

针对某项请求，可以向对方当事人送达一份按指定条款并连同当时已产生的费用允许判决的提议。如果对方当事人在被送达后14天内送达接受该提议的书面通知，任何一方随后均可提交该提议和接受通知，以及送达证明。书记官随后必须作出判决登记。

(b) 未被接受的提议。未被接受的提议视为撤回，但不妨碍此后提出新的提议。未被接受的提议的证据不可采纳，但在确定费用的程序中除外。

(c) 责任确定后的提议。当一方对另一方的责任已经确定，但责任范围仍有待进一步程序确定时，被认定负有责任的一方可以提出判决提议。该提议必须在确定责任范围的听证日期之前的合理时间内--但至少提前14天--送达。

(d) 未获接受的提议后的费用支付。如果受要约人最终获得的判决不比未获接受的提议更有利，受要约人必须支付该提议作出后所产生的费用。

(1946年12月27日修正，1948年3月19日生效；1966年2月28日修正，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 69. 执行

(a) 一总则。

(1) 金钱判决；适用程序。金钱判决通过执行令状执行，除非法院另有指示。执行程序--以及补充于并协助判决或执行的程序--必须符合法院所在州的程序，但联邦法规在其适用范围内优先。

(2) 获取证据开示。为协助判决或执行，判决债权人或利益已记录在案的权益继受人可以按照本规则或法院所在州的程序，向任何人--包括判决债务人--获取证据开示。

(b) 针对特定公职人员。当在28 U.S.C.118所述情形下对国会官员作出判决时，[1]该判决必须按照上述法规的规定予以履行。

(1948年12月29日修正，1949年10月20日生效；1970年3月30日修正，1970年7月1日生效；1987年3月2日修正，1987年8月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 70. 强制执行特定行为的判决

(a) 党未能采取行动； 命令他人行动。如果一个判决要求一方转让土地、交付契据或其他文件，或履行任何其他特定行为，而该方未在指定时间内遵守的，法院可以命令由法院指定的另一人完成该行为--费用由不服从的一方承担。完成后，该行为具有与由该方亲自完成相同的效力。

1 现经编辑重新分类为 2 U.S.C.5503。

(b) VESTING TITLE. If the real or personal property is within the district, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt.

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

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE IX. SPECIAL PROCEEDINGS

Rule 71.1. Condemning Real or Personal Property

(a) APPLICABILITY OF OTHER RULES. These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.

(b) JOINDER OF PROPERTIES. The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.

(c) COMPLAINT.

(1) *Caption*. The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.

(2) *Contents*. The complaint must contain a short and plain statement of the following:

(A) the authority for the taking;

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

(C) a description sufficient to identify the property;

(D) the interests to be acquired; and

(E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.

(3) *Parties*. When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All

(b) 权利归属。如果不动产或动产位于该辖区内，法院可以--代替命令转让--作出判决，剥夺任何一方的所有权并将其授予他人。该判决具有合法签立的转让契据的效力。

(c) 获得扣押令或财产保全令。在申有权要求履行某一行为的一方的申请，书记官必须对不服从一方的财产签发扣押令或查封令以强制其服从。

(d) 取得执行令状或协助令状。经申请--获得占有判决或命令的一方的申请，书记官必须签发执行令状或协助令状。

(e) 藐视法庭。法院还可以裁定不服从的一方藐视法庭。

(2007年4月30日修订，2007年12月1日生效。)

规则 71. 对非当事人强制执行救济或针对非当事人强制执行救济

当命令给予非当事人救济或可对非当事人执行时，执行该命令的程序与对当事人的程序相同。

(1987年3月2日修订，1987年8月1日生效；2007年4月30日修订，2007年12月1日生效。)

第九编特别程序

规则 71.1. 征收不动产或动产

(a) 其他规则的适用性。本规则管辖通过征用权征收不动产和动产的诉讼程序，但本规则另有规定的除外。

(b) 财产的合并。原告可以在单一诉讼中合并不同的财产，无论这些财产是否由相同的人拥有或为相同用途而寻求。

(c) 起诉状。

(1) 标题。起诉状必须包含规则 10(a) 规定的标题。但是，原告必须将财产--以种类、数量和位置一般性地指定--以及该财产某部分或权益的至少一名所有人列为被告。

(2) 内容。起诉状必须包含对以下内容的简短明确陈述：

(A) 取得权力的依据；

(B) 征收财产的用途；(C) 足以识别该财产的说明；(D) 拟取得的权益；以及

(E) 对于每一块财产，指定每一位作为所有人或其中权益所有人而被合并的被告。

(3) 当事人。诉讼开始时，原告只需将当时已知的对财产享有或主张权益的人列为被告。但在任何补偿听证之前，原告必须将所有对财产享有或主张权益、且其姓名已为人所知或经合理勤勉查阅记录(同时考虑财产的性质与价值以及将要取得的权益)即可查明的人追加为被告。所有

others may be made defendants under the designation ''Unknown Owners.''

(4) *Procedure*. Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.

(5) *Filing; Additional Copies*. In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants' use and additional copies at the request of the clerk or a defendant.

(d) PROCESS.

(1) *Delivering Notice to the Clerk*. On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.

(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.

(B) *Conclusion*. The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the district in which the action is brought where the attorney may be served.

(3) *Serving the Notice*.

(A) *Personal Service*. When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(B) *Service by Publication*.

(i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry within the state where the complaint is filed, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service.

其他人可以以"未知所有人"的名义被列为被告。

(4) 程序。通知必须按照规则 71.1(d) 的规定向所有被告送达，无论他们在诉讼开始时是否被列为被告或后来被追加。被告可以按照规则 71.1(e) 的规定作出答辩。同时，法院可以命令按照事实情况分配保证金。

(5) 提交；附加副本。除提交起诉状外，原告必须向书记官提供至少一份供被告使用的副本，以及应书记官或被告要求提供的附加副本。

(d) 流程。

(1) 向书记官送达通知。提交起诉状时，原告必须及时向书记官交付针对具名被告的联合或分别通知。增加被告时，原告必须向书记官交付针对新被告的附加通知。

(2) 通知的内容。

(A) 主要内容。每份通知必须载明法院、诉讼名称以及通知所针对的被告。通知必须充分描述财产以便识别，但无需描述除将从被指名被告处取得的财产以外的任何财产。通知还必须载明：

(i) 该诉讼旨在征用财产；
(ii) 拟取得的权益；(iii) 征收的授权依据；(iv) 征收财产的用途；(v) 被告可以在收到通知送达后21天内向原告律师送达答辩书；
(vi) 未能如此送达答辩书构成对征收及法院继续诉讼和确定补偿的权力的同意；以及
(vii) 未送达答辩书的被告可以提交出庭通知。

(B) 结尾。通知必须以原告律师的姓名、电话号码和电子邮件地址以及该律师可被送达的诉讼提起所在辖区内的地址作为结尾。

(3) 送达通知。

(A) 直接送达。当地址已知的被告居住在美国或受美国行政或司法管辖的领土内时，必须按照规则 4 的规定直接送达通知(不含起诉状副本)。

(B) 公告送达。

(i) 只有在原告律师提交证明书，声明该律师认为被告无法被直接送达--因为在起诉状提交所在州内经过勤勉查询后，被告的居住地仍然未知，或者即使已知，也超出直接送达的地域范围--时，才可以通过公告方式向被告送达。

Service is then made by publishing the notice—once a week for at least 3 successive weeks—in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to ''Unknown Owners.''

(ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.

(4) *Effect of Delivery and Service*. Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(5) *Amending the Notice; Proof of Service and Amending the Proof*. Rule 4(a)(2) governs amending the notice. Rule 4(*l*) governs proof of service and amending it.

(e) APPEARANCE OR ANSWER.

(1) *Notice of Appearance*. A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.

(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:

(A) identify the property in which the defendant claims an interest;

(B) state the nature and extent of the interest; and

(C) state all the defendant's objections and defenses to the taking.

(3) *Waiver of Other Objections and Defenses; Evidence on Compensation*. A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant—whether or not it has previously appeared or answered—may present evidence on the amount of compensation to be paid and may share in the award.

(f) AMENDING PLEADINGS. Without leave of court, the plaintiff may—as often as it wants—amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in Rule 5(b), on every affected party who has appeared and, as provided in Rule 71.1(d), on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants' use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the

随后通过在被征收财产所在县出版的报纸上(若该县无此类报纸，则在财产所在地普遍发行的报纸上)每周一次、连续至少3周刊登通知的方式完成送达。在最后一次刊登之前，还必须将通知副本邮寄给每一位无法亲自送达但当时已知居住地的被告。未知所有权人可通过以“未知所有权人”为收件人的通知，以同样方式经公告送达。

(ii) 以公告方式送达于最后一次公告之日完成。原告的律师必须通过证明书证明公告与邮寄，附上已公告通知的印刷副本，并在副本上标明报纸名称及公告日期。

(4) 交付和送达的效力。向书记官交付通知并送达该通知，与根据规则 4 送达传票具有同等效力。

(5) 修改通知；送达证明及修改送达证明。规则 4(a)(2) 管辖通知的修改。规则 4(*l*) 管辖送达证明及其修改。

(e) 出庭或答辩。

(1) 出庭通知。对征收其财产无异议或抗辩的被告，可以送达出庭通知，指明其主张权益的财产。此后，必须向该被告提供影响该被告的所有后续程序的通知。

(2) 答辩。对征收有异议或抗辩的被告，必须在收到通知送达后 21 日内送达答辩状。答辩状必须：

(A) 指明被告主张权益的财产；

(B) 说明该权益的性质和范围；以及

(C) 陈述被告对征收的所有异议和抗辩。

(3) 放弃其他异议和抗辩；关于补偿的证据。被告放弃其答辩状中未载明的所有异议和抗辩。不允许提出主张附加异议或抗辩的其他诉答文书或动议。但在补偿审理中，被告--无论其此前是否已出庭或答辩--均可就应支付的补偿金额提出证据，并可分享裁决款项。

(f) 修改诉状。无需法院许可，原告可在补偿审判之前的任何时间随意多次修改起诉状。但若修改将导致不符合规则71.1(i)(1)或(2)的驳回，则不得作出修改。原告无需送达修改书的副本，但必须按规则5(b)的规定，向每一位已出庭的受影响当事人送达提交通知，并按规则71.1(d)的规定，向每一位未出庭的受影响当事人送达提交通知。此外，原告必须向书记官提供每份修改书的至少一份副本供被告使用，并应书记官或被告的请求提供额外副本。被告可出庭或答辩于

time and manner and with the same effect as provided in Rule 71.1(e).

(g) SUBSTITUTING PARTIES. If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided in Rule 71.1(d)(3).

(h) TRIAL OF THE ISSUES.

(1) *Issues Other Than Compensation; Compensation*. In an action involving eminent domain under federal law, the court tries all issues, including compensation, except when compensation must be determined:

(A) by any tribunal specially constituted by a federal statute to determine compensation; or

(B) if there is no such tribunal, by a jury when a party demands one within the time to answer or within any additional time the court sets, unless the court appoints a commission.

