

/* The final part of the FRCP. */

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate deems sufficient, unless the district judge otherwise directs.

Within 10 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 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate with instructions.

Note. Amended April 30, 1991, effective December 1, 1991.

RULE 73. MAGISTRATES; TRIAL BY CONSENT AND APPEAL OPTIONS

(a) Powers; Procedure. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate may exercise the authority provided by Title 28, U.S.C. [sec.] 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. [sec.] 636(c)(7).

(b) Consent. When a magistrate has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate of civil jurisdiction over the case, as authorized by Title 28, U.S.C. [sec.] 636(c). If, within the period specified by local rule, the parties agree to a magistrate's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

No district judge, magistrate, or other court official shall attempt to persuade or induce a party to consent to a reference of a civil matter to a magistrate under this rule, nor shall a district judge or magistrate be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate.

The district judge, for good cause shown on the judge's motion, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate under this subdivision.

(c) Normal Appeal Route. In accordance with Title 28, U.S.C. [sec.] 636(c)(3), unless the parties otherwise agree to the optional appeal route provided for in subdivision (d) of this rule, appeal from a judgment entered upon direction of a magistrate in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) Optional Appeal Route. In accordance with Title 28, U.S.C. [sec.] 636(c)(4), at the time of reference to a magistrate, the parties may consent to appeal on the record to a judge of the district court and thereafter, by petition only, to the court of appeals.

RULE 74. METHOD OF APPEAL FROM MAGISTRATE TO DISTRICT JUDGE UNDER TITLE 28, U.S.C. [sec.] 636(c)(4) AND RULE 73(d)

(a) When Taken. When the parties have elected under Rule 73(d) to proceed by appeal to a district judge from an appealable decision made by a magistrate under the consent provisions of Title 28, U.S.C. [sec.] 636(c)(4), an appeal may be taken from the decision of a magistrate by filing with the clerk of the district court a notice of appeal within 30 days of the date of entry of the judgment appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days thereafter, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by the timely filing of any of the following motions with the magistrate by any party, and the full time for appeal from the judgment entered by the magistrate commences to run anew from entry of any of the following orders: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

An interlocutory decision or order by a magistrate which, if made by a judge of the district court, could be appealed under any provision of law, may be appealed to a judge of the district court by filing a notice of appeal within 15 days after entry of the decision or order, provided the parties have elected to appeal to a judge of the district court under Rule 73(d). An appeal of such interlocutory decision or order shall not stay the proceedings before the magistrate unless the magistrate or judge shall so order.

Upon a showing of excusable neglect, the magistrate may extend the time for filing a notice of appeal upon motion filed not later than 20 days after the expiration of the time otherwise prescribed by this rule.

(b) Notice of Appeal; Service. The notice of appeal shall specify the party or parties taking the

appeal, designate the judgment, order or part thereof appealed from, and state that the appeal is to a judge of the district court. The clerk shall mail copies of the notice to all other parties and note the date of mailing in the civil docket.

(c) Stay Pending Appeal. Upon a showing that the magistrate has refused or otherwise failed to stay the judgment pending appeal to the district judge under Rule 73(d), the appellant may make application for a stay to the district judge with reasonable notice to all parties. The stay may be conditioned upon the filing in the district court of a bond or other appropriate security.

(d) Dismissal. For failure to comply with these rules or any local rule or order, the district judge may take such action as is deemed appropriate, including dismissal of the appeal. The district judge also may dismiss the appeal upon the filing of a stipulation signed by all parties, or upon motion and notice by the appellant.

RULE 75. PROCEEDINGS ON APPEAL FROM MAGISTRATE TO DISTRICT JUDGE UNDER RULE 73(d)

(a) Applicability. In proceedings under Title 28, U.S.C. [sec.] 636(c), when the parties have previously elected under Rule 73(d) to appeal to a district judge rather than to the court of appeals, this rule shall govern the proceedings on appeal.

(b) Record on Appeal.

