

service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.” See subd. (c)(2)(C) of this rule.

Subd. (e). Pub. L. 97-462, §2(5), substituted “Summons” for “Same” as subd. heading.

Subd. (g). Pub. L. 97-462, §2(6), substituted in second sentence “deputy United States marshal” and “such person” for “his deputy” and “he” and inserted third sentence “If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender’s filing with the court the acknowledgment received pursuant to such subdivision.”

Subd. (j). Pub. L. 97-462, §2(7), added subd. (j).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-462 effective 45 days after Jan. 12, 1983, see section 4 of Pub. L. 97-462, set out as a note under section 2071 of this title.

Rule 4.1. Service of Other Process

(a) GENERALLY. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(l). The process may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.

(b) ENFORCEMENT OF ORDERS: COMMITMENT FOR CIVIL CONTEMPT. An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.

(As added Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1993

This is a new rule. Its purpose is to separate those few provisions of the former Rule 4 bearing on matters other than service of a summons to allow greater textual clarity in Rule 4. Subdivision (a) contains no new language.

Subdivision (b) replaces the final clause of the penultimate sentence of the former subdivision 4(f), a clause added to the rule in 1963. The new rule provides for nationwide service of orders of civil commitment enforcing decrees of injunctions issued to compel compliance with federal law. The rule makes no change in the practice with respect to the enforcement of injunctions or decrees not involving the enforcement of federally-created rights.

Service of process is not required to notify a party of a decree or injunction, or of an order that the party show cause why that party should not be held in contempt of such an order. With respect to a party who has once been served with a summons, the service of the decree or injunction itself or of an order to show cause can be made pursuant to Rule 5. Thus, for example, an injunction may be served on a party through that person’s attorney. *Chagas v. United States*, 369 F.2d 643 (5th Cir. 1966). The same is true for service of an order to show cause. *Waffenschmidt v. Mackay*, 763 F.2d 711 (5th Cir. 1985).

The new rule does not affect the reach of the court to impose criminal contempt sanctions. Nationwide enforcement of federal decrees and injunctions is already

available with respect to criminal contempt: a federal court may effect the arrest of a criminal contemnor anywhere in the United States, 28 U.S.C. §3041, and a contemnor when arrested may be subject to removal to the district in which punishment may be imposed. Fed. R. Crim. P. 40. Thus, the present law permits criminal contempt enforcement against a contemnor wherever that person may be found.

The effect of the revision is to provide a choice of civil or criminal contempt sanctions in those situations to which it applies. Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act. *Ex parte Bradley*, 74 U.S. 366 (1869). This is so even if the offensive conduct or inaction occurred outside the district of the court in which the enforcement proceeding must be conducted. *E.g.*, *McCourtney v. United States*, 291 Fed. 497 (8th Cir.), *cert. denied*, 263 U.S. 714 (1923). For this purpose, the rule as before does not distinguish between parties and other persons subject to contempt sanctions by reason of their relation or connection to parties.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) SERVICE: WHEN REQUIRED. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) MAKING SERVICE.

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

- (i) handing it to the person;
- (ii) leaving it at the person’s office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or
- (iii) if the person has no office or the office is closed, leaving it at the person’s dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the clerk of the court.

(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

(3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) SAME: NUMEROUS DEFENDANTS. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) FILING; CERTIFICATE OF SERVICE. All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court 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: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission.

(e) FILING WITH THE COURT DEFINED. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

(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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivisions (a) and (b). Compare 2 Minn.Stat. (Mason, 1927) §§ 9240, 9241, 9242; N.Y.C.P.A. (1937) §§ 163,

164, and N.Y.R.C.P. (1937) Rules 20, 21; 2 Wash.Rev.Stat.Ann. (Remington, 1932) §§ 244-249.

Note to Subdivision (d). Compare the present practice under [former] Equity Rule 12 (Issue of Subpoena—Time for Answer).

NOTES OF ADVISORY COMMITTEE ON RULES—1963 AMENDMENT

The words "affected thereby," stricken out by the amendment, introduced a problem of interpretation. See 1 Barron & Holtzoff, *Federal Practice & Procedure* 760-61 (Wright ed. 1960). The amendment eliminates this difficulty and promotes full exchange of information among the parties by requiring service of papers on all the parties to the action, except as otherwise provided in the rules. See also subdivision (c) of Rule 5. So, for example, a third-party defendant is required to serve his answer to the third-party complaint not only upon the defendant but also upon the plaintiff. See amended Form 22-A and the Advisory Committee's Note thereto.