(2) *Appointing a Commission; Commission's Powers and Report*.

(A) *Reasons for Appointing*. If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.

(B) *Alternate Commissioners*. The court may appoint up to two additional persons to serve as alternate commissioners to hear the case and replace commissioners who, before a decision is filed, the court finds unable or disqualified to perform their duties. Once the commission renders its final decision, the court must discharge any alternate who has not replaced a commissioner.

(C) *Examining the Prospective Commissioners*. Before making its appointments, the court must advise the parties of the identity and qualifications of each prospective commissioner and alternate, and may permit the parties to examine them. The parties may not suggest appointees, but for good cause may object to a prospective commissioner or alternate.

(D) *Commission's Powers and Report*. A commission has the powers of a master under Rule 53(c). Its action and report are determined by a majority. Rule 53(d), (e), and (f) apply to its action and report.

(i) DISMISSAL OF THE ACTION OR A DEFENDANT.

(1) *Dismissing the Action*.

(A) *By the Plaintiff*. If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.

(B) *By Stipulation*. Before a judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss the action in whole or in part by filing a stipulation of dismissal. And if the parties

时间、方式及效力均与规则规定相同
71.1 (e)。

(g) 当事人的替换。如果被告在被追加后死亡、丧失行为能力或转让权益，法院可基于动议和听证通知，命令替换适当的当事人。向非当事人送达动议和通知必须按规则 71.1(d)(3) 的规定进行。

(h) 问题的审理。

(1) 补偿以外的问题；补偿。在根据联邦法律涉及征用的诉讼中，法院审理所有问题，包括补偿，但补偿必须由以下方式确定的除外：

(A) 由联邦制定法特别设立的任何裁判机构确定补偿；或

(B) 如果没有此类裁判机构，则由陪审团确定，前提是当事人在答辩期限内或法院设定的任何额外期限内提出要求，除非法院任命委员会。

(2) 任命委员会；委员会的权力与报告。

(A) 任命理由。如果当事人已要求陪审团审理，法院可因待征用财产的性质、位置或数量或其他正当理由，改为任命三人委员会来确定补偿。

(B) 候补委员。法院可额外任命至多两人担任候补委员，以审理案件并替换在裁决作出前经法院认定无法或不适格履行职责的委员。委员会作出最终裁决后，法院必须解除未替换任何委员的候补委员。

(C) 审查拟任委员。在作出任命前，法院必须告知当事人每位拟任委员和候补委员的身份和资格，并可允许当事人对其进行审查。当事人不得推荐人选，但有正当理由的，可对拟任委员或候补委员提出异议。

(D) 委员会的权力和报告。委员会享有规则 53(c) 项下主事官的权力。其行动和报告由多数决定。规则 53(d)、(e) 和 (f) 适用于其行动和报告。

(i) 诉讼或被告的驳回。

(1) 驳回诉讼。

(A) 由原告撤诉。如果对某宗财产的补偿审理尚未开始，且原告尚未取得所有权或较小权益或占有，原告可无需法院命令，通过提交简要描述该财产的撤诉通知，撤回对该财产的诉讼。

(B) 经合意撤回。在作出授予原告财产所有权或较小权益或占有的判决之前，原告与受影响被告可无需法院命令，通过提交撤回合意书，全部或部分撤回诉讼。且如当事人

so stipulate, the court may vacate a judgment already entered.

(C) *By Court Order*. At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.

(2) *Dismissing a Defendant*. The court may at any time dismiss a defendant who was unnecessarily or improperly joined.

(3) *Effect*. A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

(j) DEPOSIT AND ITS DISTRIBUTION.

(1) *Deposit*. The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

(2) *Distribution; Adjusting Distribution*. After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

(k) CONDEMNATION UNDER A STATE'S POWER OF EMINENT DOMAIN. This rule governs an action involving eminent domain under state law. But if state law provides for trying an issue by jury—or for trying the issue of compensation by jury or commission or both—that law governs.

(*l*) COSTS. Costs are not subject to Rule 54(d).

(As added Apr. 30, 1951, eff. Aug. 1, 1951; amended Jan. 21, 1963, eff. July 1, 1963; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Pub. L. 100–690, title VII, §7050, Nov. 18, 1988, 102 Stat. 4401; Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

(1) *Findings and Recommendations*. A magistrate judge must promptly conduct the required proceedings when assigned,

特此规定，法院可撤销已作出的判决。

(C) 由法院命令撤诉。在补偿确定并支付之前的任何时间，法院可在动议和听证后，撤回对某宗财产的诉讼。但如果原告已就其中任何部分取得所有权、较小权益或占有，法院必须就所取得的所有权、较小权益或占有判给补偿。

(2) 驳回被告。法院可随时驳回被不必要或不适当合并的被告。

(3) 效力。除通知、约定或法院命令另有规定外，撤诉不损害实体权利。

(j) 存款及其分配。

(1) 交存。原告必须向法院交存法律规定的、作为行使征用权条件的任何款项，并可在法规允许时交存款项。

(2) 分配；调整分配。在交存之后，法院和律师必须加快程序，以便分配该交存款，并确定和支付补偿。如果最终判给被告的补偿超过分配给该被告的金额，法院必须就差额对原告作出判决。如果判给被告的补偿少于分配给该被告的金额，法院必须就该多付款项对该被告作出判决。

(k) 州征用权下的征用。

本规则管辖涉及州法律下征用权的诉讼。但如果州法律规定由陪审团审理某一问题--或由陪审团或委员会或两者审理补偿问题--则适用该法律。

(l) 诉讼费用。诉讼费用不适用规则 54(d)。

(1951 年 4 月 30 日增订，1951 年 8 月 1 日生效；1963 年 1 月 21 日修正，1963 年 7 月 1 日生效；1985 年 4 月 29 日修正，1985 年 8 月 1 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；1988 年 4 月 25 日修正，1988 年 8 月 1 日生效；Pub.L.100-690, title VII,7050, 1988 年 11 月 18 日， 102 Stat.4401;1993 年 4 月 22 日修正，1993 年 12 月 1 日生效；2003 年 3 月 27 日修正，2003 年 12 月 1 日生效；2007 年 4 月 30 日修正，2007 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

规则 72. 治安法官：审前命令

(a) 非处分性事项。当不处分当事人请求或抗辩的审前事项被提交治安法官听审和裁决时，治安法官必须迅速进行所要求的程序，并在适当时候作出书面命令说明裁决。当事人可在收到命令副本送达后14天内送达并提交对该命令的异议。当事人不得将未及时提出异议的命令瑕疵主张为错误。案件中的地区法官必须考虑及时提出的异议，并修改或撤销命令中任何明显错误或违反法律的部分。

(b) 处置性动议与囚犯申诉。

(1) 认定和建议。治安法官在被指派时必须及时进行所要求的程序，

without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

(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.

(3) *Resolving Objections*. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

(As added Apr. 28, 1983, eff. Aug. 1, 1983; amended Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 73. Magistrate Judges: Trial by Consent; Appeal

(a) TRIAL BY CONSENT. When authorized under 28 U.S.C. §636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. §636(c)(5).

(b) CONSENT PROCEDURE.

(1) *In General*. When a magistrate judge has been designated to conduct civil actions or proceedings, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. §636(c). To signify their consent, the parties must jointly or separately file a statement consenting to the referral. A district judge or magistrate judge may be informed of a party's response to the clerk's notice only if all parties have consented to the referral.

(2) *Reminding the Parties About Consenting*. A district judge, magistrate judge, or other court official may remind the parties of the magistrate judge's availability, but must also advise them that they are free to withhold consent without adverse substantive consequences.

(3) *Vacating a Referral*. On its own for good cause—or when a party shows extraordinary circumstances—the district judge may vacate a referral to a magistrate judge under this rule.

(c) APPEALING A JUDGMENT. In accordance with 28 U.S.C. §636(c)(3), an appeal from a judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

未经当事人同意，审理对请求或抗辩具有处分性的审前事项，或审理囚犯质疑监禁条件的请愿。所有证据性程序必须制作记录，其他程序可依治安法官裁量制作记录。治安法官必须作出建议性处理意见，包括在适当情况下的拟议事实认定。书记官必须迅速将副本邮寄给各方当事人。

(2) 异议。在收到建议处置意见书副本后14天内，当事人可以针对拟议的事实认定和建议提出具体的书面异议并送达及提交。当事人可以在收到另一方当事人异议书副本后14天内作出回应。除地区法官另有命令外，提出异议的当事人必须及时安排转录记录，或转录当事人一致同意或治安法官认为充分的记录部分。

(3) 处理异议。地区法官必须对治安法官处理意见中被适当提出异议的任何部分进行重新审查。地区法官可以接受、拒绝或修改建议性处理意见；接收进一步证据；或将事项退回治安法官并附指示。

(1983年4月28日增补，1983年8月1日生效；1991年4月30日修正，1991年12月1日生效；1993年4月22日修正，1993年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。)

规则 73. 治安法官：同意审判；上诉

(a) 经同意审判。当根据《美国法典》第28编第636(c)条获得授权时，治安法官可在各方当事人同意的情况下，主持民事案件或程序，包括陪审团审判或非陪审团审判。必须按照《美国法典》第28编第636(c)(5)条制作记录。

(b) 同意程序。

(1) 一般规定。当治安法官被指定进行民事案件或程序时，书记官必须向当事人发出书面通知，告知其依据 28 U.S.C.636(c) 表示同意的机会。为表示同意，当事人必须共同或分别提交同意移交的声明。只有在所有当事人都同意移交的情况下，地区法官或治安法官才可以获知当事人对书记官通知的回应。

(2) 提醒当事人关于同意事项。地区法官、治安法官或其他法院官员可以提醒当事人治安法官可供其使用，但还必须告知当事人，他们可以自由地拒绝同意，而不会产生不利的实体后果。

(3) 撤销移送。地区法官可以基于正当理由自行--或在当事人证明存在特殊情形时--撤销根据本规则向治安法官作出的移送。

(c) 对判决上诉。依据 28 U.S.C.636(c)(3)，对在治安法官指导下作出的判决的上诉，可以像对地区法院判决的任何其他上诉一样向上诉法院提出。

(As added Apr. 28, 1983, eff. Aug. 1, 1983; amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 74. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

Rule 75. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

Rule 76. [Abrogated (Apr. 11, 1997, eff. Dec. 1, 1997).]

TITLE X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) WHEN COURT IS OPEN. Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) PLACE FOR TRIAL AND OTHER PROCEEDINGS. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing—other than one ex parte—may be conducted outside the district unless all the affected parties consent.

(c) CLERK'S OFFICE HOURS; CLERK'S ORDERS.

(1) *Hours.* The clerk's office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(6)(A).

(2) *Orders.* Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

(A) issue process;
(B) enter a default;
(C) enter a default judgment under Rule 55(b)(1); and
(D) act on any other matter that does not require the court's action.

