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Calendar Clerk SDNY

General Rules

of

United States District Courts

FOR THE SOUTHERN AND EASTERN DISTRICTS

OF NEW YORK

Effective February 1, 1961

Rule 27 Amended *Effective March 20, 1961*

Rule 6 Amended *Effective April 15, 1961*

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FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK.

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The judges of the UNITED STATES DISTRICT COURTS, for the Southern and Eastern Districts of New York, have adopted the attached amended general rules effective February 1, 1961.

SIDNEY R. FEUER

CLERK,

*Eastern District
of New York*

HERBERT A. CHARLSON

CLERK,

*Southern District
of New York*

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GENERAL RULES FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK

RULE 1—Judge and Clerk

(a) The word “judge,” wherever occurring in any rule of this court, shall mean any judge or justice authorized by law to serve in this court;

(b) The words “chief judge,” wherever so occurring, shall apply also to a judge temporarily performing the duties of chief judge under 28 U. S. C. Sec. 136(e);

(c) The word “clerk,” wherever so occurring, shall include a deputy clerk designated by the clerk to perform services of the general class provided for in the rule.

RULE 2—Terms of Court; Long and Complicated Cases

(a) A regular term of court shall commence on the first Monday of each month.

The judges shall periodically adopt schedules of assignment of judges and division of the work of the court and the judges shall preside in the several parts and perform the work thus assigned. The chief judge shall file with the clerk such schedules as adopted.

(b) The (Southern) chief judge [(Eastern) with the approval of his associate judges], upon his own motion or the motion of any party, may assign a long and complicated case to a judge for all purposes including the following: (1) to hear all motions and preliminary applications; (2) to conduct the pre-trial conference; and (3) to preside at the trial of the action.

The motion of a party for such assignment shall be supported by an affidavit setting forth the nature of the action, the issues involved, the approximate number of witnesses and exhibits and any other facts indicating that the cause will be long and complicated, with an estimate of the duration of the trial.

RULE 3—Admission to the Bar

(a) A member in good standing of the bar of the State of New York, who has been such for at least one year, or a member in good standing of the bar of a United States district court in New Jersey, Connecticut or Vermont and of the bar of the State in which such district court is located, provided such district court by its rules extends a corresponding privilege to members of the bar of this court, may be admitted to practice in this court on compliance with the following provisions:

Each applicant for admission shall file with the clerk of this court, at least ten days prior to hearing thereon (unless, for good cause shown, the judge shall shorten the time), a verified written petition for admission stating: (1) his residence and office address; (2) the time when, and court where, admitted; (3) his legal training and experience; (4) whether he has ever been held in contempt of court, and if so the nature of the contempt and the final disposition thereof; (5) whether he has ever been censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith; and (6) that he has read and is familiar with (a) the provisions of the Judicial Code (Title 28, U. S. C.) which pertain to the jurisdiction of, and practice in, the United States district courts, (b) the Rules of Civil Procedure for the district courts; (c) the Rules of Criminal Procedure for the district courts; (d) the Rules of the United States District Court for the Southern (Eastern) District of New York; and (e) that he has read the Canons of Ethics of the American Bar Association, and will faithfully adhere thereto.

The petition shall be accompanied by an affidavit of an attorney of this court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this court, how long and under what circumstances he has known the applicant, and what he knows of the applicant's character and experience at the bar. Such petition shall be placed at the head of the calendar and, on the call thereof, the attorney whose affidavit accompanied the petition shall personally move the admission of the applicant. If the petition is granted, the applicant shall take the oath of office and sign the roll of attorneys.

(Eastern District only: Each applicant, upon admission to practice in the Eastern District shall pay to the clerk the statutory admission fee, and, in addition, shall pay a fee of Eight Dollars (\$8.00), which the clerk shall deposit to the credit of the Library Fund of the court.)

(b) A member in good standing of the bar of the United States District Court for the Southern (Eastern) District of New York may be admitted to the bar of this court without formal application (1) upon filing in this court a certificate of the Clerk of the United States District Court for the Southern (Eastern) District of New York, issued within 30 days, that he is a member in good standing of the bar of that court and (2) upon taking the oath of office, signing the roll of attorneys of this court and paying the fee required in this district.