As to the method of serving papers upon a party whose address is unknown, see Rule 5(b).

NOTES OF ADVISORY COMMITTEE ON RULES—1970 AMENDMENT

The amendment makes clear that all papers relating to discovery which are required to be served on any party must be served on all parties, unless the court orders otherwise. The present language expressly includes notices and demands, but it is not explicit as to answers or responses as provided in Rules 33, 34, and 36. Discovery papers may be voluminous or the parties numerous, and the court is empowered to vary the requirement if in a given case it proves needlessly onerous.

In actions begun by seizure of property, service will at times have to be made before the absent owner of the property has filed an appearance. For example, a prompt deposition may be needed in a maritime action in rem. See Rules 30(a) and 30(b)(2) and the related notes. A provision is added authorizing service on the person having custody or possession of the property at the time of its seizure.

NOTES OF ADVISORY COMMITTEE ON RULES—1980 AMENDMENT

Subdivision (d). By the terms of this rule and Rule 30(f)(1) discovery materials must be promptly filed, although it often happens that no use is made of the materials after they are filed. Because the copies required for filing are an added expense and the large volume of discovery filings presents serious problems of storage in some districts, the Committee in 1978 first proposed that discovery materials not be filed unless on order of the court or for use in the proceedings. But such materials are sometimes of interest to those who may have no access to them except by a requirement of filing, such as members of a class, litigants similarly situated, or the public generally. Accordingly, this amendment and a change in Rule 30(f)(1) continue the requirement of filing but make it subject to an order of the court that discovery materials not be filed unless filing is requested by the court or is effected by parties who wish to use the materials in the proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (d). This subdivision is amended to require that the person making service under the rule certify that service has been effected. Such a requirement has generally been imposed by local rule.

Having such information on file may be useful for many purposes, including proof of service if an issue arises concerning the effectiveness of the service. The

certificate will generally specify the date as well as the manner of service, but parties employing private delivery services may sometimes be unable to specify the date of delivery. In the latter circumstance, a specification of the date of transmission of the paper to the delivery service may be sufficient for the purposes of this rule.

Subdivision (e). The words “pleading and other” are stricken as unnecessary. Pleadings are papers within the meaning of the rule. The revision also accommodates the development of the use of facsimile transmission for filing.

Several local district rules have directed the office of the clerk to refuse to accept for filing papers not conforming to certain requirements of form imposed by local rules or practice. This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer. A clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

This is a technical amendment, using the broader language of Rule 25 of the Federal Rules of Appellate Procedure. The district court—and the bankruptcy court by virtue of a cross-reference in Bankruptcy Rule 7005—can, by local rule, permit filing not only by facsimile transmissions but also by other electronic means, subject to standards approved by the Judicial Conference.

NOTES OF ADVISORY COMMITTEE ON RULES—1996 AMENDMENT

The present Rule 5(e) has authorized filing by facsimile or other electronic means on two conditions. The filing must be authorized by local rule. Use of this means of filing must be authorized by the Judicial Conference of the United States and must be consistent with standards established by the Judicial Conference. Attempts to develop Judicial Conference standards have demonstrated the value of several adjustments in the rule.

The most significant change discards the requirement that the Judicial Conference authorize local electronic filing rules. As before, each district may decide for itself whether it has the equipment and personnel required to establish electronic filing, but a district that wishes to establish electronic filing need no longer await Judicial Conference action.

The role of the Judicial Conference standards is clarified by specifying that the standards are to govern technical matters. Technical standards can provide nationwide uniformity, enabling ready use of electronic filing without pausing to adjust for the otherwise inevitable variations among local rules. Judicial Conference adoption of technical standards should prove superior to specification in these rules. Electronic technology has advanced with great speed. The process of adopting Judicial Conference standards should prove speedier and more flexible in determining the time for the first uniform standards, in adjusting standards at appropriate intervals, and in sparing the Supreme Court and Congress the need to consider technological details. Until Judicial Conference standards are adopted, however, uniformity will occur only to the extent that local rules deliberately seek to copy other local rules.

