

Federal Rules of Civil Procedure

Rule 1. Scope and Purpose

1993 Amendments

The purpose of this revision, adding the words “and administered” to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

2007 Amendment

The language of Rule 1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The merger of law, equity, and admiralty practice is complete. There is no need to carry forward the phrases that initially accomplished the merger.

The former reference to “suits of a civil nature” is changed to the more modern “civil actions and proceedings.” This change does not affect such questions as whether the Civil Rules apply to summary proceedings created by statute. *See SEC v. McCarthy*, 322 F.3d 650 (9th Cir. 2003); *see also New Hampshire Fire Ins. Co. v. Scanlon*, 362 U.S. 404 (1960).

The Style Project

The Civil Rules are the third set of the rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure apply the same general drafting guidelines and principles used in restyling the Appellate and Criminal Rules.

1. General Guidelines

Guidance in drafting, usage, and style was provided by Bryan Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1996) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). *See also* Joseph Kimble, *Guiding Principles for Restyling the Civil Rules*, in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure*, at x (Feb. 2005) (available at http://www.uscourts.gov/rules/Prelim_draft_proposed_pt1.pdf).

2. Formatting Changes

Many of the changes in the restyled Civil Rules result from using format to achieve clearer presentation. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. “Hanging indents” are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rule 14(a) illustrates the benefits of formatting changes.

3. Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words

The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved without affecting meaning by the changes from “infant” in many rules to “minor” in all rules; from “upon motion or on its own initiative” in Rule 4(m) and variations in many other rules to “on motion or on its own”; and from “deemed” to “considered” in Rules 5(c), 12(e), and elsewhere. Some variations of expression have been carried forward when the context made that appropriate. As an example, “stipulate,” “agree,” and “consent” appear throughout the rules, and “written” qualifies these words in some places but not others. The number of variations has been reduced, but at times the former words were carried forward. None of the changes, when made, alters the rule’s meaning.

The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. The potential for confusion is exacerbated by the fact that “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant “intensifiers.” These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. “The court in its discretion may” becomes “the court may”; “unless the order expressly directs otherwise” becomes “unless the court orders otherwise.” The absence of intensifiers in the restyled rules does not change their substantive meaning. For example, the absence of the word “reasonable” to describe the written notice of foreign law required in Rule 44.1 does not mean that “unreasonable” notice is permitted.

The restyled rules also remove words and concepts that are outdated or redundant. The reference to “at law or in equity” in Rule 1 has become redundant with the merger of law and equity. Outdated words and

concepts include the reference to “demurrers, pleas, and exceptions” in Rule 7(c); the reference to “mesne” process in Rule 77(c); and the reference in Rule 81(f) to a now-abolished official position.

The restyled rules remove a number of redundant cross-references. For example, Rule 8(b) states that a general denial is subject to the obligations of Rule 11, but all pleadings are subject to Rule 11. Removing such cross-references does not defeat application of the formerly cross-referenced rule.

4. Rule Numbers

The restyled rules keep the same rule numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity. The only change that moves one part of a rule to another is the transfer of former Rule 25(d)(2) to Rule 17(d). The restyled rules include a comparison chart to make it easy to identify transfers of provisions between subdivisions and redesignations of some subdivisions.

5. Other Changes

The style changes to the rules are intended to make no changes in substantive meaning. A very small number of minor technical amendments that arguably do change meaning were approved separately from the restyled rules, but become effective at the same time. An example is adding “e-mail address” to the information that must be included in pleadings. These minor changes occur in Rules 4(k), 9(h), 11(a), 14(b), 16(c)(1), 26(g)(1), 30(b), 31, 40, 71.1, and 78.