(c) A member in good standing of the bar of any state, or of any United States district court, may upon motion be permitted to argue or try a particular cause in whole or in part as counsel or advocate. Only an attorney or proctor of this court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders.

RULE 4—Attorneys of Record and Parties Appearing *Pro Se*

(a) No member of the bar of this court not having an office within the Southern or Eastern District of New York shall appear as attorney or proctor of record in any cause without designating with his initial notice or pleading a member of the bar of either district having an office within the Southern or Eastern District of New York upon whom service of papers may be made.

(b) A party appearing *pro se* shall file with his initial notice or pleading either (1) a designation of an address within the Southern or Eastern District of New York at which service of papers may be made upon him, in which case service may be made upon him at that address in like manner as service may be made upon an attorney, or (2) a designation of the clerk of the

court in which the action is brought as the person upon whom service may be made, and an address to which the clerk may mail any papers so served upon the clerk. The clerk within three (3) days of the receipt of papers so served shall mail them to the party at that address.

Any application for leave to serve any papers in less than five days before the return day, upon a party who has so designated the clerk, shall contain a statement of such designation.

RULE 5—Discipline of Attorneys

(a) The chief judge shall have charge of all matters relating to the discipline of members of the bar.

(b) The court may make an order in a disciplinary proceeding disbarring, suspending or censuring, or taking such other action as justice may require, with respect to a member of the bar of this court

(1) who has resigned from the bar of a court of any State, Territory, District, Commonwealth or Possession;

(2) who has been disbarred, suspended from practice or censured in any State, Territory, District, Commonwealth or Possession;

(3) who has been convicted of a crime involving moral turpitude in any State, Territory, District, Commonwealth or Possession; or

(4) who is guilty of conduct unbecoming a member of the bar of this court. Without limiting the generality of the foregoing, such misconduct shall be deemed to include fraud, deceit, malpractice, conduct prejudicial to the administration of justice, or violation of the Canons of Ethics of the American Bar Association or of the New York State Bar Association.

(c) Cases within subdivisions (1), (2) and (3) of Paragraph (b) may be referred by the chief judge to the United States Attorney, who shall proceed against the respondent by a petition

setting forth the charges against him and an order requiring him to show cause within thirty days after service thereof on him, personally or by mail, of the petition and order why he should not be disciplined. Upon the filing of such a petition the chief judge may, for good cause, temporarily suspend the respondent, pending the determination of the proceeding. Upon respondent's answer to the petition, the chief judge may set the matter for prompt hearing before a court of one or more judges, or may appoint a master to hear and report his findings and recommendations. After such a hearing or report, or if no timely answer is made by the respondent, the court shall take such action as justice may require.

(d) Cases within subdivision (4) of Paragraph (b) shall be presented to the chief judge, and, if he deems the charges of professional misconduct of sufficient weight, he shall refer them for preliminary investigation and recommendation to a bar association in the county where the member has his office or in his discretion to the United States Attorney. The recommendation shall be presented to the chief judge.

Thereupon, with the approval of the chief judge, the United States Attorney or counsel designated by the court shall proceed against the respondent by a petition setting forth the charges against him and an order requiring him to show cause within thirty days after service on him, personally or by mail, of the petition and order why he should not be disciplined. Upon respondent's answer to the petition, the chief judge may set the matter for prompt hearing before a court of one or more judges, or may appoint a master to hear and report his findings and recommendations. After such a hearing or report, or if no timely answer is made by the respondent, the court shall take such action as justice may require.

(e) The court, with the consent of the respondent, may order a disciplinary hearing to be private and direct the papers to be sealed and impounded.

(f) Whenever it appears that an attorney at law admitted to practice in the court of any State, Territory, District, Commonwealth or Possession is convicted of any crime, or is disbarred

or suspended, in this court, the clerk shall transmit to the court of the State, Territory, District, Commonwealth or Possession where the attorney was admitted to practice a certified copy of the judgment of conviction or order of disbarment or suspension and a statement of his last known office and residence addresses.