It is anticipated that Judicial Conference standards will govern such technical specifications as data formatting, speed of transmission, means to transmit copies of supporting documents, and security of communication. Perhaps more important, standards must be established to assure proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. Local rules must address these issues until Judicial Conference standards are adopted.

The amended rule also makes clear the equality of filing by electronic means with written filings. An electronic filing that complies with the local rule satisfies all requirements for filing on paper, signature, or verification. An electronic filing that otherwise satisfies the requirements of 28 U.S.C. §1746 need not be separately made in writing. Public access to electronic filings is governed by the same rules as govern written filings.

The separate reference to filing by facsimile transmission is deleted. Facsimile transmission continues to be included as an electronic means.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

Subdivision (d). Rule 5(d) is amended to provide that disclosures under Rule 26(a)(1) and (2), and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. “Discovery requests” includes deposition notices and “discovery responses” includes objections. The rule supersedes and invalidates local rules that forbid, permit, or require filing of these materials before they are used in the action. The former Rule 26(a)(4) requirement that disclosures under Rule 26(a)(1) and (2) be filed has been removed. Disclosures under Rule 26(a)(3), however, must be promptly filed as provided in Rule 26(a)(3). Filings in connection with Rule 35 examinations, which involve a motion proceeding when the parties do not agree, are unaffected by these amendments.

Recognizing the costs imposed on parties and courts by required filing of discovery materials that are never used in an action, Rule 5(d) was amended in 1980 to authorize court orders that excuse filing. Since then, many districts have adopted local rules that excuse or forbid filing. In 1989 the Judicial Conference Local Rules Project concluded that these local rules were inconsistent with Rule 5(d), but urged the Advisory Committee to consider amending the rule. *Local Rules Project* at 92 (1989). The Judicial Conference of the Ninth Circuit gave the Committee similar advice in 1997. The reality of nonfiling reflected in these local rules has even been assumed in drafting the national rules. In 1993, Rule 30(f)(1) was amended to direct that the officer presiding at a deposition file it with the court or send it to the attorney who arranged for the transcript or recording. The Committee Note explained that this alternative to filing was designed for “courts which direct that depositions not be automatically filed.” Rule 30(f)(1) has been amended to conform to this change in Rule 5(d).

Although this amendment is based on widespread experience with local rules, and confirms the results directed by these local rules, it is designed to supersede and invalidate local rules. There is no apparent reason to have different filing rules in different districts. Even if districts vary in present capacities to store filed materials that are not used in an action, there is little reason to continue expending court resources for this purpose. These costs and burdens would likely change as parties make increased use of audio- and videotaped depositions. Equipment to facilitate review and reproduction of such discovery materials may prove costly to acquire, maintain, and operate.

The amended rule provides that discovery materials and disclosures under Rule 26(a)(1) and (a)(2) must not be filed until they are “used in the proceeding.” This phrase is meant to refer to proceedings in court. This filing requirement is not triggered by “use” of discovery materials in other discovery activities, such as depositions. In connection with proceedings in court, however, the rule is to be interpreted broadly; any use of discovery materials in court in connection with a motion, a pretrial conference under Rule 16, or otherwise, should be interpreted as use in the proceeding.

Once discovery or disclosure materials are used in the proceeding, the filing requirements of Rule 5(d) should apply to them. But because the filing requirement applies only with regard to materials that are used, only those parts of voluminous materials that are actually used need be filed. Any party would be free to file other

pertinent portions of materials that are so used. *See* Fed. R. Evid. 106; *cf.* Rule 32(a)(4). If the parties are unduly sparing in their submissions, the court may order further filings. By local rule, a court could provide appropriate direction regarding the filing of discovery materials, such as depositions, that are used in proceedings.

“Shall” is replaced by “must” under the program to conform amended rules to current style conventions when there is no ambiguity.

GAP Report. The Advisory Committee recommends no changes to either the amendments to Rule 5(d) or the Committee Note as published.

COMMITTEE NOTES ON RULES—2001 AMENDMENT

Rule 5(b) is restyled.

Rule 5(b)(1) makes it clear that the provision for service on a party’s attorney applies only to service made under Rules 5(a) and 77(d). Service under Rules 4, 4.1, 45(b), and 71A(d)(3)—as well as rules that invoke those rules—must be made as provided in those rules.

