DOCUMENT 174

(Superseding No. 167)

# THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

August, 1931.

## SUPREME COURT ADMIRALTY RULE 46½

On June 2, 1930, the Supreme Court of the United States promulgated the following amendment to the Admiralty Rules:

"October Term, 1929

"ORDER

"The rules of practice in admiralty heretofore promulgated by this Court (254 U. S. appendix) are amended by including therein a new rule numbered 46½ and reading as follows:

" 'In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record, and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rule 49.'

"This new rule shall become effective October 1, 1930." 281 U. S. 773.

In response to inquiries addressed to the Clerks of the District Courts in all the Districts which border the Oceans, the Gulf of Mexico and the Great Lakes, the following information has been collected as to the rules and statements which have been made to date by the Judges sitting in the various Districts:

### ALABAMA

There appears to be no rule or statement.

CALIFORNIA, NORTHERN DISTRICT

Mr. Walter B. Maling, Clerk, sends the following new Rules:

## ADMIRALTY RULES, N. D. CALIFORNIA

### *Rule 62 (New)*

FINDINGS

The provisions of General Rule 42 of this Court shall be applicable to the preparation and settlement of findings of fact and conclusions of law in cases of admiralty and maritime jurisdiction.

NOTE—This rule is enacted to bring the practice of this Court into conformity with Supreme Court Admiralty Rule 46½, effective October 1, 1930. In effect August 30, 1930.

## GENERAL RULES, N. D. CALIFORNIA

### *Rule 42*

FINDINGS

In actions at law in which a jury has been waived by written stipulation filed by the parties or by oral stipulation made in open court and entered in the record, it shall be in the discretion of the Court to make special findings of fact upon the issues raised by the pleadings. In suits in equity, findings of fact shall be made upon the issues raised by the pleadings, and the Court shall separately state its conclusions of law thereon.

In actions at law, where a request for special findings of fact is made and granted and in suits in equity, no judgment shall be entered until the findings and, in an equity suit, the conclusions of law, shall have been signed and filed or waived as hereinafter provided; but the rendition of the decision or opinion shall be deemed and considered, and shall be entered by the Clerk, as merely a preliminary order for judgment. Within five days after written notice of the decision, the prevailing party shall prepare a draft of the findings and, in an equity suit, of the conclusions of law, and deliver the same to the Clerk for the Judge and serve a copy thereof upon the adverse party who may, within five days thereafter, deliver to the Clerk and serve upon the adverse party such proposed amendments or additions as he may desire.

If the prevailing party fails to present such a draft as above provided, the adverse party may prepare a draft thereof and deliver the same to the Clerk for the Judge and serve a copy thereof on the prevailing party within five days thereafter.

The findings of fact and, where required, the conclusions of law, shall thereafter be settled by the Judge, and when so settled shall be engrossed within five days thereafter, and shall be then signed and filed. A failure to comply with the requirements of this rule may be deemed to be a waiver of findings by the party so failing.

Findings of fact must be of the ultimate facts in issue, as distinguished from conclusions of law on the one hand, and mere evidence on the other, and must cover all the material issues raised by the pleadings.

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NOTE—The amendments to Rule 42 are to bring it into conformity with 28 U. S. C. A. 773, as amended May 29, 1930 (46 Stat., c. 357), and with Supreme Court Equity Rule 70½, effective October 1, 1930.

In effect August 30, 1930.

## CALIFORNIA, SOUTHERN DISTRICT

Mr. R. S. Zimmerman, Clerk, advises that there is no local rule.

## CONNECTICUT

Mr. C. E. Pickett, Clerk, advises that there is no local rule.

## DELAWARE

Mr. H. C. Mahaffy, Jr., Clerk, writes:

"The court here has not yet adopted any local rule on that subject, nor under the corresponding Equity Rule No. 70½.

"In the few cases in Equity which we have had (we have had none in Admiralty), Judge Nields has requested counsel for the respective parties to file requests for findings of fact and conclusions of law. Just what the status of these requests will be when filed is a matter still undetermined. My present thought on the subject is that they should be marked filed by the Clerk, the filing noted on the docket, and the requests placed in the file of the case. Whether they technically become part of the pleadings, and whether error may be assigned to the failure of the court to make a specific finding, is a matter upon which I have grave doubt."

FLORIDA, SOUTHERN DISTRICT

Mr. Edwin R. Williams, Clerk, sends the following Rule:

"Rule conforming the practice in this district to accord with the Supreme Court Admiralty Rule No. 46½.

"*Admiralty Rule 55, S. D. Florida*

" 'When an admiralty case is submitted to the Court on final hearing counsel on each side shall file with the Court proposed written findings of fact and conclusions of law which are deemed by such counsel to cover the issues in the case.'

"The above rule was effective October 1, 1930."

GEORGIA

There appears to be no local rule.

LOUISIANA

Mr. Henry J. Carter, Clerk, advises that there is no local rule.

MAINE

Mr. John F. Knowlton, Clerk, advises that there is no local rule.

MARYLAND

Mr. Arthur L. Spamer, Clerk, writes:

"In reply to your request to be advised as to the authoritative text of any new rules in my District applying Supreme Court Admiralty Rule 46½, I beg to advise you that no such new rule has been adopted by our Court.