(g) A visiting lawyer permitted to argue or try a particular cause in accordance with Rule 3(c) who is found guilty of professional misconduct may be precluded from again appearing at the bar of this court. Upon the entry of an order of preclusion, the clerk shall transmit to the court of the State, Territory, District, Commonwealth or Possession where the attorney was admitted to practice, a certified copy thereof, and of the court's opinion.

RULE 6—Filing Papers: Supplying Marked Pleadings for Trial

(a) Unless a judge of this court shall otherwise direct, no paper shall be received for filing unless (1) it is plainly written, a typed ribbon copy or printed, without erasures or interlineations which materially deface it, (2) it bears the index number, if any, assigned to the action or proceeding and (3) it bears endorsed upon the cover the name, office and post office address and telephone number of the attorney or proctor of record for the party filing the same.

(b) Counsel for plaintiff or libelant shall at least one day before a case is scheduled to actually go to trial (unless a shorter time is allowed by the judge) supply to the judge designated to preside at the trial a ribbon copy of marked pleadings which shall consist of the following:

(1) a copy of the complaint or libel and of any third party complaint or third party libel briefly indicating in the margin thereof, at each numbered paragraph or article thereof, the manner in which the defendant or respondent, or any third party defendant or respondent-impleaded who has filed an answer thereto, treats the allegations contained in said paragraph of the complaint or libel or third party complaint or third party libel;

(2) a complete and accurate copy of each answer filed by the defendant or respondent or any third party defendant or respondent-impleaded in the cause, similarly marked in case a reply has been filed;

(3) a complete and accurate copy of each reply filed in the cause.

(c) Interrogatories and answers thereto.

(1) Filing of interrogatories to parties and answers thereto.

(i) Interrogatories served pursuant to Rule 33 of the Federal Rules of Civil Procedure or Rule 31 of the Rules of Practice in Admiralty and Maritime Cases shall be filed by the propounder within two days after service thereof.

(ii) The party to whom such interrogatories are directed shall file his answers thereto within two days after service thereof.

(2) Filing of deposition of witness upon written interrogatories. The officer before whom the deposition of a witness by written interrogatories is taken pursuant to Rule 31 of the Federal Rules of Civil Procedure shall file or mail the deposition, together with a copy of the interrogatories and notice of taking, within two days after the deposition has been completed in accordance with Rule 31(b) of the Federal Rules of Civil Procedure.

RULE 7—Transfer of Cases to Another District

In a case ordered transferred from this district, the clerk, unless otherwise ordered, shall upon the expiration of five days mail to the court to which the case is transferred (1) certified copies of the court's opinion ordering the transfer, of its order thereon, and of the docket entries in the case, and (2) the originals of all other papers on file in the case.

RULE 8—Naturalization Days

The petitions of aliens to become citizens of the United States shall be heard on (Eastern) Tuesdays and Thursdays, [(Southern) Mondays] and on any other day fixed by the court.

RULE 9—Motions

(a) Except as otherwise provided by statute, rule or order of the court, notice of motion in all actions or proceedings shall be in the time and manner as provided in the Rules of Civil Procedure for the United States District Courts.

(b) Upon any motion the moving party shall serve and file with the motion papers a memorandum setting forth the points and authorities relied upon in support of the motion divided, under appropriate headings, into as many parts as there are points to be determined. The opposing party shall serve and file with the papers in opposition to the motion an answering memorandum, similarly divided, setting forth the points and authorities relied upon in opposition. Failure to comply may be deemed sufficient cause for the denial of the motion or the granting of the motion by default as the case may be.

(c) The notice of motion, supporting affidavits and memoranda, with proof of due service, shall be served in accordance with the following:

(1) All motions and exceptions under Rule 26 through 37 inclusive of the Rules of Civil Procedure, and under Rules 27 and 30 (insofar as they apply to interrogatories), 31, 32, 32A, 32B and 32C of the Rules of Practice in Admiralty and Maritime Cases, shall be served at least five (5) days before the return day unless otherwise provided by statute or directed by the court. Where such service is made opposing affidavits and answering memoranda of law shall be served no later than noon of the day preceding the return day.