(d) SERVING NOTICE OF AN ORDER OR JUDGMENT.

(1) *Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) *Time to Appeal Not Affected by Lack of Notice.* Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a).

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971;

(1983年4月28日增补，1983年8月1日生效；1987年3月2日修正，1987年8月1日生效；1993年4月22日修正，1993年12月1日生效；1997年4月11日修正，1997年12月1日生效；2007年4月30日修正，2007年12月1日生效。)

规则 74. [已废止(1997年4月11日，1997年12月1日生效)。]

规则 75. [已废止(1997年4月11日，1997年12月1日生效)。]

规则 76. [已废止(1997年4月11日，1997年12月1日生效)。]

第十编地区法院与书记官：进行商业；签发命令

规则 77. 处理事务；书记官的权力；命令的通知 命令或判决

(a) 法院开放时。每个地区法院被视为始终开放，以供提交任何文书、签发和退回令状、提出动议或作出命令。

(b) 审判和其他程序的地点。每次实体审判必须在公开法庭进行，并在方便的情况下在常规法庭进行。任何其他行为或程序可以由法官在法官办公室进行或主持，无需书记官或其他法院官员出席，并可在地区内或地区外的任何地方进行。但除单方听证外，不得在地区外进行任何听证，除非所有受影响的当事人同意。

(c) 书记员办公时间；书记员命令。

(1) 办公时间。书记官办公室--有一名书记官或副手值班--必须在每个工作日办公时间内开放，但星期六、星期日和法定假日除外。但法院可以通过地方规则或命令，要求办公室在星期六或规则 6(a)(6)(A) 所列假日以外的特定法定假日按指定时间开放。

(2) 命令。在法院基于正当理由中止、变更或撤销书记官行为的权力约束下，书记官可以：

(A) 发出程序；(B) 作出缺席判决；

(C) 根据规则 55(b)(1) 作出缺席判决；以及

(D) 处理任何其他不需要法院采取行动的事项。

(d) 送达命令或判决通知书。

(1) 送达。在作出命令或判决后，书记官必须立即按照规则 5(b) 的规定，向每位未因未出庭而构成缺席的当事人送达登记通知。书记官必须将送达记录在案卷上。当事人也可以按照规则 5(b) 的规定送达登记通知。

(2) 未获通知不影响上诉期限。未获登记通知不影响上诉期限，也不免除--或授权法院免除--当事人未在允许的期限内提起上诉的责任，但《联邦上诉程序规则》第4条(a)款允许的情形除外。

(1946年12月27日修正，1948年3月19日生效；1963年1月21日修正，1963年7月1日生效；1967年12月4日修正，1968年7月1日生效；1971年3月1日修正，1971年7月1日生效；

Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 25, 2014, eff. Dec. 1, 2014.)

Rule 78. Hearing Motions; Submission on Briefs

(a) PROVIDING A REGULAR SCHEDULE FOR ORAL HEARINGS. A court may establish regular times and places for oral hearings on motions.

(b) PROVIDING FOR SUBMISSION ON BRIEFS. By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 79. Records Kept by the Clerk

(a) CIVIL DOCKET.

(1) *In General*. The clerk must keep a record known as the ''civil docket'' in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered*. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded*. Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word ''jury'' in the docket.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2001年4月23日修正，2001年12月1日生效；2007年4月30日修正，2007年12月1日生效；2014年4月25日修正，2014年12月1日生效。）

规则 78. 动议听证；依据书状提交

(a) 为口头听证会提供固定日程安排。法院可确定口头听证动议的常规时间和地点。

(b) 规定依据书状提交。法院可以通过规则或命令，规定依据书状提交和裁决动议，无需口头听证。

(1987年3月2日修订，1987年8月1日生效；2007年4月30日修订，2007年12月1日生效。）

规则 79. 书记官保存的记录

(a) C 民事案件日程表。

(1) 一般规定。书记官必须按照美国法院行政办公室主任经美国司法会议批准规定的形式和方式，保存称为“民事案卷”的记录。书记官必须将每件民事案件登记入案卷。案件必须被分配连续的案件编号，该编号必须在该案件首次登记入案卷处注明。

(2) 应登记的事项。下列事项必须标注案卷编号，并按时间顺序登记于案卷目录中--

等：

(A) 向书记员提交的文件；

(B) 签发的令状，以及显示执行的送达证明或其他回呈；以及

(C) 出庭、命令、裁决和判决。

(3) 登记内容；要求陪审团审判。每项登记必须简要载明所提交文书或所签发令状的性质、每份送达证明或其他回复的实质内容，以及每项命令和判决的实质内容与登记日期。当已适当要求或命令进行陪审团审判时，书记官必须在案卷目录中登记“jury”一词。

(b) 民事判决和命令。书记官必须保存每份终局判决和可上诉命令的副本；每份影响不动产或动产所有权或留置权的命令的副本；以及法院指示保存的任何其他命令的副本。书记官必须按照美国法院行政办公室主任经美国司法会议批准规定的形式和方式保存这些副本。

(c) 索引；日历。在法院的指导下，书记员必须：

(1) 保存规则 79(b) 所述案件摘要簿以及判决和命令的索引；以及

(2) 编制所有可供审判的诉讼的日程表，区分陪审团审判与非陪审团审判。

(d) 其他记录。书记官必须保存美国法院行政办公室主任经美国司法会议批准所要求的任何其他记录。

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 80. Stenographic Transcript as Evidence

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Apr. 30, 2007, eff. Dec. 1, 2007.)

TITLE XI. GENERAL PROVISIONS

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

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1948 年 12 月 29 日修订，1949 年 10 月 20 日生效；1963 年 1 月 21 日修订，1963 年 7 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则 80. 速记笔录作为证据

如果听证或审判中以速记方式记录的证言在以后的审判中可采纳为证据，该证言可以通过由记录人核证的笔录予以证明。(经 1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

第十一编一般规定

规则 81. 规则的普遍适用性；已移除的诉讼

(a) 适用于特定程序。

(1) 捕获物诉讼。本规则不适用于受 10 U.S.C.7651-7681 管辖的海事捕获物诉讼。

(2) 破产。本规则在《联邦破产程序规则》规定的范围内适用于破产程序。

(3) 公民身份。本规则适用于入籍程序，但以该等程序中的做法未由联邦法规规定且此前已符合民事诉讼做法者为限。8 U.S.C.1451 关于公告送达和答辩的规定适用于撤销公民证书的程序。

(4) 特别令状。本规则适用于人身保护令和权利调查令程序，但以该等程序中的做法符合下列情形者为限：

(A) 未由联邦法规、《第 2254 条案件适用规则》或《第 2255 条案件适用规则》规定；以及

(B) 此前已遵循民事诉讼中的做法。

(5) 涉及传票的程序。本规则适用于通过美国官员或机构依据联邦法规签发的传票强制取得证言或出示文件的程序，但法规、地方规则或程序中的法院命令另有规定的除外。

(6) 其他程序。本规则在适用范围内管辖下列法律项下的程序，但该等法律另有程序规定的除外：

(A) 7 U.S.C.292、499g(c)，用于审查农业部长命令；

(B) 9 U.S.C.，涉及仲裁；

(C) 15 U.S.C.522，用于复审内政部部长的命令；

(D) 15 U.S.C.715d(c)，用于审查驳回结关证书的命令；

(E) 29 U.S.C.159、160，用于执行国家劳资关系委员会的命令；

(F) 33 U.S.C.918、921，用于执行或审查《码头和港口工人补偿法》项下的补偿命令；以及

(G) 45 U.S.C.159，用于审查铁路劳资争议中的仲裁裁决。

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

(c) REMOVED ACTIONS.

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

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

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

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

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

(3) *Demand for a Jury Trial*.

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

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

(i) it files a notice of removal; or

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

(d) LAW APPLICABLE.

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

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

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

(As amended Dec. 28, 1939, eff. Apr. 3, 1941; Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 1951, eff. Aug. 1, 1951; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

(b) 告知令状和履行职务令。告知令状和履行职务令予以废止。此前可通过该等令状获得的救济，可通过本规则项下的适当诉讼或动议获得。

(c) 删除诉讼。

(1) 适用范围。本规则适用于从州法院移送后的民事诉讼。

(2) 进一步诉答。移送后，无需重新诉答，除非法院命令重新诉答。在移送前未答辩的被告必须在本条下列期限中最长的期限内，依据本规则答辩或提出其他抗辩或异议：

(A) 收到--通过送达或其他方式--载明救济请求的初始诉答文书副本后 21 日内；

(B) 被送达初始诉答文书的传票后 21 日内，该初始诉答文书须在送达时已存档；或

(C) 移送通知提交后7天。

(3) 要求陪审团审判。

(A) 受州法影响。当事人在移送前已依照州法明确要求陪审团审判的，移送后无需重新提出要求。如果州法不要求明确要求陪审团审判，则当事人在移送后无需提出要求，除非法院命令当事人在指定期限内提出。法院必须应一方当事人的请求作出此种命令，也可以自行作出。被如此命令却未提出要求的当事人放弃陪审团审判。

根据规则*38*。如果在移送时所有必要的诉答文书均已送达，则有权根据规则38获得陪审团审判的当事人，若在下列时间起14日内送达要求，必须获得陪审团审判：

(B) (i) 其提交移送通知；或(ii) 其被送达另一方提交的移送通知。

(d) 法律适用。

(1) "州法"的定义。当本规则提及州法时，"法"一词包括该州的法规和该州的司法裁判。

(2) "州"的定义。"州"一词在适当情况下包括哥伦比亚特区和美国的任何联邦或领地。

(3) 哥伦比亚特区"联邦法规"的定义。在美国哥伦比亚特区地区法院，"联邦法规"一词包括任何在特区当地适用的国会法案。

（经1939年12月28日修正，1941年4月3日生效；1946年12月27日修正，1948年3月19日生效；1948年12月29日修正，1949年10月20日生效；1951年4月30日修正，1951年8月1日生效；1963年1月21日修正，1963年7月1日生效；1966年2月28日修正，1966年7月1日生效；1967年12月4日修正，1968年7月1日生效；1971年3月1日修正，1971年7月1日生效；1987年3月2日修正，1987年8月1日生效；2001年4月23日修正，2001年12月1日生效；2002年4月29日修正，2002年12月1日生效；2007年4月30日修正，2007年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

Rule 82. Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. §1390.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 28, 2016, eff. Dec. 1, 2016.)

Rule 83. Rules by District Courts; Judge's Directives

(a) LOCAL RULES.

(1) *In General*. After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(2) *Requirement of Form*. A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 84. [Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]

Rule 85. Title

These rules may be cited as the Federal Rules of Civil Procedure.