"For your information I might add that I understand the District Judges of the Fourth Circuit, at a meeting held in Asheville, North Carolina, in the early part of July, passed a resolution requesting the Senior Circuit Judge of the Fourth Circuit (Honorable John J. Parker), to present this question of further interpretation of Supreme Court Admiralty Rule 46½ to the next Council of the Senior Circuit Judges, and to endeavor to obtain through appropriate action of this Council an interpretative ruling from the Supreme Court at an early date.

"I might also add that pending the rendition of such a ruling our Court deems the filing of a written Opinion in which are included findings of fact and conclusions of law, a sufficient compliance with the new Supreme Court Admiralty Rule 46½."

MASSACHUSETTS

Mr. Frank H. Mason, Deputy Clerk, writes:

"Judge Morton directs me to inform you that this Court has made no calendar rule in connection with the new Admiralty Rule 46½, but that he himself has followed the practice recently stated by Judge Woolsey of requiring the prevailing party to prepare a statement of the findings and conclusions from the Opinion and submit same to the Court and when approved to be embodied in the appeal record under Rule 49."

MICHIGAN

There appears to be no local rule.

NEW JERSEY

Hon. Geo. T. Cranmer, Clerk, advises that there is no local rule.

NEW YORK, EASTERN AND SOUTHERN DISTRICTS

Messrs. Percy G. R. Gilkes and Charles Weiser, Clerks of these respective Districts, advise that the Judges have adopted a new rule, as follows:

*Admiralty Rule 42*

EFFECTIVE JULY 1, 1931

"In any cause in Admiralty the Court may, in its discretion, require from either or both parties, either before or after the announcement of the Court's decision, proposed findings of fact and conclusions of law, but unless adopted by the Court, such proposed findings of fact and conclusions of law shall not form any part of the record in the Court, and the Court's adoption of or failure to adopt any part thereof as the findings of fact and conclusions of law shall not be subject to any exception."

## New York, Northern and Western Districts

Miss May C. Sickmon and Mr. John W. Hahn, Clerks of these respective Districts, advise that there are no local rules.

## Ohio, Northern District

Mr. F. J. Denzler, Clerk, writes as follows:

> "I beg to advise that in the United States District Court for the Northern District of Ohio, we have no rule to supplement Supreme Court Admiralty Rule 46½, because we think it is not necessary. The rule, as promulgated by the Supreme Court, is, in my opinion, perfectly plain and its meaning clear. While some may think an opinion written or delivered by the judge complies with the rule, I do not so regard it.
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> "Our practice here has been to request counsel for the parties to agree upon findings and conclusions for submission to the Court, or to submit their respective drafts, if they cannot agree. In either event the Court corrects or modifies and then adopts and signs those which it conceives to represent and declare its judgment."

## Oregon

Mr. G. H. Marsh, Clerk, advises that there is no local rule.

## Pennsylvania, Eastern District

Mr. Leo A. Lilly, Deputy Clerk, states:

> "No rule has been made in this district concerning the practice to be followed in view of Supreme Court Rule 46½, which went into effect on October 1. It is not the practice here for counsel to file requests for findings of fact and conclusions of law. The judges on their own motion take notice of the admiralty rule in question and make such findings and conclusions as a matter of course."

RHODE ISLAND

There appears to be no local rule.

SOUTH CAROLINA, EASTERN DISTRICT

Mr. Richard W. Hutson, Clerk, writes:

"There is no specific rule in this District concerning the practice to be followed in view of Supreme Court Admiralty Rule 46½, nor has there been any statement by the Court relative thereto.

"Recently in the case of Graniteville Manufacturing Co., vs. Query, et al., as members of the South Carolina Tax Commission, arising in this District, the Court adverted to Supreme Court Equity Rule 70½ (which is the same as Admiralty Rule 46½). That was a three-Judge case under Section 266 of the Judicial Code, and all the facts were stipulated. The Court said, in substance, that it would seem unnecessary where all the facts were stipulated that the facts should be specially found and re-stated, but in order to remove any uncertainty, the Court stated that the Court specially found the facts as contained in the stipulation. District Judge Ernest F. Cochran delivered the Opinion, which was concurred in by Circuit Judge John J. Parker and Circuit Judge Elliott Northcott. The decision is published at 44 F. (2d) 64.

"I am sending you under separate cover, a copy of the new rules for this District, effective January 1st, 1931, which contain a number of Admiralty rules, but none specifically referring to the subject covered by Admiralty Rule 46½."

TEXAS, SOUTHERN DISTRICT

Mr. L. C. Masterson, Clerk, advises that there is no local rule.

VIRGINIA, EASTERN DISTRICT

Mr. C. L. Wright, Clerk, writes:

"This Court has not adopted a Rule of its own in connection with the new Rule of the Supreme Court, but the Court has and will follow the practice outlined in the new Rule of the Supreme Court."

WASHINGTON, WESTERN DISTRICT

There appears to be no local rule.

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The present situation as to local practice would seem to be covered by the foregoing statements.

ARNOLD W. KNAUTH,
*Secretary.*