

AMENDMENTS
TO
**Rules of Practice in
Admiralty and Maritime
Cases**

Adopted
by the
SUPREME COURT OF THE
UNITED STATES



APRIL 17, 1961

UNITED STATES
GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES.

WASHINGTON, D.C., *April 18, 1961.*

*To the Senate and House of Representatives of the
United States of America in Congress assembled:*

By direction of the Supreme Court, I have the honor to report to the Congress the attached amendments to the Rules of Practice in Admiralty and Maritime Cases for the Courts of the United States which have been adopted by the Supreme Court, pursuant to Title 28, U.S.C., Sec. 2073.

Accompanying these amendments is the Report of the Judicial Conference of the United States, submitted to the Court for its consideration pursuant to Title 28, U.S.C., Sec. 331.

Mr. Justice Douglas has filed the attached statement.

I am requested to state that Justice Black does not join in approval of the Rules because he believes that it would be better for Congress to act directly by legislation on the matters treated by the Rules.

Respectfully,

EARL WARREN,
Chief Justice of the United States.



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Supreme Court of the United States

October Term, 1960

The following order was adopted by the Supreme Court on April 17, 1961.

ORDER

Ordered: 1. That the Rules of Practice in Admiralty and Maritime Cases be, and they hereby are, amended by including therein Rules 30A, 30B, 30C, 30D, 30E, 30F, 30G, 32D, 58, 59, and 60, and amendments to Rules 32, 32B and 32C(e), as hereinafter set forth:

1 Rule 30A

2 DEPOSITIONS PENDING ACTION

3 (a) WHEN DEPOSITIONS MAY BE TAKEN.

4 Any party may take the testimony of any person,
5 including a party, by deposition upon oral
6 examination or written interrogatories for the
7 purpose of discovery or for use as evidence in the
8 action or for both purposes. After commence-
9 ment of the action the deposition may be taken
10 without leave of court, except that leave, granted
11 with or without notice, must be obtained if
12 notice of the taking is served by the plaintiff
13 within 20 days after commencement of the
14 action. The attendance of witnesses may be
15 compelled by the use of subpoena as provided in
16 Rule 32D. Depositions shall be taken only in
17 accordance with these rules, except that deposi-
18 tions may also be taken under and used in ac-
19 cordance with sections 863, 864, and 865 of the

20 Revised Statutes (see note preceding 28 U.S.C.
21 §1781). The deposition of a person confined in
22 prison may be taken only by leave of court on
23 such terms as the court prescribes.

24 (b) SCOPE OF EXAMINATION. Unless other-
25 wise ordered by the court as provided by rule
26 30E(b) or (d), the deponent may be examined
27 regarding any matter, not privileged, which is
28 relevant to the subject matter involved in the
29 pending action, whether it relates to the claim
30 or defense of the examining party or to the claim
31 or defense of any other party, including the
32 existence, description, nature, custody, condition
33 and location of any books, documents, or other
34 tangible things and the identity and location of
35 persons having knowledge of relevant facts. It
36 is not ground for objection that the testimony
37 will be inadmissible at the trial if the testimony
38 sought appears reasonably calculated to lead to
39 the discovery of admissible evidence.

40 (c) EXAMINATION AND CROSS-EXAMINATION.
41 Examination and cross-examination of deponents
42 may proceed as permitted at the trial under the
43 provisions of Rule 46A.

44 (d) USE OF DEPOSITIONS. At the trial or
45 upon the hearing of a motion or an interlocutory
46 proceeding, any part or all of a deposition, so
47 far as admissible under the rules of evidence,
48 may be used against any party who was present
49 or represented at the taking of a deposition or
50 who had due notice thereof, in accordance with
51 any one of the following provisions:

52 (1) Any deposition may be used by any party
53 for the purpose of contradicting or impeaching
54 the testimony of deponent as a witness.

55 (2) The deposition of a party or of any one
56 who at the time of taking the deposition was an
57 officer, director, or managing agent of a public or
58 private corporation, partnership, or association
59 which is a party may be used by an adverse
60 party for any purpose.