(2) In: All other motions except those in criminal proceedings, or for preferences, or in cases assigned to a judge for all purposes; all bankruptcy proceedings which are required to be conducted before a judge (other than jury

trials); all exceptions other than as provided in subparagraph (1) hereof; and all writs of habeas corpus (other than in criminal proceedings or as 28 U. S. C. Sec. 2243 may otherwise require) including deportation and exclusion, the notice of motion, supporting affidavits and accompanying memoranda of law shall be served at least ten (10) days before the return day unless otherwise provided by statute or directed by the court. Where such service is made opposing affidavits and answering memoranda shall be served at least three (3) days before the return day.

(3) Upon any motion all affidavits, memoranda and other papers to be submitted in support of the motion must be filed with the clerk of the motion part (Southern), with the clerk of the court (Eastern) with proof of due service at least three (3) days before the return day. No note of issue is required. All papers and memoranda to be submitted in opposition to the motion must be filed with the said clerk with proof of due service before noon on the day preceding the return day. No papers, either in support of or in opposition to the motion, which have not been filed as heretofore provided will be accepted for filing or received by the court except upon special permission granted by the court for good cause shown.

(4) No order to show cause to bring on a motion will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary.

(d) Upon any motion based upon rules or statutes the notice of motion or order to show cause shall specify the rules or statutes upon which the motion is predicated. If such specification has not been made the motion may be stricken from the calendar.

(e) Upon any motion, objections or exceptions addressed to interrogatories, answers to interrogatories or requests for admissions, the moving party shall (1) file a copy thereof simultaneously with the filing of the moving papers in all instances in which the notice to take interrogatories or such

interrogatories or answers have not been filed previously, and (2) specify and quote verbatim in the motion papers each interrogatory, answer or request to which the objection or exception is taken and immediately following each specification shall set forth the basis of the objection or exception.

(f) No motion of the type described in subparagraph (1) of subdivision (c) of this rule shall be heard unless counsel for the moving party files with the court at or prior to the argument an affidavit certifying that he has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the court and has been unable to reach such an agreement. If part of the issues raised by motion have been resolved by agreement the affidavit shall specify the issues so resolved and the issues remaining unresolved.

(g) Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(h) All motions and exceptions in a case assigned to a judge for all purposes pursuant to General Rule 2(b) shall be made returnable before the judge to whom the case is assigned and not in the motion part. The notice of motion, affidavits, memoranda and other papers submitted in support and the papers and memoranda submitted in opposition thereto shall be filed at the times prescribed in subparagraph (3) of subdivision (c) with the clerk of the court and not with the clerk of the motion part.

(i) There shall be a preliminary call of the General Motion Calendar by the clerk at 10:00 A. M. at which defaults, unopposed withdrawals and consents to the granting of motions may be noted. Any noticed motion may be adjourned, but not more than twice, by signed stipulation filed with the clerk of the motion part (Southern), with the clerk of the court (Eastern), not later than noon of the day preceding the return day of the motion. All motions not adjourned by such stipulation shall be heard on the return day or stricken from the calendar unless the judge assigned to the motion part, on good cause shown, shall otherwise direct.

(j) Motions marked off the calendar shall not be restored by consent or stipulation.

(k) The judge may direct the parties to submit, and may determine motions without oral hearing.

(1) No motion except for judgment or other final relief will be entertained in a case after it has reached the Permanent Calendar pursuant to the Calendar Rules unless the moving party has first obtained an order from the Part I Judge granting permission to make such motion. Application to the Part I Judge for such an order must be made on five (5) days' notice to all parties who have appeared in the action upon a showing by affidavit that circumstances arising subsequent to the date when the case reached the Permanent Calendar require that the motion sought to be made is necessary in the interests of substantial justice. This subdivision does not apply to motions or applications which are required to be made to the Part I Judge under the Calendar Rules.

(m) A notice of motion for reargument shall be served within ten (10) days after the filing of the court's determination of the original motion and shall be made returnable within the same period of time as required for the original motion. There shall be served with the notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. No oral argument shall be heard unless the court grants the motion and specifically directs that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court.