Subparagraphs (A), (B), and (C) of Rule 5(b)(2) carry forward the method-of-service provisions of former Rule 5(b).

Subparagraph (D) of Rule 5(b)(2) is new. It authorizes service by electronic means or any other means, but only if consent is obtained from the person served. The consent must be expressed, and cannot be implied from conduct. Early experience with electronic filing as authorized by Rule 5(d) is positive, supporting service by electronic means as well. Consent is required, however, because it is not yet possible to assume universal entry into the world of electronic communication. Subparagraph (D) also authorizes service by nonelectronic means. The Rule 5(b)(2)(B) provision making mail service complete on mailing is extended in subparagraph (D) to make service by electronic means complete on transmission; transmission is effected when the sender does the last act that must be performed by the sender. Service by other agencies is complete on delivery to the designated agency.

Finally, subparagraph (D) authorizes adoption of local rules providing for service through the court. Electronic case filing systems will come to include the capacity to make service by using the court’s facilities to transmit all documents filed in the case. It may prove most efficient to establish an environment in which a party can file with the court, making use of the court’s transmission facilities to serve the filed paper on all other parties. Transmission might be by such means as direct transmission of the paper, or by transmission of a notice of filing that includes an electronic link for direct access to the paper. Because service is under subparagraph (D), consent must be obtained from the persons served.

Consent to service under Rule 5(b)(2)(D) must be in writing, which can be provided by electronic means. Parties are encouraged to specify the scope and duration of the consent. The specification should include at least the persons to whom service should be made, the appropriate address or location for such service—such as the e-mail address or facsimile machine number, and the format to be used for attachments. A district court may establish a registry or other facility that allows advance consent to service by specified means for future actions.

Rule 6(e) is amended to allow additional time to respond when service is made under Rule 5(b)(2)(D). The additional time does not relieve a party who consents to service under Rule 5(b)(2)(D) of the responsibilities to monitor the facility designated for receiving service and to provide prompt notice of any address change.

Paragraph (3) addresses a question that may arise from a literal reading of the provision that service by electronic means is complete on transmission. Electronic communication is rapidly improving, but lawyers report continuing failures of transmission, particularly with respect to attachments. Ordinarily the risk of non-receipt falls on the person being served, who has consented to this form of service. But the risk

should not extend to situations in which the person attempting service learns that the attempted service in fact did not reach the person to be served. Given actual knowledge that the attempt failed, service is not effected. The person attempting service must either try again or show circumstances that justify dispensing with service.

Paragraph (3) does not address the similar questions that may arise when a person attempting service learns that service by means other than electronic means in fact did not reach the person to be served. Case law provides few illustrations of circumstances in which a person attempting service actually knows that the attempt failed but seeks to act as if service had been made. This negative history suggests there is no need to address these problems in Rule 5(b)(3). This silence does not imply any view on these issues, nor on the circumstances that justify various forms of judicial action even though service has not been made.

Changes Made After Publication and Comments Rule 5(b)(2)(D) was changed to require that consent be “in writing.”

Rule 5(b)(3) is new. The published proposal did not address the question of failed service in the text of the rule. Instead, the Committee Note included this statement: “As with other modes of service, however, actual notice that the transmission was not received defeats the presumption of receipt that arises from the provision that service is complete on transmission. The sender must take additional steps to effect service. Service by other agencies is complete on delivery to the designated agency.” The addition of paragraph (3) was prompted by consideration of the draft Appellate Rule 25(c) that was prepared for the meeting of the Appellate Rules Advisory Committee. This draft provided: “Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received.” Although Appellate Rule 25(c) is being prepared for publication and comment, while Civil Rule 5(b) has been published and otherwise is ready to recommend for adoption, it seemed desirable to achieve some parallel between the two rules.

The draft Rule 5(b)(3) submitted for consideration by the Advisory Committee covered all means of service except for leaving a copy with the clerk of the court when the person to be served has no known address. It was not limited to electronic service for fear that a provision limited to electronic service might generate unintended negative implications as to service by other means, particularly mail. This concern was strengthened by a small number of opinions that say that service by mail is effective, because complete on mailing, even when the person making service has prompt actual notice that the mail was not delivered. The Advisory Committee voted to limit Rule 5(b)(3) to service by electronic means because this means of service is relatively new, and seems likely to miscarry more frequently than service by post. It was suggested during the Advisory Committee meeting that the question of negative implication could be addressed in the Committee Note. There was little discussion of this possibility. The Committee Note submitted above includes a “no negative implications” paragraph prepared by the Reporter for consideration by the Standing Committee.