61 (3) The deposition of a witness, whether or
62 not a party, may be used by any party for any
63 purpose if the court finds: 1, that the witness is
64 dead; or 2, that the witness is at a greater dis-
65 tance than 100 miles from the place of trial or
66 hearing, or is out of the United States, unless
67 it appears that the absence of the witness was
68 procured by the party offering the deposition;
69 or 3, that the witness is unable to attend or
70 testify because of age, sickness, infirmity, or
71 imprisonment; or 4, that the party offering the
72 deposition has been unable to procure the
73 attendance of the witness by subpoena; or 5,
74 upon application and notice, that such excep-
75 tional circumstances exist as to make it desirable,
76 in the interest of justice and with due regard to
77 the importance of presenting the testimony of
78 witnesses orally in open court, to allow the
79 deposition to be used.

80 (4) If only part of a deposition is offered in
81 evidence by a party, an adverse party may
82 require him to introduce all of it which is relevant
83 to the part introduced, and any party may
84 introduce any other parts.

85 Substitution of parties does not affect the
86 right to use depositions previously taken; and,
87 when an action in any court of the United States
88 or of any state has been dismissed and another
89 action involving the same subject matter is

90 afterward brought between the same parties or
91 their representatives or successors in interest,
92 all depositions lawfully taken and duly filed in
93 the former action may be used in the latter as
94 if originally taken therefor.

95 (e) OBJECTIONS TO ADMISSIBILITY. Subject
96 to the provisions of Rule 30G(c), objection may
97 be made at the trial or hearing to receiving in
98 evidence any deposition or part thereof for any
99 reason which would require the exclusion of the
100 evidence if the witness were then present and
101 testifying.

102 (f) EFFECT OF TAKING OR USING DEPOSI-
103 TIONS. A party shall not be deemed to make a
104 person his own witness for any purpose by taking
105 his deposition. The introduction in evidence of
106 the deposition or any part thereof for any pur-
107 pose other than that of contradicting or impeach-
108 ing the deponent makes the deponent the witness
109 of the party introducing the deposition, but this
110 shall not apply to the use by an adverse party
111 of a deposition as described in paragraph (2) of
112 subdivision (d) of this rule. At the trial or
113 hearing any party may rebut any relevant
114 evidence contained in a deposition whether
115 introduced by him or by any other party.

1 Rule 30B

2 DEPOSITIONS BEFORE ACTION OR
3 PENDING APPEAL

4 (a) BEFORE ACTION.

5 (1) PETITION. A person who desires to per-
6 petuate his own testimony or that of another
7 person regarding any matter that may be

8 cognizable in any court of the United States
9 may file a verified petition in the United States
10 district court in the district of the residence of
11 any expected adverse party.

12 The petitioner shall be entitled in the name of
13 the petitioner and shall show: 1, that the
14 petitioner expects to be a party to an action
15 cognizable in a court of the United States but
16 is presently unable to bring it or cause it to be
17 brought, 2, the subject matter of the expected
18 action and his interest therein, 3, the facts
19 which he desires to establish by the proposed
20 testimony and his reasons for desiring to per-
21 petuate it, 4, the names or a description of the
22 persons he expects will be adverse parties and
23 their addresses so far as known, and 5, the
24 names and addresses of the persons to be
25 examined and the substance of the testimony
26 which he expects to elicit from each, and shall
27 ask for an order authorizing the petitioner to
28 take the depositions of the persons to be ex-
29 amined named in the petition, for the purpose
30 of perpetuating their testimony.

31 (2) NOTICE AND SERVICE. The petitioner
32 shall thereafter serve a notice upon each person
33 named in the petition as an expected adverse
34 party, together with a copy of the petition,
35 stating that the petitioner will apply to the
36 court, at a time and place named therein, for
37 the order described in the petition. At least 20
38 days before the date of hearing the notice shall
39 be served either within or without the district
40 or state in the manner provided in Rule 4(d)
41 of the Federal Rules of Civil Procedure for
42 service of summons; but if such service cannot

43 with due diligence be made upon any expected
44 adverse party named in the petition, the court
45 may make such order as is just for service by
46 publication or otherwise, and shall appoint, for
47 persons not served in the manner provided in
48 Rule 4(d) of the Federal Rules of Civil Pro-
49 cedure, an attorney who shall represent them,
50 and, in case they are not otherwise represented,
51 shall cross-examine the deponent. If any ex-
52 pected adverse party is a minor or incompetent
53 the provisions of Rule 17(c) of the Federal
54 Rules of Civil Procedure apply.