(1) Composition. The original papers and exhibits filed with the clerk of the district court, the transcript of the proceedings, if any, and the docket entries shall constitute the record on appeal. In lieu of this record the parties, within 10 days after the filing of the notice of appeal, may file a joint statement of the case showing how the issues presented by the appeal arose and were decided by the magistrate, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(2) Transcript. Within 10 days after filing the notice of appeal the appellant shall make arrangements for the production of a transcript of such parts of the proceedings as the appellant deems necessary. Unless the entire transcript is to be included, the appellant, within the time provided above, shall serve on the appellee and file with the court a description of the parts of the transcript which the appellant intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, within 10 days after the service of the statement of the appellant, the appellee shall serve on the appellant and file with the court a designation of additional parts to be included. The appellant shall promptly make arrangements for the inclusion of all such parts unless the magistrate, upon motion, exempts the appellant from providing certain parts, in which case the appellee may provide for their transcription.

(3) Statement in Lieu of Transcript. If no record of the proceedings is available for transcription, the parties shall, within 10 days after the filing of the notice of appeal, file a statement of the evidence from the best available means to be submitted in lieu of the transcript. If the parties cannot agree

they shall submit a statement of their differences to the magistrate for settlement.

(c) Time for Filing Briefs. Unless a local rule or court order otherwise provides, the following time limits for filing briefs shall apply.

(1) The appellant shall serve and file the appellant's brief within 20 days after the filing of the transcript, statement of the case, or statement of the evidence.

(2) The appellee shall serve and file the appellee's brief within 20 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee.

(4) If the appellee has filed a cross-appeal, the appellee may file a reply brief limited to the issues on the cross-appeal within 10 days after service of the reply brief of the appellant.

(d) Length and Form of Briefs. Briefs may be typewritten. The length and form of briefs shall be governed by local rule.

(e) Oral Argument. The opportunity for the parties to be heard on oral argument shall be governed by local rule.

RULE 76. JUDGMENT OF THE DISTRICT JUDGE ON THE APPEAL UNDER RULE 73(d) AND COSTS

(a) Entry of Judgment. When the parties have elected under Rule 73(d) to appeal from a judgment of the magistrate to a district judge, the clerk shall prepare, sign, and enter judgment in accordance with the order or decision of the district judge following an appeal from a judgment of the magistrate, unless the district judge directs otherwise. The clerk shall mail to all parties a copy of the order or decision of the district judge.

(b) Stay of Judgments. The decision of the district judge shall be stayed for 10 days during which time a party may petition the district judge for rehearing, and a timely petition shall stay the decision of the district judge pending disposition of a petition for rehearing. Upon the motion of a party, the decision of the district judge may be stayed in order to allow a party to petition the court of appeals for leave to appeal.

(c) Costs. Except as otherwise provided by law or ordered by the district judge, costs shall be taxed against the losing party; if a judgment of the magistrate is affirmed in part or reversed in part, or is vacated, costs shall be allowed only as ordered by the district judge. The cost of the transcript, if necessary for the determination of the appeal, and the premiums paid for bonds to

preserve rights pending appeal shall be taxed as costs by the clerk.

X. DISTRICT COURTS AND CLERKS

RULE 77. DISTRICT COURTS AND CLERKS

(a) District Courts Always Open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time of appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure.

Note. Amended April 30, 1991, effective December 1, 1991.

RULE 78. MOTION DAY

Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the

advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments and Orders. The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; Calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(d) Other Books and Records of the Clerk. The clerk shall also keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

RULE 80. STENOGRAPHER; STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

(a) [Abrogated]

(b) [Abrogated]

(c) Stenographic Report or Transcript as Evidence. Whenever the

testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

XI. GENERAL PROVISIONS

RULE 81. APPLICABILITY IN GENERAL

(a) To What Proceedings Applicable.

(1) These rules do not apply to prize proceedings in admiralty governed by Title 10, U.S.C. [sec.] 7651-7681. They do not apply to proceedings in bankruptcy or proceedings in copyright under Title 17, U.S.C., except in so far as they may be made applicable thereto by rules promulgated by Supreme Court of the United States. They do not apply to mental health proceedings in the United States District Court for the District of Columbia.

(2) These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warranto, to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice of civil actions. The writ of habeas corpus, or order to show cause, shall be directed to the person having custody of the person detained. It shall be returned within 3 days unless for good cause shown additional time is allowed which in cases brought under 28 U.S.C. [sec.] 2254 shall not exceed 40 days, and in all other cases shall not exceed 20 days.

