

JOHN J. OHEAR, JR.

Civil Rules

of

United States District Courts

FOR THE SOUTHERN AND EASTERN DISTRICTS

OF NEW YORK

Effective July 1, 1962

United States District Courts

FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK.

The judges of the UNITED STATES DISTRICT COURTS, for the Southern and Eastern Districts of New York, have adopted the attached civil rules, effective July 1, 1962.

HERBERT A. CHARLSON
CLERK,
*Southern District
of New York*

SIDNEY R. FEUER
CLERK,
*Eastern District
of New York*

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Civil
~~GENERAL~~

**RULES FOR THE SOUTHERN AND
EASTERN DISTRICT OF NEW YORK**

**RULE 1—Address of Party or Original Owner of Claim to be
Furnished**

A party shall furnish to any other party, within five days after demand, a verified statement setting forth his post office address and residence, and, if a corporation, the names, post office addresses and residences of its principal officers. In the case of an assigned claim, the statement shall include the post office address and residence of the original owner of the claim and of any assignee thereof. Upon non-compliance with the demand, the court, on *ex parte* application, shall order the furnishing of the statement, and in a proper case, on motion, may direct that the proceedings on the part of the non-complying party be stayed, or make such other order as justice requires.

RULE 2—Security for Costs

The court, on motion or on its own initiative, may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as it may designate. For failure to comply with the order the court may make such orders in regard to non-compliance as are just, and among others the following: an order striking out pleadings or staying further proceedings until the bond is filed or dismissing the action or rendering a judgment by default against the non-complying party.

RULE 3—Removal of Cases from State Courts

(a) A defendant or defendants desiring to remove a civil action or proceeding from a state court in this district shall file in this court a verified petition as required by 28 U. S. C. Sec. 1446, and, except where a bond is not required by law, shall file a bond in the penal sum of \$500.00, complying with the

*see my title 28¹-1446 re: caption
should be same as in state courts*

provisions of the General Rules, conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceeding should it be determined that the case was not removable or was improperly removed.

(b) If the court's jurisdiction is based upon diversity of citizenship (28 U. S. C. §1332) the petition for removal shall set forth the State of citizenship and residence address of each party named in the caption and, in the case of a corporation, the State of incorporation and of its principal place of business, regardless of whether service of process has been effected on all parties. If such information or a designated part thereof is unknown to defendant, defendant may so state, and in that case plaintiff within twenty (20) days after removal shall file in the office of the clerk a statement of the omitted information.

(c) Within twenty (20) days after filing the petition and bond, the petitioner shall file with the clerk a copy of all records and proceedings had in the state court.

(d) Upon the entry of an order, remanding a case to the state court, the plaintiff shall deposit with the clerk a copy thereof to be certified and mailed by the clerk to the clerk of the state court.

RULE 4—Order of Taking Depositions

From and after the fortieth day after commencement of an action, unless otherwise ordered by the court for good cause shown, neither the service of a notice to take the deposition upon oral examination of party or witness, nor the pendency of any such deposition, shall prevent another party, adverse or otherwise, from noticing or taking the deposition upon oral examination of party or witness concurrently with the taking of such deposition noticed or commenced earlier.

It shall be the duty of all attorneys to make every reasonable effort to stipulate as to the exact places, dates and times for the commencement and resumption of the taking of all such concurrent depositions. In the event that attorneys are unable to so stipulate, any party may apply to the court for an order fixing

the same and other terms and conditions to govern such depositions, as well as for any other order or relief relating thereto.

Rule 5—Counsel Fees on Taking Depositions in Certain Cases

(a) When a proposed deposition upon oral examination, including a deposition before action, or pending appeal, is sought to be taken at a place more than 100 miles from the courthouse, the court may provide in the order therefor, or in any order entered under Rule of Civil Procedure 30(b), that prior to the examination the applicant pay the expense of the attendance at the place where the deposition is to be taken of one attorney for each adversary party, or expected party, including a reasonable counsel fee. The amounts so paid shall be a taxable cost in the event that the applicant recovers costs of the action or proceeding.

(b) An order, pursuant to Rule of Civil Procedure 27(a)(2), appointing an attorney to represent the absent expected adversary party and to cross-examine the proposed witness, shall fix his compensation to include his expenses; the compensation so fixed shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

RULE 6—Masters

(a) *Agreement on a master.* The parties to a civil action may stipulate in writing for the appointment of a master to report upon particular issues, or upon all the issues. The stipulation may suggest the master, in which case the court may appoint the person named. The procedure covering such a reference shall be the same as that governing any other reference to a master.

(b) *May sit outside district.* A master may sit within or outside the district. Where he is requested to sit outside the district for the convenience of a party and there is opposition thereto by another party, he may make an order for the holding of the hearing, or a part thereof, outside the district, upon such

terms and conditions as shall be just. Such order may be reviewed by the court upon motion of any party, served within ten (10) days after notice to all parties by the master of the making of the order.

(c) *Report.* The court in passing upon the report of a master in non-jury actions shall be deemed to have adopted the findings of fact enumerated in the report, except where its order rejects the report in its entirety, or except to the extent that it specifically rejects enumerated findings.

(d) *Fees taxable.* After a master's compensation and disbursements have been allowed by the court, the prevailing party may pay such compensation and disbursements, and on payment the amount thereof shall be a taxable cost against the unsuccessful party or parties. Where, however, the court directs by order the parties against whom, or the proportion in which such compensation and disbursements shall be charged, or the fund or subject matter out of which they shall be paid, the party making the payment to the master shall be entitled to tax such compensation and disbursements only against such parties and in such proportions as the court has directed, and to payment of such taxable cost only out of such fund or subject matter as the court has directed.