(n) APPLICABLE IN THE EASTERN DISTRICT ONLY

(1) All motions other than in criminal, or bankruptcy proceedings, or for preferences, or in cases assigned to a judge for all purposes, all exceptions, all writs of habeas corpus (other than in criminal proceedings, or as 28 U. S. C. Sec. 2243 may otherwise require), including deportation and exclusion shall be heard on Wednesdays in the motion part.

(2) Bankruptcy motions and proceedings which are required to be conducted before a judge (other than jury trials) shall be heard on Fridays in the motion part, UNLESS the judge assigned to the motion part otherwise directs.

(3) Criminal motions shall be heard in Trial Term Part IV, excepting that in the summer months they shall be heard in the criminal part.

(o) APPLICABLE IN THE SOUTHERN DISTRICT ONLY

(1) All motions described in subparagraph (1) of subdivision (c) shall be noticed for and heard on Thursdays in the motion part, except that during July, August and September such motions will be heard on Tuesdays, unless the judge assigned to the motion part otherwise directs.

(2) All other motions except those in criminal proceedings, or for preferences, or in cases assigned to a judge for all purposes; all bankruptcy proceedings which are required to be conducted before a judge (other than jury trials); all exceptions other than as provided in paragraph (c)(1); and all writs of habeas corpus (other than in criminal proceedings or as 28 U. S. C. Sec. 2243 may otherwise require) including deportation and exclusion shall be heard on Tuesdays in the motion part unless the judge assigned to the motion part otherwise directs.

(3) Any motion seeking combined or alternative relief which falls within the purview of both subparagraphs (1) and (2) of subdivision (c) of this rule shall be governed by the subdivision which is appropriate to the primary or predominant relief sought. If such a motion has been noticed under the

inappropriate subparagraph the motion may be adjourned to a day for hearing motions under the appropriate subparagraph as the judge assigned to the motion part shall direct.

RULE 10—Preparation and Entry of Judgments, Decrees and Final Orders

Upon the verdict of a jury or the decision of a cause by an opinion, memorandum, findings or other direction of the court, a separate document which shall constitute the judgment, decree or final order shall be signed by the clerk and entered. The judgment, decree or final order shall contain no recitals other than a recital of the verdict or any direction by the court upon which such judgment, decree or final order is entered. Unless the judge specifically directs otherwise, the clerk shall promptly prepare the judgment, decree or final order. He shall forthwith sign and enter it, except that where approval by the judge is required by F. R. Civ. P. 58, he shall first submit the judgment, decree or final order to the judge, who shall manifest such approval by adding his signature thereto or noting his approval on the margin. The notation in the appropriate docket of the judgment, decree or final order herein provided, whether prepared by the clerk or the attorney, shall constitute the entry of judgment.

NOTE: The confusion which preceded (and has followed) *United States v. F. & M. Schaefer Brewing Co.* (1958) 356 U. S. 227, with reference to the document or act from which the time to appeal runs, has made it desirable to provide specifically for a formal judgment, decree or final order in all cases. To avoid delay the judgment is to be prepared by the clerk unless the court directs settlement.

RULE 11—Orders

(a) A memorandum signed by the judge of the decision of a motion that does not finally determine all claims for relief shall constitute the order unless the memorandum directs the submission or settlement of an order in more extended form.

The notation in the appropriate docket of such memorandum, which does not direct the submission or settlement of an order in more extended form, shall constitute the entry of the order. The notation in the appropriate docket of an order in more extended form, as required to be submitted or settled by such memorandum, shall constitute the entry of the order.

(b) No *ex parte* order shall be granted, unless based upon an affidavit showing cause therefor, and stating whether a previous application for similar relief has been made.

(c) In the Eastern District, paragraph (a) shall not apply. Orders on all motions shall be submitted with notice of settlement.

RULE 12—Clerk to Sign Certain Orders

The clerk shall sign orders of the following classes without submission to a judge:

(a) Orders specially appointing persons 18 years old or over to serve a summons and complaint, or to serve an involuntary petition and subpoena in bankruptcy.