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

Rule 86. Effective Dates

(a) IN GENERAL. These rules and any amendments take effect at the time specified by the Supreme Court, subject to 28 U.S.C. §2074. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Supreme Court specifies otherwise; or

规则 82. 不受影响的管辖权和审判地

本规则不扩大或限制地区法院的管辖权或该等法院中诉讼的审判地。规则 9(h) 项下的海事或海商请求受 28 U.S.C.1390 管辖。(经 1948 年 12 月 29 日修订，1949 年 10 月 20 日生效；1966 年 2 月 28 日修订，1966 年 7 月 1 日生效；2001 年 4 月 23 日修订，2001 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效；2016 年 4 月 28 日修订，2016 年 12 月 1 日生效。)

规则 83. 地区法院规则；法官指令

(a) 地方法院规则。

(1) 一般规定。在给予公告和评论机会后，地区法院以其地区法官的多数行事，可以制定和修改规范其程序的规则。地方规则必须与联邦法规和依据28 U.S.C.2072和2075制定的规则相一致--但不得重复，并且必须符合美国司法会议规定的任何统一编号系统。地方规则自地区法院指定的日期起生效，并持续有效，除非经法院修改或经巡回区司法委员会废止。规则和修正案的副本必须在通过时提供给司法委员会和美国法院行政办公室，并向公众提供。

(2) 形式要求。施加形式要求的地方规则，不得以因非故意的不遵守而导致当事人丧失任何权利的方式执行。

(b) 无控制性法律时的程序。法官

可以任何与联邦法律、依 28 U.S.C.2072 和 2075 通过的规则以及该地区的地方规则相一致的方式规范执业行为。对于不遵守联邦法律、联邦规则或地方规则中未规定的任何要求的行为，不得施加制裁性措施或其他不利后果，除非被指控的违反者在特定案件中已获得关于该要求的实际通知。

(1985 年 4 月 29 日修订，1985 年 8 月 1 日生效；1995 年 4 月 27 日修订，1995 年 12 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

规则84。[已废止(2015年4月29日，2015年12月1日生效)。] 规则85. 标题

这些规则可引称为《联邦民事诉讼规则》。

(2007年4月30日修订，2007年12月1日生效。)

规则 86. 生效日期

(a)总则。本规则及其任何修正案在最高法院指定的时间生效，但须符合 28 U.S.C.2074。

本规则适用于：

(1) 在生效日期之后启动的诉讼程序；以及

(2) 该日期之后在届时未决诉讼中的程序

少于：

(A) 除非最高法院另有规定；或

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) DECEMBER 1, 2007 AMENDMENTS. If any provision in Rules 1–5.1, 6–73, or 77–86 conflicts with another law, priority in time for the purpose of 28 U.S.C. §2072(b) is not affected by the amendments taking effect on December 1, 2007.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 17, 1961, eff. July 19, 1961; Jan. 21 and Mar. 18, 1963, eff. July 1, 1963; Apr. 30, 2007, eff. Dec. 1, 2007.)

(B)法院认定在特定诉讼中适用本规则不可行或会造成不公正。

(b)2007 年 12 月 1 日修正案。如果规则 1-5.1、6-73 或 77-86 中的任何规定与另一法律相冲突，就 28 U.S.C.2072(b) 而言，时间上的优先性不受 2007 年 12 月 1 日生效的修正案的影响。

(1946 年 12 月 27 日修订，1948 年 3 月 19 日生效；1948 年 12 月 29 日修订，1949 年 10 月 20 日生效；1961 年 4 月 17 日修订，1961 年 7 月 19 日生效；1963 年 1 月 21 日和 3 月 18 日修订，1963 年 7 月 1 日生效；2007 年 4 月 30 日修订，2007 年 12 月 1 日生效。)

APPENDIX OF FORMS

[Abrogated (Apr. 29, 2015, eff. Dec. 1, 2015).]

表格附录

[已废止(2015年4月29日，2015年12月1日生效)。]

SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS[1]

Rule A. Scope of Rules

(1) These Supplemental Rules apply to:

(A) the procedure in admiralty and maritime claims within the meaning of Rule 9(h) with respect to the following remedies:

(i) maritime attachment and garnishment,

(ii) actions in rem,

(iii) possessory, petitory, and partition actions, and

(iv) actions for exoneration from or limitation of liability;

(B) forfeiture actions in rem arising from a federal statute; and

(C) the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions in rem include such analogous statutory condemnation proceedings.

(2) The Federal Rules of Civil Procedure also apply to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 12, 2006, eff. Dec. 1, 2006.)

Rule B. In Personam Actions: Attachment and Garnishment

(1) WHEN AVAILABLE; COMPLAINT, AFFIDAVIT, JUDICIAL AUTHORIZATION, AND PROCESS. In an in personam action:

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

(b) The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court's order upon application without further court order.

(c) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must issue the summons and process of attachment and garnishment. The plaintiff has the burden in any post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed.

[1] Title amended April 12, 2006, effective December 1, 2006.

海事或海商补充规则 索赔与资产没收诉讼[1]

规则 A.规则适用范围

(1) 本补充规则适用于：

(A) 规则 9(h) 含义范围内的海事和海商请求中的程序，涉及以下救济：

(i) 海事扣押与债权扣押，(ii) 对物诉讼，

(iii) 占有、追索和分割诉讼，以及

(iv) 免除或限制责任的诉讼性；

(B) 因联邦法规引起的对物没收诉讼；和

(C)与海事对物诉讼类似的法定没收程序中的程序，无论是否属于海事和海商管辖范围。除另有规定外，本补充规则中对对物诉讼的提及包括此类类似的法定没收程序。

(2)《联邦民事诉讼规则》亦适用于前述程序，但以其与这些补充规则不一致的范围为限。

(1966 年 2 月 28 日增补，1966 年 7 月 1 日生效；2006 年 4 月 12 日修订，2006 年 12 月 1 日生效。)

规则 B.对人诉讼：扣押与债权扣押

(1) 可用时；起诉状、宣誓书、司法授权和传票。在对人诉讼中：

(a)如果在请求扣押的核实起诉状和规则 B(1)(b) 要求的宣誓书提交时，被告未在该地区内被找到，核实起诉状可以包含请求向传票中指定的债权扣押人发出扣押被告有形或无形个人财产(以被诉金额为限)的传票的请求。

(b) 原告或原告的律师必须在起诉状中附上一份宣誓书并提交，声明据宣誓人所知，或根据所获信息和信念，无法在本地区内找到被告。法院必须审查起诉状和宣誓书，如果本规则B的条件似乎存在，则作出如此声明的命令，并授权扣押和债权扣押程序。书记官可以应申请签发补充令以执行法院的命令，无需进一步的法院命令。

(c)如果原告或原告的律师证明紧急情况使法院审查不可行，书记官必须签发传票和扣押及债权扣押传票。在规则 E(4)(f) 下的任何扣押后听证中，原告负有证明存在紧急情况的举证责任。

1 2006年4月12日修订标题，2006年12月1日生效。

(d)(i) If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.

(ii) If the property is other tangible or intangible property, the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(e) The plaintiff may invoke state-law remedies under Rule 64 for seizure of person or property for the purpose of securing satisfaction of the judgment.

(2) NOTICE TO DEFENDANT. No default judgment may be entered except upon proof—which may be by affidavit—that:

(a) the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4;

(b) the plaintiff or the garnishee has mailed to the defendant the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt; or

(c) the plaintiff or the garnishee has tried diligently to give notice of the action to the defendant but could not do so.

(3) ANSWER.

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

(b) *By Defendant*. The defendant shall serve an answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule C. In Rem Actions: Special Provisions

(1) WHEN AVAILABLE. An action in rem may be brought:

(a) To enforce any maritime lien;

(b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest

(d)(i)如果财产是船舶或船上的有形财产，传票、传票和任何补充传票必须交付给执法官送达。

(ii)如果财产是其他有形或无形财产，传票、传票和任何补充传票必须交付给获授权送达的人或组织，该人或组织可以是(A)执法官；(B)与美国签订合同的人；(C)法院为此目的特别指定的人；或(D)在美国提起的诉讼中，美国的任何官员或雇员。

(e)原告可以援引规则 64 下的州法律救济措施，以扣押人身或财产，从而确保判决得到履行。

(2) 对被告的通知。除有证据证明以下事项外，不得作出缺席判决--该证明可以宣誓书形式作出：

(a)起诉状、传票和扣押或债权扣押传票已按规则 4 授权的方式送达被告；

(b)原告或债权扣押人已使用任何要求回执的邮寄方式，将起诉状、传票和扣押或债权扣押传票邮寄给被告；

或

(c)原告或债权扣押人已尽力向被告发出诉讼通知，但无法做到。

(3) 回答。

(a) 由第三债务人作出。第三债务人应在向其送达令状后21天内送达答辩书，连同对随起诉状送达的任何书面质询的答复。对第三债务人的书面质询可以随起诉状送达，无需法院许可。如果第三债务人拒绝或疏于就被告在其手中的债务、债权或财产，或原告可能提出的有关该等债务、债权和财产的任何书面质询，经宣誓作出答复，法院可以对第三债务人发出强制令。如果第三债务人承认任何债务、债权或财产，该等财产应保留在第三债务人手中或缴入法院登记处，且在任一情况下均应受法院进一步命令的约束。

(b) 由被告。被告应在传票执行后30天内送达答辩状，无论是通过扣押财产还是通过对第三债务人的送达。

(1966 年 2 月 28 日增补，1966 年 7 月 1 日生效；1985 年 4 月 29 日修订，1985 年 8 月 1 日生效；1987 年 3 月 2 日修订，1987 年 8 月 1 日生效；2000 年 4 月 17 日修订，2000 年 12 月 1 日生效；2005 年 4 月 25 日修订，2005 年 12 月 1 日生效；2009 年 3 月 26 日修订，2009 年 12 月 1 日生效。)

规则 C.对物诉讼：特别规定

(1) 可用时。对物诉讼可基于以下情形提起：(a) 为执行任何海事留置权；(b) 当美国法规规定海事对物诉讼或类似程序时。除法律另有规定外，可进行对物诉讼的一方也可以，或作为替代，对任何可能负有责任的人进行对人诉讼。

豁免由美国拥有或占有、或由美国运营或为其运营的船舶或其他财产免于逮捕

or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) COMPLAINT. In an action in rem the complaint must:

(a) be verified;

(b) describe with reasonable particularity the property that is the subject of the action; and

(c) state that the property is within the district or will be within the district while the action is pending.

(3) JUDICIAL AUTHORIZATION AND PROCESS.

(a) *Arrest Warrant*.

(i) The court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.

(ii) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

(b) *Service*.

(i) If the property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant and any supplemental process must be delivered to the marshal for service.

(ii) If the property that is the subject of the action is other property, tangible or intangible, the warrant and any supplemental process must be delivered to a person or organization authorized to enforce it, who may be: (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(c) *Deposit in Court*. If the property that is the subject of the action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue—in addition to the warrant—a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.

(d) *Supplemental Process*. The clerk may upon application issue supplemental process to enforce the court's order without further court order.

(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.