(e) *Order of reference.* Whenever an order of reference to a master is made, the attorney procuring the order shall, at the time of filing thereof, deposit with the clerk a copy to be furnished to the master.

(f) *Filing of report.* Upon the filing of his report the master shall furnish the clerk with sufficient copies of a notice of filing thereof addressed severally to the parties or their attorneys, to enable the clerk to mail copies to them.

✓ 11 (g) *Confirmation etc., of master's report.* A motion to confirm or to reject, in whole or in part, a report of a master shall be heard by the judge appointing such master.

RULE 7—Proposed Findings of Fact and Conclusions of Law

In any civil action, where findings of fact and conclusions of law are required, the court may require from either or both parties, before or after the announcement of its decision, proposed findings of fact and conclusions of law, for the assistance of the court, but, unless adopted by the court, such proposed findings of fact and conclusions of law shall not form any part of the record of the action.

RULE 8—Default Judgment

(a) *By the clerk.* When a party is entitled to have the clerk enter a default judgment pursuant to Rule of Civil Procedure 55(b)(1), he shall submit with his form of judgment a statement showing the principal amount due which shall not exceed the amount demanded in the complaint giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed. An affidavit of the party or his attorney shall be appended to the statement showing: (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that he has made default in appearance in the action; (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as therein set forth; and (4) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein. The clerk shall thereupon enter judgment for principal, interest and costs.

(b) *By the court.* An application to the court for the entry of a default judgment, pursuant to Rule of Civil Procedure 55(b)(2), shall be accompanied by a certificate of the clerk of the entry of the default, and by a copy of the pleading to which no response has been made.

RULE 9—Stenographic Transcript

Subject to the provisions of Rule of Civil Procedure 54(d), the expense of any party in necessarily obtaining all or any part

Ci V-141-307 - motion for default judgment, & request before jury to assess damages.

of a transcript, for purposes of a new trial, or for amended findings or for appeal shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference.

RULE 10—Notice of Sale

In any civil action, the notice of any proposed sale of property directed to be made by any order or judgment of the court, unless otherwise ordered by the court, need not set out the terms of sale specified in the order or judgment, and the notice will be sufficient if in substantially the following form:

UNITED STATES DISTRICT COURT
EASTERN [SOUTHERN] DISTRICT OF NEW YORK

NOTICE OF SALE

Pursuant to
(Order or Judgment)
of the United States District Court for the Eastern [Southern]
District of New York, filed in the office of the Clerk of said
Court on in the cause
(Date)
entitled
(Name and Docket Number)
the undersigned will sell at public sale at
(Place of Sale)
..... on
(Date and Hour of Sale)
..... at o'clock in this noon
the property in said
(Order or Judgment)
described and therein directed to be sold, to which
..... reference is made for the
(Order or Judgment)
terms of sale and for a description of the property which may
be briefly described as follows:

Dated:

.....
Signature and Official Title

The notice need not describe the property by metes and bounds or otherwise in detail and will be sufficient if in general terms it identifies the property by specifying its nature and location. However, it shall state the approximate acreage of any real estate outside the limits of any town or city, the street, lot and block number of any real estate within any town or city, the termini of any railroad and a general statement of the character of any improvements upon the property.

NOTE: As to executions and judicial sales see 28
U. S. C. Secs. 2001-2004.

RULE 11—Fees in Stockholder and Class Actions

Fees for attorneys or others shall not be paid upon the recovery or compromise in a derivative or class action on behalf of a corporation or class except as allowed by the court after a hearing upon such notice as the court may direct. The notice shall include a statement of the names and addresses of the applicants for such fees and the amounts requested respectively. The court, in its discretion, may direct that the notice also be given the New York Regional Office of the Securities and Exchange Commission. Where the court directs notice of a hearing upon a proposed voluntary dismissal or settlement of a derivative or class action, the above information as to the applications shall be included in the notice.

RULE 12—Entry of Order or Judgment

The attorney causing the entry of an order or judgment shall append to or endorse upon it a list of the names of the parties entitled to be notified of the entry thereof and the names and addresses of their respective attorneys.

RULE 13—Appeals

(a) A notice of appeal shall exhibit the names of the several parties to the judgment, and the names and addresses of their respective attorneys of record. Upon the filing of the notice of appeal the appellant shall furnish the clerk with a sufficient

number of copies thereof to enable him to comply with the provisions of Rule of Civil Procedure 73(b).

(b) Whenever a notice of motion to enforce the liability of a surety upon an appeal or a supersedeas bond is served upon the clerk pursuant to Rule of Civil Procedure 73(f), the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

RULE 14—Contempts

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule of Civil Procedure 37(b)(2)(IV), shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his attorney; otherwise service shall be made personally, in the manner provided for by the Rules of Civil Procedure for the service of a summons. If an order to show cause is sought, such order may upon necessity shown therefor, embody a direction to the United States marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the court for his surrender.

(b) If the alleged contemnor puts in issue his alleged misconduct or the damages thereby occasioned, he shall upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, he shall make written demand therefor on or before the

return day or adjourned day of the application; otherwise he will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by the United States marshal, and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be the Federal House of Detention. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him, he shall be discharged from the proceeding and, in the discretion of the court, may have judgment against the complainant for his costs and disbursements and a reasonable counsel fee.

RULE 15—Procedure in Absence of Rule

Whenever a procedural question arises which is not covered by the provisions of any statute of the United States, or of the Rules of Civil Procedure, or of the Rules of the United States District Courts for the Eastern and Southern Districts of New York, it shall be determined, if possible, by the parallels or

analogies furnished by such statutes and rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States shall be applied, or in default thereof, in the discretion of the court, the procedure which shall then prevail in the Supreme Court or the Surrogates Court as the case may be of the State of New York may be applied.

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