55 (3) ORDER AND EXAMINATION. If the court
56 is satisfied that the perpetuation of the testi-
57 mony may prevent a failure or delay of justice,
58 it shall make an order designating or describing
59 the persons whose depositions may be taken and
60 specifying the subject matter of the examination
61 and whether the depositions shall be taken upon
62 oral examination or written interrogatories.
63 The depositions may then be taken in accord-
64 ance with these rules, and the court may make
65 orders of the character provided for by Rules
66 32 and 32A. For the purpose of applying these
67 rules to depositions for perpetuating testimony,
68 each reference therein to the court in which the
69 action is pending shall be deemed to refer to the
70 court in which the petition for such deposition
71 was filed.

72 (4) USE OF DEPOSITION. If a deposition to
73 perpetuate testimony is taken under these rules
74 or if, although not so taken, it would be ad-
75 missible in evidence in the courts of the state
76 in which it is taken, it may be used in any
77 action involving the same subject matter sub-

78 sequently brought in a United States district
79 court, in accordance with the provisions of Rule
80 30A(d).

81 (b) PENDING APPEAL. If an appeal has been
82 taken from a judgment of a district court or
83 before the taking of an appeal if the time therefor
84 has not expired, the district court in which the
85 judgment was rendered may allow the taking
86 of the depositions of witnesses to perpetuate their
87 testimony for use in the event of further pro-
88 ceedings in the district court. In such case
89 the party who desires to perpetuate the testi-
90 mony may make a motion in the district court
91 for leave to take the depositions, upon the same
92 notice and service thereof as if the action was
93 pending in the district court. The motion shall
94 show (1) the names and addresses of persons
95 to be examined and the substance of the testi-
96 mony which he expects to elicit from each; (2)
97 the reasons for perpetuating their testimony.
98 If the court finds that the perpetuation of the
99 testimony is proper to avoid a failure or delay
100 of justice, it may make an order allowing the
101 depositions to be taken and may make orders
102 of the character provided for by Rules 32 and
103 32A, and thereupon the depositions may be
104 taken and used in the same manner and under
105 the same conditions as are prescribed in these
106 rules for depositions taken in actions pending
107 in the district court.

108 (c) PERPETUATION BY ACTION. This rule
109 does not limit the power of a court to entertain
110 an action to perpetuate testimony.

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Rule 30C

2

PERSONS BEFORE WHOM DEPOSITIONS

3

MAY BE TAKEN

4

(a) WITHIN THE UNITED STATES. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

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(b) IN FOREIGN COUNTRIES. In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in [here name the country]".

30

(c) DISQUALIFICATION FOR INTEREST. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee

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33

34 of such attorney or counsel, or is financially
35 interested in the action.

1 Rule 30D

2 STIPULATIONS REGARDING THE
3 TAKING OF DEPOSITIONS

4 If the parties so stipulate in writing, deposi-
5 tions may be taken before any person, at any
6 time or place, upon any notice, and in any
7 manner and when so taken may be used like
8 other depositions.

1 Rule 30E

2 DEPOSITIONS UPON ORAL
3 EXAMINATION

4 (a) NOTICE OF EXAMINATION: TIME AND
5 PLACE. A party desiring to take the deposition
6 of any person upon oral examination shall give
7 reasonable notice in writing to every other party
8 to the action. The notice shall state the time and
9 place for taking the deposition and the name and
10 address of each person to be examined, if known,
11 and, if the name is not known, a general descrip-
12 tion sufficient to identify him or the particular
13 class or group to which he belongs. On motion
14 of any party upon whom the notice is served, the
15 court may for cause shown enlarge or shorten the
16 time.

17 (b) ORDERS FOR THE PROTECTION OF PARTIES
18 AND DEPONENTS. After notice is served for tak-
19 ing a deposition by oral examination, upon mo-
20 tion seasonably made by any party or by the per-
21 son to be examined and upon notice and for good
22 cause shown, the court in which the action is

23 pending may make an order that the deposition
24 shall not be taken, or that it may be taken only
25 at some designated place other than that stated
26 in the notice, or that it may be taken only on
27 written interrogatories, or that certain matters
28 shall not be inquired into, or that the scope of the
29 examination shall be limited to certain matters,
30 or that the examination shall be held with no one
31 present except the parties to the action and their
32 officers or counsel, or that after being sealed the
33 deposition shall be opened only by order of the
34 court, or that secret processes, developments, or
35 research need not be disclosed, or that the parties
36 shall simultaneously file specified documents or
37 information enclosed in sealed envelopes to be
38 opened as directed by the court; or the court may
39 make any other order which justice requires to
40 protect the party or witness from annoyance,
41 embarrassment, or oppression.