(3) In proceedings under Title 9, U.S.C., relating to arbitration, or under the Act of May 20, 1926, ch. 347, [sec.] 9 (44 Stat.585), U.S.C., Title 45, [sec.] 159, relating to boards of arbitration of railway labor disputes, these rules apply only to the extent that matters of procedure are not provided for in those statutes. These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, [sec.] 2 (42 Stat. 388), U.S.C., Title 7, [sec.] 292; or by the Act of June 10, 1930, c. 436, [sec.] 7 (46 Stat. 534), as amended, U.S.C., Title 7, [sec.] 499g(c), for instituting proceedings in the United States district courts to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, [sec.] 2 (48 Stat. 1214), U.S.C., Title 15, [sec.] 522, for instituting proceedings to review orders of the Secretary of the Interior; or prescribed by the Act of February 22, 1935, c. 18, [sec.] 5 (49 Stat.31), U.S.C., Title 15, [sec.] 715d(c), as extended, for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules so far as applicable.

(5) These rules do not alter the practice in the United States

district courts prescribed in the Act of July 5, 1935, c. 372, [sec.] 9 and 10 (49 Stat. 453), as amended, U.S.C., Title 29, [sec.] 159 and 160, for beginning and conducting proceedings to enforce orders of the National Labor Relations Board; and in respects not covered by those statutes, the practice in the district courts shall conform to these rules so far as applicable.

(6) These rules apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, [sec.] 18, 21 (44 Stat. 1434, 1436), as amended, U.S.C., Title 33, [sec.] 918, 921, except to the extent that matters of procedure are provided for in that Act. The provisions for service by publication and for answer in proceedings to cancel certificates of citizenship under the Act of June 27, 1952, c. 477, Title III, c. 2, [sec.] 340 (66 Stat. 260), U.S.C., Title 8, [sec.] 1451, remain in effect.

(7) [Abrogated]

(b) Scire Facias and Mandamus. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules.

(c) Removed Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is longest. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 shall be accorded it, if the party's demand therefor is served within 10 days after the petition for removal is filed if the party is the petitioner, or if not the petitioner within 10 days after service on the party of the notice of filing the petition. A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by that party of trial by jury.

(d) [Abrogated]

(e) Law Applicable. Whenever in these rules the law of the state in which the district court is held is made applicable, the law applied in the District of Columbia governs proceedings in the United States District Court for the District of Columbia. When the word "state" is used, it includes, if appropriate, the District of Columbia. When the term "statute of the United States" is used, it includes, so far as concerns

proceedings in the United States District Court for the District of Columbia, any Act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them.

(f) References to Officer of the United States. Under any rule in which reference is made to an officer or agency of the United States, the term "officer" includes a district director of internal revenue, a former district director or collector of internal revenue, or the personal representative of a deceased district director or collector of internal revenue.

RULE 82. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purposes of Title 28, U.S.C. [sec.] 1391-93.

RULE 83. RULES BY DISTRICT COURTS

Each district court by action of a majority of the judges thereof may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. A local rule so adopted shall take effect upon the date specified by the district court and shall remain in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public. In all cases not provided for by rule, the district judges and magistrates may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act.

RULE 84. FORMS

The forms contained in the Appendix of Forms [not included herein] are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 85. TITLE

These rules may be known and cited as the Federal Rules of Civil Procedure.

RULE 86. EFFECTIVE DATE

(a) [Effective Date of Original Rules]. These rules will take effect on the day which is 3 months subsequent to the adjournment of the second regular session of the 75th Congress, but if that day is prior to September 1, 1938, then these rules will take effect on September 1, 1938. They govern all

proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Effective Date of Amendments. The amendments adopted by the Supreme Court on December 27, 1946, and transmitted to the Attorney General on January 2, 1947, shall take effect on the day which is three months subsequent to the adjournment of the first regular session of the 80th Congress, but, if that day is prior to September 1, 1947, then these amendments shall take effect on September 1, 1947. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) Effective Date of Amendments. The amendments adopted by the Supreme Court on December 29, 1948, and transmitted to the Attorney General on December 31, 1948, shall take effect on the day following the adjournment of the first regular session of the 81st Congress.

(d) Effective Date of Amendments. The amendments adopted by the Supreme Court on April 17, 1961, and transmitted to the Congress on April 18, 1961, shall take effect on July 19, 1961. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(e) Effective Date of Amendments. The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963, shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.