或扣押的法定规定不受本规则影响。当法规如此规定时，针对美国或其工具机构的诉讼可以按对物诉讼原则进行。

(2) 起诉状。在对物诉讼中，起诉状必须：

(a) 予以核实；

(b) 以合理的特定性描述作为诉讼标的的财产；以及

(c) 声明该财产位于本地区内，或在诉讼进行期间将位于本地区内。

(3) 司法授权与程序。

(a)逮捕令。(i) 法院必须审查起诉状及任何佐证文件。如果对物诉讼的条件似乎存在，法院必须签发命令，指示书记官签发逮捕作为诉讼标的的船舶或其他财产的逮捕令。

(ii) 如果原告或原告的律师证明紧急情况使法院审查不可行，书记官必须迅速签发传票和逮捕作为诉讼标的的船舶或其他财产的逮捕令。在任何根据规则 E(4)(f) 进行的逮捕后听证中，原告负有证明紧急情况存在的责任。

(b) 服务。

(i) 如果作为诉讼标的的财产是船舶或船舶上的有形财产，逮捕令和任何补充程序必须交付给执法官送达。

(ii) 如果作为诉讼标的的财产是其他财产，无论是有形还是无形，逮捕令和任何补充程序必须交付给获授权执行的人或组织，该人或组织可以是：(A) 执法官；(B) 与美国签订合同的人；(C) 法院为此目的特别指定的人；或 (D) 在美国提起的诉讼中，美国的任何官员或雇员。

(c) 向法院提存。如果诉讼标的财产全部或部分由运费、财产出售所得或其他无形财产构成，书记官必须--除令状外--签发传票，命令任何控制该财产的人说明理由，为何该财产不应提存于法院以等候判决。

(d) 补充程序。书记官可经申请签发补充程序以执行法院命令，无需进一步的法院命令。

(4) 通知。当诉讼标的财产已根据规则 E(5) 解除扣押时，除送达程序外无需其他通知。如果财产在执行后 14 天内未解除扣押，原告必须迅速--或在法院允许的时间内--在法院命令指定的、在该地区具有普遍发行量的报纸上对该诉讼和扣押发布公告，但如果在公告完成前财产已解除扣押，公告可以终止。通知必须指明根据规则 C(6) 提交对扣押财产的权益声明或权利主张以及答辩的时间。

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.

(5) ANCILLARY PROCESS. In any action in rem in which process has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

(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.

(b) *Interrogatories*. Interrogatories may be served with the complaint in an in rem action without leave of court. Answers to the interrogatories must be served with the answer to the complaint.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule D. Possessory, Petitory, and Partition Actions

In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties.

(As added Feb. 28, 1966, eff. July 1, 1966.)

本规则不影响根据经修正的 46 U.S.C.31301 及以下各条取消优先船舶抵押权的诉讼中的通知要求。

(5) 辅助程序。在任何已按本规则规定送达程序的对物诉讼中，如果诉讼标的财产的任何部分因被转移或出售，或因为是在未接受程序送达的人手中的无形财产，而未被置于法院控制之下，法院可以应动议命令任何占有或控制该财产或其收益的人说明理由，为何不应将其交付给执行官或持有财产扣押令的其他人员或组织的保管，或交付法院保管以等候判决；并且在听证后，法院可以作出法律和正义所要求的判决。

(6) 回应性答辩；质询书。

(a)权益声明；答辩。在对物诉讼中：(i) 主张占有权或对诉讼标的财产享有任何所有权权益的人，必须提交经核实的权利或权益声明：

(A) 在送达程序文件后14天内，或

(B) 在法院允许的时间内；

(ii) 权利或利益声明必须描述支持该人要求返还财产或有权为该诉讼辩护的财产利益；

(iii) 代理人、受托保管人或律师必须声明代表他人提交权利或利益声明的授权；以及

(iv) 主张占有权或任何所有权利益的人必须在提交利益或权利声明后 21 天内送达答辩状。

(b) 书面质询。在对物诉讼中，书面质询可随起诉状送达，无需法院许可。对书面质询的答复必须随对起诉状的答辩状一并送达。

（1966年2月28日增补，1966年7月1日生效；1985年4月29日修正，1985年8月1日生效；1987年3月2日修正，1987年8月1日生效；1991年4月30日修正，1991年12月1日生效；2000年4月17日修正，2000年12月1日生效；2002年4月29日修正，2002年12月1日生效；2005年4月25日修正，2005年12月1日生效；2006年4月12日修正，2006年12月1日生效；2008年4月23日修正，2008年12月1日生效；2009年3月26日修正，2009年12月1日生效。）

规则 D.占有、追索与分割诉讼

在所有关于占有、分割以及根据海事实践程序就船舶主张所有权的诉讼中，在所有就货物或其他海事财产的占有而可如此主张的诉讼中，以及在由一名或多名部分所有人针对其他部分所有人提起的、要求为未经其同意而进行的任何航程中船舶的返还提供担保的诉讼中，或由一名或多名部分所有人针对其他部分所有人提起的、要求在为船舶安全返还提供担保后取得船舶占有以进行任何航程的诉讼中，程序应通过扣押船舶、货物或其他财产的令状，并按照规则 B(2) 规定的方式向对方当事人发出通知。(1966 年 2 月 28 日增补，1966 年 7 月 1 日生效。)

Rule E. Actions in Rem and Quasi in Rem: General Provisions

(1) APPLICABILITY. Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.

(2) COMPLAINT; SECURITY.

(a) *Complaint*. In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

(b) *Security for Costs*. Subject to the provisions of Rule 54(d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any appellate court.

(3) PROCESS.

(a) In admiralty and maritime proceedings process in rem or of maritime attachment and garnishment may be served only within the district.

(b) *Issuance and Delivery*. Issuance and delivery of process in rem, or of maritime attachment and garnishment, shall be held in abeyance if the plaintiff so requests.

(4) EXECUTION OF PROCESS; MARSHAL'S RETURN; CUSTODY OF PROPERTY; PROCEDURES FOR RELEASE.

(a) *In General*. Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district, the marshal or other person or organization having a warrant shall forthwith execute the process in accordance with this subdivision (4), making due and prompt return.

(b) *Tangible Property*. If tangible property is to be attached or arrested, the marshal or other person or organization having the warrant shall take it into the marshal's possession for safe custody. If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person's agent. In furtherance of the marshal's custody of any vessel the marshal is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the marshal or deputy marshal or by the clerk that the vessel has been released in accordance with these rules.

(c) *Intangible Property*. If intangible property is to be attached or arrested the marshal or other person or organization having the warrant shall execute the process by leaving with

规则 E.对物诉讼与准对物诉讼：一般规定

(1)适用范围。除另有规定外，本规则适用于附带海事扣押和债权扣押程序的对人诉讼、对物诉讼以及所有权请求、占有和分割诉讼，补充规则 B、C 和 D。

(2) 起诉状；担保。

(a) 起诉状。在适用本规则的诉讼中，起诉状应如此特定地陈述请求所依据的情况，使被告或索赔人能够无需动议要求更明确的陈述即可开始调查事实并拟定答辩状。

(b) 费用担保。在遵守规则 54(d)及相关成文法规定的前提下，法院可在提交起诉状时，或在任何被告、索赔人或任何其他当事人出庭时，或在之后的任何时间，要求原告、被告、索赔人或其他当事人提供担保或追加担保，金额由法院指定，用以支付因任何中间命令或终局判决，或因任何上诉法院在上诉中对该当事人判给的所有费用和开支。

(3) 流程。

(a) 在海事和海商程序中，对物程序或海事扣押和债权扣押程序只能在本地区内送达。

(b) 签发与送达。如果原告提出请求，对物程序、海事扣押和债权扣押程序的签发与送达应暂缓进行。

(4)程序的执行；执法官的报告；财产的保管；释放程序。

(a) 一般规定。在程序签发和交付后，或在附有扣押和债权扣押程序的传票的情况下，当出现被告无法在本地区内被找到的情形时，持有逮捕令的执法官或其他人员或组织应依照本第(4)款立即执行该程序，并及时适当地提交报告。

(b) 有形财产。如果有形财产将被扣押或逮捕，执行官或持有令状的其他人员或组织应将其置于执行官的占有之下以安全保管。如果财产的性质或状况使得实际占有不可行，执行官或执行程序的其他人应在显眼处将程序副本张贴于该财产上，并将起诉状和程序副本留给占有该财产的人或其代理人。为促进执行官对任何船舶的保管，执行官有权向海关关长提出书面请求，在执行官或副执行官或书记官通知该船舶已根据本规则解除扣押之前，不授予该船舶结关许可。

(c) 无形财产。如果要扣押或逮捕无形财产，持有逮捕令的执法官或其他人员或组织应通过向

the garnishee or other obligor a copy of the complaint and process requiring the garnishee or other obligor to answer as provided in Rules B(3)(a) and C(6); or the marshal may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer unless alias process shall be served.

(d) *Directions With Respect to Property in Custody*. The marshal or other person or organization having the warrant may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

(e) *Expenses of Seizing and Keeping Property; Deposit*. These rules do not alter the provisions of Title 28, U.S.C., §1921, as amended, relative to the expenses of seizing and keeping property attached or arrested and to the requirement of deposits to cover such expenses.

(f) *Procedure for Release From Arrest or Attachment*. Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This subdivision shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§603 and 604[2] or to actions by the United States for forfeitures for violation of any statute of the United States.

(5) RELEASE OF PROPERTY.

(a) *Special Bond*. Whenever process of maritime attachment and garnishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court. The parties may stipulate the amount and nature of such security. In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum.

(b) *General Bond*. The owner of any vessel may file a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be

[2]Repealed by Pub. L. 98–89, §4(b), Aug. 26, 1983, 97 Stat. 600, section 1 of which enacted Title 46, Shipping.

债权扣押人或其它债务人留下一份起诉状和程序副本，要求债权扣押人或其它债务人按照规则 B(3)(a) 和 C(6) 的规定作出答复，以此执行该程序；或者执法官可以接受将欠款支付至法院登记处，以原告主张的金额为限，包括利息和费用，在此情况下，除非送达替代程序，债权扣押人或其它债务人无需作出答复。

(d) 关于保管中财产的指示。持有令状的执法官或其他人员或组织可随时就已被扣押或逮捕的财产向法院申请指示，并应按法院的指示向任何或所有当事人发出该申请的通知。

(e) 扣押和保管财产的费用；提存。本规则不改变经修正的《美国法典》第28编第1921条关于扣押和保管被扣押或逮捕财产的费用以及为此类费用提存保证金要求的规定。

(f) 解除扣押或查封的程序。每当财产被扣押或查封时，任何主张对该财产享有权益的人均有权获得迅速听证，在听证中应要求原告说明为何不应撤销扣押或查封，或为何不应给予与本规则一致的其他救济。本款不适用于海员工资诉讼中依据《美国法典》第46 编 603 and 604 [2]提交充分理由证明后签发令状的情形，也不适用于美国就违反美国任何成文法而提起的没收诉讼。

(5) 财产释放。

(a) 特别保证书。凡签发海事扣押与扣押债权程序或对物程序时，在提供经法院或书记官批准、或经当事人约定之担保，以保证回应法院或任何上诉法院之判决的条件下，该程序之执行应予中止，或财产应予发还。当事人可约定该担保之金额与性质。如当事人未能或拒绝如此约定，法院应将保证书或约定之本金金额确定为足以涵盖原告经合理陈述之请求金额连同应计利息及费用之数额；但本金金额在任何情况下不得超过(i)原告诉请金额之两倍，或(ii)经适当估价之财产价值，以较小者为准。该保证书或约定应以支付本金金额及其按年利率6%计算之利息为条件。

(b) 一般保证。任何船舶的所有人均可提交一般保证书或担保书，并附具充分的保证人，经法院批准，其条件为对该法院此后可能受理的、涉及该船舶被扣押或逮捕的一切或任何诉讼中该法院作出的判决负责。此后，针对该船舶的一切此类程序之执行应

2 由 Pub.L.98-89,4(b), Aug.26, 1983, 97 Stat.600 废止，该法第 1 条制定了《美国法典》第 46 编《航运》。

stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The district court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. Such bond or stipulation shall be indorsed by the clerk with a minute of the actions wherein process is so stayed. Further security may be required by the court at any time.