(b) Orders on consent for the substitution of attorneys.

(c) Orders of discontinuance or dismissal, with or without prejudice, on consent, except in bankruptcy proceedings and in causes to which Rule 23c or Rule 66 of the Rules of Civil Procedure applies.

(d) Orders on consent satisfying decrees, and orders on consent cancelling stipulations and bonds.

NOTE: Rule 11(c) and (d) of the General Rules, effective March 1, 1952, which provided for the clerk's signature to orders on consent extending the time within which to plead, move or except and to file the record on appeal and to docket the appeal have been omitted in these rules because of *Orange Theatre Corporation v. Rayherstz Amusement Corporation*, 130 F. 2d 185 (3d Cir. 1942), *cert. denied*, 322 U. S. 740.

RULE 13—Form of Orders, Judgments and Decrees

The form of an order, judgment or decree shall be entitled substantially as follows:

UNITED STATES DISTRICT COURT,
EASTERN (SOUTHERN) DISTRICT OF NEW YORK.

CAPTION	} Docket No.
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The date shall immediately precede the signature of the judge, clerk, referee or master and shall be substantially as follows: "Dated: Brooklyn, New York (New York, New York), July 1, 1958".

RULE 14—Submission of Orders, Judgments and Decrees

Proposed orders, judgments and decrees shall be presented to the clerk, and not presented directly to the judge. Unless the form of order, judgment or decree is consented to in writing, or unless the court otherwise directs, two-days' notice of settlement is required. One-day's notice is required of all counter-proposals. Unless adopted by the court, such proposed orders, judgments or decrees shall not form any part of the record of the action.

RULE 15—Entering Satisfaction of Judgments or Decrees

Satisfaction of a money judgment recovered or registered in this district shall be entered by the clerk, as follows:

(a) Upon the payment into court of the amount thereof, plus interest, and the payment of the clerk's and marshal's fees, if any;

(b) Upon the filing of a satisfaction-piece executed and acknowledged by (1) the judgment-creditor; or (2) his legal representatives or assigns, with evidence of their authority; or

(3) his attorney or proctor, if within two years of the entry of the judgment or decree.

(c) If the judgment-creditor is the United States, upon the filing of a satisfaction-piece executed by the United States Attorney.

(d) In admiralty, pursuant to an order of satisfaction; but such an order will not be made on the consent of the proctors only, unless such consent is given within two years from the entry of the decree to be satisfied.

(e) Upon the registration of a certified copy of a satisfaction entered in another district.

RULE 16—Receivers

Applications for the appointment of receivers shall be made only to the *ex parte* judge. If he is unavailable, the application shall be made to such other judge as the chief judge designates.

NOTE: See Bankruptcy Rules 7 and XI-4-c. (The reference is to certain requirements of notice in the Bankruptcy Rules.)

RULE 17—Oath of Master, Commissioner, Etc.

Every person appointed master, special master, commissioner, special commissioner, assessor or appraiser shall before entering upon his duties take and subscribe an oath, which, except as otherwise prescribed by statute or rule, shall be to the effect that he will faithfully and impartially discharge his duties conformably to the order of appointment to the best of his ability and understanding. Such oath may be taken before any federal or state officer authorized by federal law to administer oaths, and shall be filed in the office of the clerk.

RULE 18—Commission to Take Testimony

(a) Except as otherwise provided by law, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the

same shall be that provided in the Rules of Civil Procedure for the United States District Courts. The party seeking the deposition shall furnish the officer to whom the commission is issued with a copy of Rules of Civil Procedure 26(b), (c), 28(c), 30(c), (d), (e) and (f) and 43 (b).

(b) Upon receipt of a deposition the clerk, unless otherwise ordered, shall open and file it forthwith and give notice thereof by mail to the attorneys for the parties.

RULE 19—Deposition for Use Abroad

A person desiring to take the deposition of a witness who resides or may be found within the district for use in a judicial proceeding pending in a foreign country may apply *ex parte* to the court for an order designating a commissioner before whom such deposition may be taken. If a person has been appointed to take such deposition by the court in which the action is pending, the court shall designate that person commissioner unless there be good cause for withholding such designation. If no such appointment has been made, the court, if requested, shall designate as commissioner a person authorized to administer oaths by the laws of the United States or of the State of New York.