The Advisory Committee did not consider at all a question that was framed during the later meeting of the Appellate Rules Advisory Committee. As approved by the Advisory Committee, Rule 5(b)(3) defeats service by electronic means “if the party making service learns that the attempted service did not reach the person to be served.” It says nothing about the time relevant to learning of the failure. The omission may seem glaring. Curing the omission, however, requires selection of a time. As revised, proposed Appellate Rule 25(c) requires that the party making service learn of the failure within three calendar days. The Appellate Rules Advisory Committee will have the luxury of public comment and another year to consider the desirability of this short period. If Civil Rule 5(b) is to be rec-

ommended for adoption now, no such luxury is available. This issue deserves careful consideration by the Standing Committee.

Several changes are made in the Committee Note. (1) It requires that consent “be express, and cannot be implied from conduct.” This addition reflects a more general concern stimulated by a reported ruling that an e-mail address on a firm’s letterhead implied consent to email service. (2) The paragraph discussing service through the court’s facilities is expanded by describing alternative methods, including an “electronic link.” (3) There is a new paragraph that states that the requirement of written consent can be satisfied by electronic means, and that suggests matters that should be addressed by the consent. (4) A paragraph is added to note the additional response time provided by amended Rule 6(e). (5) The final two paragraphs address newly added Rule 5(b)(3). The first explains the rule that electronic service is not effective if the person making service learns that it did not reach the person to be served. The second paragraph seeks to defeat any negative implications that might arise from limiting Rule 5(b)(3) to electronic service, not mail, not other means consented to such as commercial express service, and not service on another person on behalf of the person to be served.

Rule 6(e)

The Advisory Committee recommended that no change be made in Civil Rule 6(e) to reflect the provisions of Civil Rule 5(b)(2)(D) that, with the consent of the person to be served, would allow service by electronic or other means. Absent change, service by these means would not affect the time for acting in response to the paper served. Comment was requested, however, on the alternative that would allow an additional 3 days to respond. The alternative Rule 6(e) amendments are cast in a form that permits ready incorporation in the Bankruptcy Rules. Several of the comments suggest that the added three days should be provided. Electronic transmission is not always instantaneous, and may fail for any of a number of reasons. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that will make electronic service ever more attractive. Consistency with the Bankruptcy Rules will be a good thing, and the Bankruptcy Rules Advisory Committee believes the additional three days should be allowed.

Rule 6. Time

(a) COMPUTATION. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), “legal holiday” includes 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, Christ-

mas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

[(c) UNAFFECTED BY EXPIRATION OF TERM.] (Rescinded Feb. 28, 1966, eff. July 1, 1966)

(d) FOR MOTIONS—AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) ADDITIONAL TIME AFTER SERVICE UNDER RULE 5(b)(2)(B), (C), OR (D). Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

(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.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Note to Subdivisions (a) and (b). These are amplifications along lines common in state practices, of [former] Equity Rule 80 (Computation of Time—Sundays and Holidays) and of the provisions for enlargement of time found in [former] Equity Rules 8 (Enforcement of Final Decrees) and 16 (Defendant to Answer—Default—Decree Pro Confesso). See also Rule XIII, Rules and Forms in Criminal Cases, 292 U.S. 661, 666 (1934). Compare Ala.Code Ann. (Michie, 1928) §13 and former Law Rule 8 of the Rules of the Supreme Court of the District of Columbia (1924), superseded in 1929 by Law Rule 8, Rules of the District Court of the United States for the District of Columbia (1937).

Note to Subdivision (c). This eliminates the difficulties caused by the expiration of terms of court. Such statutes as U.S.C. Title 28, [former] §12 (Trials not discontinued by new term) are not affected. Compare *Rules of the United States District Court of Minnesota*, Rule 25 (Minn.Stat. (Mason, Supp. 1936), p. 1089).

Note to Subdivision (d). Compare 2 Minn.Stat. (Mason, 1927) §9246; N.Y.R.C.P. (1937) Rules 60 and 64.