42 (c) RECORD OF EXAMINATION; OATH; OBJEC-
43 TIONS. The Officer before whom the deposition
44 is to be taken shall put the witness on oath and
45 shall personally, or by some one acting under
46 his direction and in his presence, record the testi-
47 mony of the witness. The testimony shall be
48 be taken stenographically and transcribed unless
49 the parties agree otherwise. All objections made
50 at the time of the examination to the qualifica-
51 tions of the officer taking the deposition, or to the
52 manner of taking it, or to the evidence presented,
53 or to the conduct of any party, and any other
54 objection to the proceedings, shall be noted by
55 the officer upon the deposition. Evidence ob-
56 jected to shall be taken subject to the objections.
57 In lieu of participating in the oral examination,

58 parties served with notice of taking a deposition
59 may transmit written interrogatories to the
60 officer, who shall propound them to the witness
61 and record the answers verbatim.

62 (d) MOTION TO TERMINATE OR LIMIT EXAMI-
63 NATION. At any time during the taking of the
64 deposition, on motion of any party or of the
65 deponent and upon a showing that the examina-
66 tion is being conducted in bad faith or in such
67 manner as unreasonably to annoy, embarrass, or
68 oppress the deponent or party, the court in which
69 the action is pending or the court in the district
70 where the deposition is being taken may order
71 the officer conducting the examination to cease
72 forthwith from taking the deposition, or may
73 limit the scope and manner of the taking of the
74 deposition as provided in subdivision (b). If
75 the order made terminates the examination, it
76 shall be resumed thereafter only upon the order
77 of the court in which the action is pending. Upon
78 demand of the objecting party or deponent, the
79 taking of the deposition shall be suspended for
80 the time necessary to make a motion for an
81 order. In granting or refusing such order the
82 court may impose upon either party or upon the
83 witness the requirement to pay such costs or
84 expenses as the court may deem reasonable.

85 (e) SUBMISSION TO WITNESS; CHANGES; SIGN-
86 ING. When the testimony is fully transcribed
87 the deposition shall be submitted to the witness
88 for examination and shall be read to or by him,
89 unless such examination and reading are waived
90 by the witness and by the parties. Any changes
91 in form or substance which the witness desires
92 to make shall be entered upon the deposition by

93 the officer with a statement of the reasons given
94 by the witness for making them. The deposi-
95 tion shall then be signed by the witness, unless
96 the parties by stipulation waive the signing or
97 the witness is ill or cannot be found or refuses
98 to sign. If the deposition is not signed by the
99 witness, the officer shall sign it and state on the
100 record the fact of the waiver or of the illness or
101 absence of the witness or the fact of the refusal
102 to sign together with the reason, if any, given
103 therefor; and the deposition may then be used
104 as fully as though signed, unless on a motion to
105 suppress under Rule 30G(d) the court holds
106 that the reasons given for the refusal to sign
107 require rejection of the deposition in whole or in
108 part.

109 (f) CERTIFICATION AND FILING BY OFFICER;
110 COPIES; NOTICE OF FILING.

111 (1) The officer shall certify on the deposition
112 that the witness was duly sworn by him and
113 that the deposition is a true record of the testi-
114 mony given by the witness. He shall then
115 securely seal the deposition in an envelope in-
116 dorsed with the title of the action and marked
117 "Deposition of [here insert name of witness]"
118 and shall promptly file it with the court in
119 which the action is pending or send it by regis-
120 tered mail to the clerk thereof for filing.

121 (2) Upon payment of reasonable charges
122 therefor, the officer shall furnish a copy of the
123 deposition to any party or to the deponent.

124 (3) The party taking the deposition shall give
125 prompt notice of its filing to all other parties.

126 (g) FAILURE TO ATTEND OR TO SERVE SUB-
127 POENA; EXPENSES.

128 (1) If the party giving the notice of the taking
129 of a deposition fails to attend and proceed
130 therewith and another party attends in person
131 of by attorney pursuant to the notice, the court
132 may order the party giving the notice to pay to
133 such other party the amount of the reasonable
134 expenses incurred by him and his attorney in so
135 attending, including reasonable attorney's fees.