If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

(c) *Release by Consent or Stipulation; Order of Court or Clerk; Costs*. Any vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal's acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party's attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid. Otherwise no property in the custody of the marshal, other person or organization having the warrant, or other officer of the court shall be released without an order of the court; but such order may be entered as of course by the clerk, upon the giving of approved security as provided by law and these rules, or upon the dismissal or discontinuance of the action; but the marshal or other person or organization having the warrant shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid.

(d) *Possessory, Petitory, and Partition Actions*. The foregoing provisions of this subdivision (5) do not apply to petitory, possessory, and partition actions. In such cases the property arrested shall be released only by order of the court, on such terms and conditions and on the giving of such security as the court may require.

(6) REDUCTION OR IMPAIRMENT OF SECURITY. Whenever security is taken the court may, on motion and hearing, for good cause shown, reduce the amount of security given; and if the surety shall be or become insufficient, new or additional sureties may be required on motion and hearing.

(7) SECURITY ON COUNTERCLAIM.

(a) When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court, for cause shown, directs otherwise. Proceedings on the original claim must be stayed until this security is given, unless the court directs otherwise.

只要该保证书或约定所担保之金额至少为在所有已开始且待决、且该船舶已被扣押或逮捕之诉讼中原告所主张总额之两倍，即持续中止。判决与救济可依该保证书或约定取得，如同在每一该等诉讼中已提交特别保证书或约定。地区法院可作出必要命令以实施本规则，特别是关于就针对已提交一般保证书之船舶的任何诉讼或扣押给予适当通知。书记官应将该保证书或约定批注，并附记程序如此中止之诉讼。法院可随时要求追加担保。

如果在特定案件中提供了特别保证书或担保书，则一般保证书或担保书就该案件的责任即告终止。

(c) 经同意或协议释放；法院或书记官的命令；费用。凡由执法官或持有令状的其他人员或组织保管的任何船舶、货物或其他财产，在执法官接受并批准由财产被扣留所代表的一方或该方律师签署并明确授权予以释放的协议、保证书或其他担保后，如法院及其官员的一切费用和收费已首先支付，可立即予以释放。否则，未经法院命令，不得释放由执法官、持有令状的其他人员或组织或法院其他官员保管的任何财产；但该命令可由书记官依当然程序作出，条件是根据法律和本规则提供经批准的担保，或在诉讼被驳回或终止时作出；但执法官或持有令状的其他人员或组织在法院官员的费用和收费首先支付之前，不得交付如此释放的任何财产。

(d) 占有、请求返还和分割诉讼。本款(5)的上述规定不适用于请求返还、占有和分割诉讼。在此类案件中，被扣押的财产仅可依法院命令予以解除，并须遵守法院可能要求的条款和条件及提供的担保。

(6)担保的减少或减损。凡已取得担保，法院可依动议并经听证，在有正当理由的情况下，减少所提供担保的金额；如保证人不足或变得不足，可依动议并经听证要求提供新的或额外的保证人。

(7) 反诉担保。

(a) 当在原诉中已就损害赔偿提供担保的人提出反请求，而该反请求源于作为原诉标的的交易或事件时，为其利益已提供担保的原告必须就反请求中要求的损害赔偿提供担保，除非法院在有正当理由的情况下另有指令。原请求的诉讼程序必须中止，直至提供该担保，除非法院另有指令。

(b) The plaintiff is required to give security under Rule E(7)(a) when the United States or its corporate instrumentality counterclaims and would have been required to give security to respond in damages if a private party but is relieved by law from giving security.

(8) RESTRICTED APPEARANCE. An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

(9) DISPOSITION OF PROPERTY; SALES.

(a) *Interlocutory Sales; Delivery*.

(i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

(ii) In the circumstances described in Rule E(9)(a)(i), the court, on motion by a defendant or a person filing a statement of interest or right under Rule C(6), may order that the property, rather than being sold, be delivered to the movant upon giving security under these rules.

(b) *Sales, Proceeds*. All sales of property shall be made by the marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

(10) PRESERVATION OF PROPERTY. When the owner or another person remains in possession of property attached or arrested under the provisions of Rule E(4)(b) that permit execution of process without taking actual possession, the court, on a party's motion or on its own, may enter any order necessary to preserve the property and to prevent its removal.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 12, 2006, eff. Dec. 1, 2006.)

Rule F. Limitation of Liability

(1) TIME FOR FILING COMPLAINT; SECURITY. Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit

(b) 当美国或其法人机构提出反请求，且若为私人当事方本应被要求提供担保以承担损害赔偿责任，但依法免除提供担保时，原告须依规则 E(7)(a) 提供担保。

(8)限制性出庭。为抗辩海事和海商请求而进行的出庭，如该请求已签发对物程序，或扣押和扣押第三人财产程序，可明确限制为对该请求的抗辩，在此情况下，该出庭不构成对任何其他请求的出庭，而就该其他请求而言，此类程序不可用或尚未送达。

(9) 财产处分；出售。

(a)中间出售；交付。(i) 经一方当事人、执行官或对财产享有保管权的其他人申请，法院可命令将全部或部分财产出售--出售所得款项，或其中足以满足判决的部分，应缴入法院，以等待法院的进一步命令--如果：

(A) 被扣押或逮捕的财产易腐，或在诉讼期间被保管扣留而易于变质、腐烂或受损；

(B)保管该财产的费用过高或不成比例；或

(C) 在确保财产释放方面存在不合理延迟。

(ii) 在规则 E(9)(a)(i) 所述情形下，法院可依被告或依规则 C(6) 提交权益或权利声明的人的动议，命令不将财产变卖，而是在依本规则提供担保后交付给动议人。

(b) 变卖、所得。一切财产变卖应由联邦法警或副联邦法警，或由持有令状的其他人或组织，或在联邦法警或其他持有令状的人或组织为利害关系方时由法院指定的任何其他人进行；变卖所得应随即缴入法院登记处，依法处理。

(10)财产的保全。当所有人或其他人仍占有依规则 E(4)(b) 准许在不实际占有情况下执行程序的条款所扣押或逮捕的财产时，法院可依一方当事人动议或自行作出保全财产并防止其被移走所必需的任何命令。

(1966 年 2 月 28 日增订，1966 年 7 月 1 日生效；1985 年 4 月 29 日修正，1985 年 8 月 1 日生效；1987 年 3 月 2 日修正，1987 年 8 月 1 日生效；1991 年 4 月 30 日修正，1991 年 12 月 1 日生效；2000 年 4 月 17 日修正，2000 年 12 月 1 日生效；2006 年 4 月 12 日修正，2006 年 12 月 1 日生效。)

规则 F.责任限制

(1)提交起诉书的时间；担保。在收到书面请求后六个月内，任何船舶所有人均可依本规则第(9)款的规定，向适当的地区法院提交起诉书，以依法限制责任。所有人(a) 应向法院缴存，为

of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

(2) COMPLAINT. The complaint shall set forth the facts on the basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) CLAIMS AGAINST OWNER; INJUNCTION. Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner's property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

(4) NOTICE TO CLAIMANTS. Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for

向索赔人支付一笔等于船舶及待收运费中所有人权益的金额或价值，或为此提供的经批准的担保，以及法院为执行经修订的法规条款而不时确定必要的额外款项或为此提供的经批准的担保；或(b) 由所有人选择，将船舶及待收运费中所有人的权益，连同法院为执行经修订的法规条款而不时确定必要的额外款项或为此提供的经批准的担保，转让给法院指定的受托人，以惠及索赔人。原告还应提供诉讼费用担保，并且，如果原告选择提供担保，还应提供自担保之日起按年利率6%计算的利息担保。

(2) 起诉状。起诉状应载明主张责任限制权利所依据的事实，以及使法院能够确定所有人责任限制金额所必需的全部事实。起诉状可请求免除责任以及限制责任。起诉状应说明(如有)产生寻求限制的请求的航次，及其终止的日期和地点；据原告所知，该航次产生的所有请求的金额，包括所有未清偿的留置权或留置权索赔，无论是合同、侵权还是其他方面，以及就此(如有)正在进行的诉讼和程序；船舶是否受损、灭失或弃置，如是，何时何地；航次结束时船舶的价值，或在沉船情况下，其残骸、剥离物或收益(如有)的价值，以及它们所在何处及由谁占有；以及已收回或可收回的任何待收运费的金额。如果原告选择将原告在船舶中的权益转让给受托人，起诉状还必须进一步说明其上任何在先的优先留置权，以及自产生寻求限制的请求的航次或航程以来她(如有)所进行的航次或航程，以及因任何此类后续航次或航程而产生的任何现有留置权，连同其金额和原因，以及据所知的留置权人的姓名和地址；以及船舶是否在此类后续航次或航程中或因此遭受任何损害。

(3) 对船东的索赔；禁令。船东遵守本规则第(1)款的要求后，就所涉事项对船东或船东财产的一切索赔和程序即告终止。经原告申请，法院应禁止就本诉讼中受责任限制约束的任何索赔，对原告或原告财产提起进一步诉讼或程序。

(4) 致索赔人通知。在所有人遵守本规则第(1)款后，法院应向所有就起诉状寻求限制的请求提出索赔的人发出通知，告诫他们在通知中指定的日期或之前向法院书记官提交各自的索赔，并向原告律师送达其副本。如此确定的日期不得少于通知发出后30天。如有正当理由，法院可延长提交索赔的期限。通知应在法院可能指定的报纸上每周刊登一次，连续

four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) CLAIMS AND ANSWER. Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

(6) INFORMATION TO BE GIVEN CLAIMANTS. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of the claimant's attorney (if the claimant is known to have one), (c) the nature of the claim, i.e., whether property loss, property damage, death, personal injury etc., and (d) the amount thereof.