The entry of such an order constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein. The Rules of Civil Procedure for the United States District Courts, so far as applicable, including the provision for punishment for contempt for disobedience of a subpoena, shall govern the taking of such deposition.

RULE 20—Exhibits

Except in proceedings before a master or commissioner, and unless the court otherwise directs, exhibits shall not be filed with the clerk, but shall be retained in the custody of the respective attorneys who produced them in court. In the case of an appeal or other review by an appellate court a party, upon the request of any other party, shall make the original exhibits available to him, or furnish copies, as may be necessary to enable him to designate or prepare the record on appeal.

RULE 21—Actions By or on Behalf of Infants or Incompetents

An action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the court embodied in an order, judgment or decree. The proceeding upon an application to settle or compromise such an action shall conform, as nearly as may be, to the New York State statutes and rules, but the court, for cause shown, may dispense with any New York State requirement.

The court shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise and shall determine the said fee and disbursements, after due inquiry as to all charges against the fund.

The court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems may best protect the interest of the infant or incompetent.

RULE 22—Settlements, Apportionments and Allowances in Wrongful Death Actions

In an action for wrongful death

(a) this court shall apportion the avails of the action only where required by statute;

(b) this court shall approve a settlement only in a case covered by subdivision (a);

(c) this court shall approve an attorney's fee only upon application in accordance with the provisions of Section 475 of the Judiciary Law of the State of New York.

RULE 23—Review of Causes; Dismissal for Want of Prosecution

Causes which have been pending for more than (Southern) one year [(Eastern) six months] and are not on the trial calendar may be called for review upon not less than fifteen (15) days' notice given by the clerk by mail addressed to the attorneys or

proctors of record. Notice of the call of such causes shall be published in the New York Law Journal, or otherwise as the court directs. The court may thereupon enter an order dismissing the cause for want of prosecution, or continuing it, or may make such other order as justice may require.

RULE 24—Notice of Claim of Unconstitutionality

If, at any time prior to the trial of any action, suit or proceeding, to which neither the United States nor any agency, officer or employee thereof is a party, a party draws in question the constitutionality of an act of Congress affecting the public interest, such party (to enable the court to comply with 28 U. S. C. Sec. 2403) shall notify the chief judge in writing of the existence of such question, giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

RULE 25—Three-Judge Court

Whenever upon an application for injunctive relief counsel is of opinion that the relief is such as may be granted only by a three-judge court, the petition shall so state, and the proposed order to show cause (whether or not containing a stay), or the notice of motion, shall include a request for a hearing before a three-judge court. Upon the convening of a three-judge court, in addition to the original papers on file, there shall be handed up three copies of the pleadings, three copies of the motion papers and three copies of all briefs.

RULE 26—Habeas Corpus

(a) The petition in all habeas corpus proceedings shall set forth whether or not applications previously have been made for writs or for similar relief, stating to what court or judge they were made, the determination in each case, and any new facts upon the present application that were not previously shown.

(b) The original verified petition shall be filed with the clerk. In addition to the service on the respondent of the writ

of habeas corpus or order to show cause why such a writ should not issue, in all cases of deportation and exclusion, and in all cases where an official or employee of the United States is respondent, a copy of the petition and writ or order to show cause shall be served on the United States Attorney on the day of the issuance of the writ or granting of the order; if the office of the United States Attorney is closed, these papers shall be served before 10 A. M. on the following business day.

RULE 27—Petitions for Habeas Corpus in Exclusion and Deportation Cases

(a) A petition for habeas corpus in an exclusion or deportation case must be verified and, if the petitioner applies as next friend, must show either that the petitioner has been authorized by the alien to make the application, or that he is the parent, child, spouse, brother, or sister of the alien.

(b) Where an appeal from an order of a special inquiry officer is permitted by law, a writ will not be allowed to review that order unless the petition shows that the alien has taken such an appeal, and that the order of exclusion or deportation has become final.