136 (2) If the party giving the notice of the taking
137 of a deposition of a witness fails to serve a
138 subpoena upon him and the witness because of
139 such failure does not attend, and if another
140 party attends in person or by attorney because
141 he expects the deposition of that witness to be
142 taken, the court may order the party giving the
143 notice to pay to such other party the amount of
144 the reasonable expenses incurred by him and
145 his attorney in so attending, including reasonable
146 attorney's fees.

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Rule 30F

2 DEPOSITIONS OF WITNESSES UPON 3 WRITTEN INTERROGATORIES

4 (a) SERVING INTERROGATORIES; NOTICE. A
5 party desiring to take the deposition of any
6 person upon written interrogatories shall serve
7 them upon every other party with a notice
8 stating the name and address of the person who
9 is to answer them and the name or descriptive
10 title and address of the officer before whom the
11 deposition is to be taken. Within 10 days
12 thereafter a party so served may serve cross
13 interrogatories upon the party proposing to

14 take the deposition. Within 5 days thereafter
15 the latter may serve redirect interrogatories
16 upon a party who has served cross interrogatories.
17 Within 3 days after being served with redirect
18 interrogatories, a party may serve recross inter-
19 rogatories upon the party proposing to take the
20 deposition.

21 (b) OFFICER TO TAKE RESPONSES AND PRE-
22 PARE RECORD. A copy of the notice and
23 copies of all interrogatories served shall be
24 delivered by the party taking the deposition to
25 the officer designated in the notice, who shall
26 proceed promptly, in the manner provided by
27 Rule 30E (c), (e), and (f), to take the testi-
28 mony of the witness in response to the inter-
29 rogatories and to prepare, certify, and file or
30 mail the deposition, attaching thereto the copy
31 of the notice and the interrogatories received
32 by him.

33 (c) NOTICE OF FILING. When the deposition
34 is filed the party taking it shall promptly give
35 notice thereof to all other parties.

36 (d) ORDERS FOR THE PROTECTION OF PARTIES
37 AND DEONENTS. After the service of inter-
38 rogatories and prior to the taking of the testi-
39 mony of the deponent, the court in which the
40 action is pending, on motion promptly made by
41 a party or a deponent, upon notice and good
42 cause shown, may make any order specified in
43 Rule 30E which is appropriate and just or
44 an order that the deposition shall not be taken
45 before the officer designated in the notice or
46 that it shall not be taken except upon oral
47 examination.

1

Rule 30G

2

EFFECT OF ERRORS AND IRREGULARI-
TIES IN DEPOSITIONS

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4 (a) AS TO NOTICE. All errors and irregulari-
5 ties in the notice for taking a deposition are
6 waived unless written objection is promptly
7 served upon the party giving the notice.

8 (b) AS TO DISQUALIFICATION OF OFFICER.
9 Objection to taking a deposition because of
10 disqualification of the officer before whom it is
11 to be taken is waived unless made before the
12 taking of the depositions begins or as soon
13 thereafter as the disqualification becomes known
14 or could be discovered with reasonable diligence.

15 (c) AS TO TAKING OF DEPOSITION.

16 (1) Objections to the competency of a witness
17 or to the competency, relevancy, or materiality
18 of testimony are not waived by failure to make
19 them before or during the taking of the deposi-
20 tion, unless the ground of the objection is one
21 which might have been obviated or removed if
22 presented at that time.

23 (2) Errors and irregularities occurring at the
24 oral examination in the manner of taking the
25 deposition, in the form of the questions or
26 answers, in the oath or affirmation, or in the
27 conduct of parties and errors of any kind which
28 might be obviated, removed, or cured if promptly
29 presented, are waived unless seasonable objection
30 thereto is made at the taking of the deposition.

31 (3) Objections to the form of written inter-
32 rogatories submitted under Rule 30F are waived
33 unless served in writing upon the party pro-
34 pounding them within the time allowed for

35 serving the succeeding cross or other interroga-
36 tories and within 3 days after service of the last
37 interrogatories authorized.