(7) INSUFFICIENCY OF FUND OR SECURITY. Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) OBJECTIONS TO CLAIMS: DISTRIBUTION OF FUND. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) VENUE; TRANSFER. The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced

四周，在确定的提交索赔日期之前。原告至迟应在第二次刊登之日，将通知副本邮寄给已知对船舶或原告提出任何索赔的每一个人，该索赔产生于寻求限制的请求所源自的航次或航程。在涉及死亡的案件中，此类通知副本应邮寄至死者最后已知地址的死者，并邮寄给已知因此类死亡提出任何索赔的任何人。

(5) 索赔和答辩。索赔应在规则第(4)款规定的通知中指定的日期或之前提交并送达。每项索赔应载明索赔人支持该索赔所依据的事实、其项目以及同一事项发生的日期。如果索赔人希望就免除责任的权利或限制责任的权利提出异议，索赔人应提交并送达对起诉状的答辩，除非该索赔已包含答辩。

(6) 应向索赔人提供的信息。在通知中规定的索赔申报日期后30天内，或法院此后允许的期限内，原告应向每位索赔人的律师(如索赔人无律师，则向索赔人本人)邮寄一份清单，列明：(a) 每位索赔人的姓名；(b) 索赔人律师的姓名和地址(如已知索赔人有律师);(c) 索赔的性质，即是否为财产损失、财产损坏、死亡、人身伤害等；以及 (d) 索赔金额。

(7) 资金或担保不足。任何索赔人可提出动议，要求增加存入法院的资金或原告提供的担保，理由是上述资金或担保低于原告在船舶及待收运费中的权益价值。此后，法院应促使对原告在船舶及待收运费中的权益价值进行适当评估；如法院认定存款或担保不足或过多，应命令增加或减少。同样，任何索赔人可要求增加存款或担保，理由是上述存款或担保不足以执行有关死亡或人身伤害索赔的法规规定；经通知和听证后，法院可同样命令增加或减少存款或担保。

(8) 对索赔的异议：资金分配。任何有利益关系的当事人可以质疑或争辩任何索赔，而无需对其提出异议。责任确定后，所存入或担保的基金，或船舶及待收运费的收益，应在遵守所有相关法律规定的前提下，按各索赔人经正式证明的各自索赔金额比例，在若干索赔人之间按比例分配，但保留各方依法可能享有的任何优先权。

(9) 审判地；移送。起诉状应提交至扣押或逮捕船舶以应答原告寻求限制责任的任何索赔所在的任何地区；或者，如果船舶未被扣押或逮捕，则提交至船东因任何此类索赔而被起诉所在的任何地区。当船舶未被扣押或逮捕以应答上述事项，且诉讼尚未开始

against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.

(As added Feb. 28, 1966, eff. July 1, 1966; amended Mar. 2, 1987, eff. Aug. 1, 1987.)

Rule G. Forfeiture Actions In Rem

(1) SCOPE. This rule governs a forfeiture action in rem arising from a federal statute. To the extent that this rule does not address an issue, Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.

(2) COMPLAINT. The complaint must:

(a) be verified;

(b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;

(c) describe the property with reasonable particularity;

(d) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;

(e) identify the statute under which the forfeiture action is brought; and

(f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

(3) JUDICIAL AUTHORIZATION AND PROCESS.

(a) *Real Property*. If the defendant is real property, the government must proceed under 18 U.S.C. §985.

(b) *Other Property; Arrest Warrant*. If the defendant is not real property:

(i) the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control;

(ii) the court—on finding probable cause—must issue a warrant to arrest the property if it is not in the government's possession, custody, or control and is not subject to a judicial restraining order; and

(iii) a warrant is not necessary if the property is subject to a judicial restraining order.

(c) *Execution of Process*.

(i) The warrant and any supplemental process must be delivered to a person or organization authorized to execute it, who may be: (A) a marshal or any other United States officer or employee; (B) someone under contact with the United States; or (C) someone specially appointed by the court for that purpose.

(ii) The authorized person or organization must execute the warrant and any supplemental process on property in the United States as soon as practicable unless:

针对船东的，诉讼可在船舶所在地区进行，但如船舶不在任何地区内且未在任何地区提起诉讼，则起诉状可在任何地区提交。为当事人和证人的便利及司法利益，法院可将诉讼移送至任何地区；如审判地设定错误，法院应驳回诉讼，或如符合司法利益，将诉讼移送至本可提起该诉讼的任何地区。如船舶已出售，就本规则而言，出售所得应代表该船舶。

(1966年2月28日增补，1966年7月1日生效；1987年3月2日修正，1987年8月1日生效。)

规则 G.对物没收诉讼

(1) 适用范围。本规则管辖因联邦法规产生的对物没收诉讼。在本规则未涉及某一问题的范围内，补充规则C和E以及联邦民事诉讼规则亦适用。

(2) 起诉状。起诉状必须：

(a) 予以核实；

(b) 陈述事项管辖权、对被告财产的对物管辖权以及审判地的依据；

(c) 以合理特定性描述该财产；(d) 如果该财产是有形财产，说明任何扣押发生时的所在地，以及--如果不同--提起诉讼时的所在地；

(e) 指明据以提起没收诉讼的法规；以及

(f) 陈述足够详细的事实，以支持合理相信政府将能够在审判中履行其举证责任。

(3) 司法授权与程序。

(a) 不动产。如果被告是不动产，政府必须依据18 U.S.C.985进行程序。

(b)其他财产；逮捕令。如果被告不是不动产：

(i) 如果该财产在政府的占有、保管或控制之下，书记官必须签发逮捕该财产的令状；

(ii) 如果该财产不在政府的占有、保管或控制之下且不受司法限制令约束，法院在认定可能原因后必须签发逮捕该财产的令状；以及

(iii) 如果该财产受司法限制令约束，则无需令状。

(c) 执行程序。

(i) 令状及任何补充程序必须交付给获授权执行的人员或组织，该人员或组织可以是：(A) 执法官或任何其他美国官员或雇员；(B) 与美国有合同关系的人；或(C) 法院为此目的特别指定的人。

(ii) 获授权的人员或组织必须尽快对美国境内的财产执行令状及任何补充程序，除非：

(A) the property is in the government's possession, custody, or control; or

(B) the court orders a different time when the complaint is under seal, the action is stayed before the warrant and supplemental process are executed, or the court finds other good cause.

(iii) The warrant and any supplemental process may be executed within the district or, when authorized by statute, outside the district.

(iv) If executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located.

(4) NOTICE.

(a) *Notice by Publication.*

(i) When Publication Is Required. A judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time after filing the complaint or at a time the court orders. But notice need not be published if:

(A) the defendant property is worth less than $1,000 and direct notice is sent under Rule G(4)(b) to every person the government can reasonably identify as a potential claimant; or

(B) the court finds that the cost of publication exceeds the property's value and that other means of notice would satisfy due process.

(ii) Content of the Notice. Unless the court orders otherwise, the notice must:

(A) describe the property with reasonable particularity;

(B) state the times under Rule G(5) to file a claim and to answer; and

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

(iii) Frequency of Publication. Published notice must appear:

(A) once a week for three consecutive weeks; or

(B) only once if, before the action was filed, notice of nonjudicial forfeiture of the same property was published on an official internet government forfeiture site for at least 30 consecutive days, or in a newspaper of general circulation for three consecutive weeks in a district where publication is authorized under Rule G(4)(a)(iv).

(iv) Means of Publication. The government should select from the following options a means of publication reasonably calculated to notify potential claimants of the action:

(A) if the property is in the United States, publication in a newspaper generally circulated in the district where the action is filed, where the property was seized, or where property that was not seized is located;

(A)该财产处于政府的占有、保管或控制之下；或

(B) 当起诉状处于密封状态、诉讼在令状和补充程序执行前被中止，或法院认定存在其他正当理由时，法院命令不同的时间。

(iii) 令状及任何补充程序可以在该地区内执行，或者在法规授权时，在该地区外执行。

(iv) 如果需要对美国境外的财产执行令状，该令状可以转递给财产所在地的适当机关以送达程序。

(4) 通知。

(a) 公告送达。

(i) 何时需要公告。只有在政府于提交起诉状后的合理时间内或在法院命令的时间已公告该诉讼通知的情况下，才可以作出没收判决。但以下情形无需公告：

(A) 被告财产价值低于1,000美元，且根据规则G(4)(b)向政府能够合理识别为潜在索赔人的每一个人发送直接通知；或

(B) 法院认定公告费用超过财产价值，且其他通知方式将满足正当程序。

(ii) 通知的内容。除非法院另有命令，通知必须：

(A) 描述该财产，并附有合理的特定性；

(B) 说明根据规则 G(5) 提交索赔和答辩的时间；以及

(C) 指定应向其送达索赔书和答辩书的政府律师。

(iii) 发布频率。已发布的公告必须刊登于：

(A) 每周一次，连续三周；或

(B) 仅一次，如果在提起诉讼之前，同一财产的非司法没收通知已在官方互联网政府没收网站上连续公告至少30天，或在根据规则G(4)(a)(iv)授权公告的地区的一般发行报纸上连续公告三周。

(iv) 公告方式。政府应从以下选项中选定一种合理旨在通知潜在索赔人该诉讼的公告方式：

(A) 如果财产在美国境内，在提起诉讼所在地区、财产被扣押所在地区或未被扣押财产所在地的一般发行报纸上公告；

(B) if the property is outside the United States, publication in a newspaper generally circulated in a district where the action is filed, in a newspaper generally circulated in the country where the property is located, or in legal notices published and generally circulated in the country where the property is located; or

(C) instead of (A) or (B), posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

(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.

(iii) Sending Notice.

(A) The notice must be sent by means reasonably calculated to reach the potential claimant.

(B) Notice may be sent to the potential claimant or to the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case.

(C) Notice sent to a potential claimant who is incarcerated must be sent to the place of incarceration.

(D) Notice to a person arrested in connection with an offense giving rise to the forfeiture who is not incarcerated when notice is sent may be sent to the address that person last gave to the agency that arrested or released the person.

(E) Notice to a person from whom the property was seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property.

(iv) When Notice Is Sent. Notice by the following means is sent on the date when it is placed in the mail, delivered to a commercial carrier, or sent by electronic mail.

(v) Actual Notice. A potential claimant who had actual notice of a forfeiture action may not oppose or seek relief from forfeiture because of the government's failure to send the required notice.

(5) RESPONSIVE PLEADINGS.