(c) Petitioner must state in detail upon what grounds the final order of exclusion or deportation is invalid. The petition shall include a statement (1) that the petitioner or his attorney has learned the facts so stated from the records of the Immigration and Naturalization Service; or (2) that access to such records has been refused, in which event the petition shall state when and by whom application was made, and who refused the inspection; or (3) that the interval between the notice to the alien of the final order of exclusion or deportation and the time of the proposed enforcement of the order is too short to allow an examination of the records, in which event the petition shall state the time when the alien was informed of the final order of exclusion or deportation, the time of the proposed enforcement, and why the interval was not long enough to apply for examination of the records.

RULE 28—Service of the Writ in Exclusion and Deportation Cases

After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served upon, such master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ will not be recognized as binding upon him without service. Service must be made by delivery of the original writ to the respondent while the alien is in his custody. Service may not be made upon a master after a ship has cast off her moorings.

In case the writ is served upon the master of a ship or upon the commanding officer of an airplane, he may deliver the alien at once to the officer from whom he received him, for custody until the return day. In such case the writ will be deemed returnable forthwith, and the custody of the officer so receiving the alien will be deemed that of the respondent, pending disposition of the writ.

RULE 29—Payment of Fees in Advance

The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him in advance.

RULE 30—Publication of Advertisements

All advertisements except notices of sale of real estate or of any interest in land shall, in civil and admiralty causes, be published in a newspaper published in the City of New York and which has a general circulation or a circulation calculated to give public notice of a legal publication. The court may direct the publication of such additional advertisement as it may deem advisable.

Unless otherwise ordered, notices for the sale of real estate or of any interest in land shall be published in a newspaper of general circulation in the county in which the real estate or the land in question is located.

RULE 31—Sureties

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation must (1) be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, or be secured by (2) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or (3) the undertaking or guaranty of two individual residents of the Southern or Eastern Districts of New York, each of whom owns real or personal property within such districts worth double the amount of the bond, undertaking or stipulation, over all his debts and liabilities, and over all obligations assumed by him on other bonds, undertakings, or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond, or undertaking, or stipulation executed by individual sureties, each surety shall attach his affidavit of justification, giving his full name, occupation, residence and business addresses, and showing that he is qualified as an individual surety under subdivision (b) of this rule.

(d) Members of the bar, administrative officers or employees of this court, the marshal, his deputies or assistants, shall not act as surety in any suit, action or proceeding pending in this court.

RULE 32—Approval of Bonds or Corporate Sureties

Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a judge or by court rule or statute, may be approved by the clerk.

RULE 33—Supersedeas

A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and such damages for delay as may be awarded,

plus \$250 to cover costs and, if eligible under Rule 32, may be approved by the clerk.

When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

Upon approval a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, short notice of a hearing before the court on such objections shall be given.

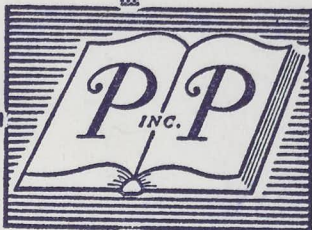
RULE 34—Remand by an Appellate Court

Whenever an appellate court has remanded a cause or matter to the district court, and further proceedings not requiring the trial of an issue of fact are appropriate, an application with reference thereto, whether made upon the motion calendar or otherwise, shall be referred for such further proceedings to the judge who heard the cause or matter below unless the appellate court otherwise directs.

Any other order or judgment of an appellate court, when filed in the office of the clerk of the district court, shall automatically become the order or judgment of the district court and be entered as such by the said clerk without further order, except if such order or judgment of the appellate court requires further proceedings in the district court other than a new trial, an order shall be entered making the order or judgment of the appellate court the order or judgment of the district court.

RULE 35—Notice of Changes in Rules

No amendment shall be made by the court to any local rule which is identical with a rule of the United States District Court for the Southern [Eastern] District of New York and no additional rules, other than Calendar Rules, shall be adopted without prior notice of the proposed amendment or additions by the chief judge of this court to the chief judge of the United States District Court for the Southern [Eastern] District.



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