(a) *Filing a Claim.*

(i) A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must:

(B) 如果财产在美国境外，在提起诉讼所在地区的一般发行报纸上、财产所在国的一般发行报纸上，或在财产所在国发布并一般发行的法律公告中公告；

或

(C) 代替(A)或(B)，在官方互联网政府没收网站上连续公告至少30天。

(b) 致已知潜在索赔人的通知。

(i) 需要直接通知。政府必须在根据规则G(5)(a)(ii)(B)提交索赔的期限结束前，向根据政府所知事实合理看来是潜在索赔人的任何人发送诉讼通知和起诉状副本。

(ii) 通知的内容。通知必须说明：(A) 通知发送的日期；

(B) 提交索赔的截止日期，至少为通知发送后35天；

(C) 必须在提交索赔后不迟于21天内提交答辩或根据规则12提出的动议；以及

(D) 接收索赔书和答辩书的政府律师的姓名。

(iii) 发送通知。

(A) 通知必须通过合理计算能够送达潜在索赔人的方式发送。

(B) 通知可发送给潜在索赔人，或发送给就财产扣押或相关调查、行政没收程序或刑事案件中代表潜在索赔人的律师。

(C) 发送给被监禁的潜在索赔人的通知必须发送至监禁地点。

(D) 向因引起没收的犯罪而被逮捕、但在发送通知时未被监禁的人发送通知，可发送至该人最后向逮捕或释放该人的机构提供的地址。

(E) 向财产被扣押、但在发送通知时未被监禁的人发送通知，可发送至该人最后向扣押财产的机构提供的地址。

(iv) 通知的发送时间。通过下列方式发送的通知，其发送日期为投入邮件、交付商业承运人或通过电子邮件发送之日。

(v) 实际通知。实际知悉没收诉讼的潜在索赔人不得以政府未发送所需通知为由提出异议或寻求没收救济。

(5) 回应性诉辩。

(a) 提起诉讼。

(i) 主张对被告财产享有权益的人可通过在诉讼待决法院提交索赔书来对没收提出异议。该索赔书必须：

(A) identify the specific property claimed;
(B) identify the claimant and state the claimant's interest in the property;
(C) be signed by the claimant under penalty of perjury; and
(D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).

(ii) Unless the court for good cause sets a different time, the claim must be filed:
(A) by the time stated in a direct notice sent under Rule G(4)(b);
(B) if notice was published but direct notice was not sent to the claimant or the claimant's attorney, no later than 30 days after final publication of newspaper notice or legal notice under Rule G(4)(a) or no later than 60 days after the first day of publication on an official internet government forfeiture site; or
(C) if notice was not published and direct notice was not sent to the claimant or the claimant's attorney:
(1) if the property was in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the filing, not counting any time when the complaint was under seal or when the action was stayed before execution of a warrant issued under Rule G(3)(b); or
(2) if the property was not in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the government complied with 18 U.S.C. §985(c) as to real property, or 60 days after process was executed on the property under Rule G(3).

(iii) A claim filed by a person asserting an interest as a bailee must identify the bailor, and if filed on the bailor's behalf must state the authority to do so.

(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.

(A) 确定所主张的具体财产；
(B) 确定索赔人并说明索赔人对该财产的权益；

(C) 由申诉人签署，并承担伪证罪责任；且

(D) 送达根据规则 G(4)(a)(ii)(C) 或 (b)(ii)(D) 指定的政府律师。

(ii) 除法院基于正当理由设定不同时间外，索赔书必须在下列期限内提交：

(A)在依据规则 G(4)(b) 发送的直接通知所载明的时间之前；

(B) 如果通知已公布但未向索赔人或索赔人的律师发送直接通知，则不迟于根据规则 G(4)(a) 在报纸上公布通知或法律通知最终公布后 30 日，或不迟于在官方互联网政府没收网站上首次公布后 60 日；或

(C如果通知未公布且未向索赔人或索赔人的律师发送直接通知：

(1) 如果起诉书提交时财产处于政府的占有、保管或控制之下，则不迟于提交后 60 日，不计起诉书处于密封状态或诉讼在根据规则 G(3)(b) 签发的令状执行前被中止的任何时间；或

(2) 如果起诉书提交时财产不处于政府的占有、保管或控制之下，则不迟于政府就不动产遵守 18 U.S.C.985(c) 后 60 日，或根据规则 G(3) 对财产执行程序后 60 日。

(iii) 以受托人身份主张权益的人提交的索赔书必须指明委托人，如果代表委托人提交，必须说明其权限。

(b) 答辩。索赔人必须在提交索赔书后 21 日内送达并提交对起诉书的答辩或根据规则 12 提出的动议。索赔人如果未通过动议提出异议或未在答辩中陈述异议，则放弃对物管辖权或审判地点的异议。

(6) 特别质询书。

(a) 时间与范围。在索赔申请提交之后、证据开示结束之前的任何时间，政府无需法院许可即可送达仅限于索赔人身份及其与被告财产关系的特别书面质询。但若索赔人送达驳回诉讼的动议，政府必须在动议送达后21天内送达该书面质询。

(b) 答复或异议。对该等书面质询的答复或异议必须在书面质询送达后21天内送达。

(c) 政府答复的延后。在索赔人答复该等书面质询后21天内，政府无需对索赔人依据规则 G(8)(b) 提出的驳回诉讼动议作出回应。

(7) PRESERVING, PREVENTING CRIMINAL USE, AND DISPOSING OF PROPERTY; SALES.

(a) *Preserving and Preventing Criminal Use of Property*. When the government does not have actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.

(b) *Interlocutory Sale or Delivery*.

(i) Order to Sell. On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:

(A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or is disproportionate to its fair market value;

(C) the property is subject to a mortgage or to taxes on which the owner is in default; or

(D) the court finds other good cause.

(ii) Who Makes the Sale. A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.

(iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.

(iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.

(v) Delivery on a Claimant's Motion. The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.

(c) *Disposing of Forfeited Property*. Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

(8) MOTIONS.

(a) *Motion To Suppress Use of the Property as Evidence*. If the defendant property was seized, a party with standing to contest the lawfulness of the seizure may move to suppress use of the property as evidence. Suppression does not affect forfeiture of the property based on independently derived evidence.

(b) *Motion To Dismiss the Action*.

(i) A claimant who establishes standing to contest forfeiture may move to dismiss the action under Rule 12(b).

(ii) In an action governed by 18 U.S.C. § 983(a)(3)(D) the complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property. The sufficiency of the complaint is governed by Rule G(2).

(7) 财产的保全、防止犯罪使用和处置；出售。

(a) 保全财产及防止财产的犯罪性使用。当政府并未实际占有被告财产时，法院可依动议或自行作出任何必要命令，以保全该财产、防止其被转移或设定负担，或防止其被用于犯罪。

(b) 中间买卖或交付。

(i) 出售令。基于一方当事人或财产保管人的动议，法院可命令全部或部分出售财产，如果：

(A) 财产易腐或在诉讼待决期间被保管而面临变质、腐烂或受损的风险；

(B) 保管财产的费用过高或与其公平市场价值不成比例；

(C) 财产设有抵押或存在所有者拖欠的税款；或

(D) 法院认定存在其他正当理由。

(ii) 出售的执行人。出售必须由有权出售财产的美国机构、该机构的承包商或法院指定的任何人进行。

(iii) 出售程序。出售受 28 U.S.C.2001、2002 和 2004 管辖，除非所有当事人在法院批准下同意出售、出售的各个方面或不同程序。

(iv) 出售所得。出售所得是替代被出售财产的替代物，可被没收。所得必须存放在美国维持的计息账户中，直至没收诉讼结束。

(v) 基于索赔人动议的交付。如果索赔人表明存在允许根据规则 G(7)(b)(i) 出售的情形并根据本规则提供担保，法院可命令在诉讼结束前将财产交付给索赔人。

(c) 没收财产的处理。没收判决作出后，该财产或出售该财产所得收益必须依照法律规定予以处理。

(8) 动议。

(a) 排除将该财产用作证据的动议。若被告财产已被扣押，具有资格质疑扣押合法性的当事人可提出动议，排除将该财产用作证据。排除并不影响基于独立取得的证据对该财产进行没收。

(b) 驳回诉讼动议。

(i) 确立质疑没收资格的索赔人可以依据规则 12(b) 动议驳回诉讼。

(ii) 在受 18 U.S.C.983(a)(3)(D) 管辖的诉讼中，不得以政府在该诉状提交时没有充分证据确立财产可没收性为由驳回诉状。诉状的充分性受规则 G(2) 管辖。

(c) *Motion To Strike a Claim or Answer*.

(i) At any time before trial, the government may move to strike a claim or answer:

(A) for failing to comply with Rule G(5) or (6), or

(B) because the claimant lacks standing.

(ii) The motion:

(A) must be decided before any motion by the claimant to dismiss the action; and

(B) may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.

(d) *Petition To Release Property*.

(i) If a United States agency or an agency's contractor holds property for judicial or nonjudicial forfeiture under a statute governed by 18 U.S.C. §983(f), a person who has filed a claim to the property may petition for its release under §983(f).

(ii) If a petition for release is filed before a judicial forfeiture action is filed against the property, the petition may be filed either in the district where the property was seized or in the district where a warrant to seize the property issued. If a judicial forfeiture action against the property is later filed in another district—or if the government shows that the action will be filed in another district—the petition may be transferred to that district under 28 U.S.C. §1404.

(e) *Excessive Fines*. A claimant may seek to mitigate a forfeiture under the Excessive Fines Clause of the Eighth Amendment by motion for summary judgment or by motion made after entry of a forfeiture judgment if:

(i) the claimant has pleaded the defense under Rule 8; and

(ii) the parties have had the opportunity to conduct civil discovery on the defense.

(9) TRIAL. Trial is to the court unless any party demands trial by jury under Rule 38.

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Mar. 26, 2009, eff. Dec. 1, 2009.)

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(c) 请求删除某项主张或答辩的动议。

(i) 在审判前的任何时间，政府可以动议删除索赔或答辩：

(A) 因未能遵守规则 G(5) 或 (6)，或 (B) 因索赔人缺乏资格。

(ii) 该动议：

(A) 必须在索赔人提出的任何驳回诉讼动议之前裁决；以及

(B) 可以作为就诉答文书作出判决的动议提出，或作为在听证后或通过简易判决确定索赔人能否以优势证据承担确立资格举证责任的动议提出。

(d) 申请发还财产。

(i) 如果美国机构或机构承包商根据受《美国法典》第18编第983(f)条管辖的法规持有用于司法或非司法没收的财产，已对该财产提出主张的人可根据第983(f)条申请发还该财产。

(ii) 如果在针对该财产的司法没收诉讼提起之前提交发还申请，该申请可以在扣押财产所在地区或签发扣押财产令状的地区提交。如果针对该财产的司法没收诉讼后来在另一地区提起--或者如果政府表明该诉讼将在另一地区提起--该申请可以依据 28 U.S.C.1404 移送至该地区。

(e)过度罚款。索赔人可以依据第八修正案的过度罚款条款，通过简易判决动议或在没收判决作出后提出的动议，寻求减轻没收，如果：

(i) 索赔人已根据规则 8 提出抗辩；且

(ii) 各方已有机会就该抗辩进行民事证据开示。

(9) 审判。审判由法院进行，除非任何一方依据规则 38 要求陪审团审判。

(2006 年 4 月 12 日增补，2006 年 12 月 1 日生效；2009 年 3 月 26 日修正，2009 年 12 月 1 日生效。)

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