38 (d) AS TO COMPLETION AND RETURN OF
39 DEPOSITION. Errors and irregularities in the
40 manner in which the testimony is transcribed or
41 the deposition is prepared, signed, certified,
42 sealed, indorsed, transmitted, filed, or otherwise
43 dealt with by the officer under Rules 30E and
44 30F are waived unless a motion to suppress the
45 deposition or some part thereof is made with
46 reasonable promptness after such defect is, or
47 with due diligence might have been, ascertained.

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Rule 32D

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SUBPOENA

3 (a) FOR ATTENDANCE OF WITNESSES; FORM;
4 ISSUANCE. Every subpoena shall be issued
5 by the clerk under the seal of the court, shall
6 state the name of the court and the title of
7 the action, and shall command each person to
8 whom it is directed to attend and give testimony
9 at a time and place therein specified. The clerk
10 shall issue a subpoena, or a subpoena for the
11 production of documentary evidence, signed and
12 sealed but otherwise in blank, to a party re-
13 questing it, who shall fill it in before service.

14 (b) FOR PRODUCTION OF DOCUMENTARY EVI-
15 DENCE. A subpoena may also command the
16 person to whom it is directed to produce the
17 books, papers, documents, or tangible things
18 designated therein; but the court, upon motion
19 made promptly and in any event at or before the
20 time specified in the subpoena for compliance

21 therewith, may (1) quash or modify the sub-
22 poena if it is unreasonable and oppressive or
23 (2) condition denial of the motion upon the
24 advancement by the person in whose behalf the
25 subpoena is issued of the reasonable cost of
26 producing the books, papers, documents, or
27 tangible things.

28 (c) SERVICE. A subpoena may be served by
29 the marshal, by his deputy, or by any other
30 person who is not a party and is not less than
31 18 years of age. Service of a subpoena upon
32 a person named therein shall be made by deliver-
33 ing a copy thereof to such person and by tender-
34 ing to him the fees for one day's attendance and
35 the mileage allowed by law. When the sub-
36 poena is issued on behalf of the United States
37 or an officer or agency thereof, fees and mileage
38 need not be tendered.

39 (d) SUBPOENA FOR TAKING DEPOSITIONS;
40 PLACE OF EXAMINATION.

41 (1) Proof of service of a notice to take a depo-
42 sition as provided in Rules 30E(a) and 30F(a)
43 constitutes a sufficient authorization for the
44 issuance by the clerk of the district court for
45 the district in which the deposition is to be
46 taken of subpoenas for the persons named or
47 described therein. The subpoena may com-
48 mand the person to whom it is directed to
49 produce designated books, papers, documents,
50 or tangible things which constitute or contain
51 evidence relating to any of the matters within
52 the scope of the examination permitted by
53 Rule 30A(b), but in that event the subpoena
54 will be subject to the provisions of subdivision

55 (b) of Rule 30E and subdivision (b) of this
56 Rule 32D.

57 (2) A resident of the district in which the
58 deposition is to be taken may be required to
59 attend an examination only in the county
60 wherein he resides or is employed or transacts
61 his business in person, or at such other con-
62 venient place as is fixed by an order of court.
63 A nonresident of the district may be required
64 to attend only in the county wherein he is
65 served with a subpoena, or within 40 miles from
66 the place of service, or at such other convenient
67 place as is fixed by an order of court.

68 (e) SUBPOENA FOR A HEARING OR TRIAL.

69 (1) At the request of any party subpoenas
70 for attendance at a hearing or trial shall be
71 issued by the clerk of the district court for the
72 district in which the hearing or trial is held. A
73 subpoena requiring the attendance of a witness
74 at a hearing or trial may be served at any place
75 within the district, or at any place without the
76 district that is within 100 miles of the place of
77 the hearing or trial specified in the subpoena;
78 and, when a statute of the United States provides
79 therefor, the court upon proper application and
80 cause shown may authorize the service of a
81 subpoena at any other place.

82 (2) A subpoena directed to a witness in a
83 foreign country shall issue under the circum-
84 stances and in the manner and be served as
85 provided in Title 28, U.S.C., § 1783.

86 (f) CONTEMPT. Failure by any person with-
87 out adequate excuse to obey a subpoena served

88 upon him may be deemed a contempt of the
89 court from which the subpoena issued.

1 Rule 32

2 DISCOVERY AND PRODUCTION OF
3 DOCUMENTS AND THINGS FOR IN-
4 SPECTION, COPYING, OR PHOTO-
5 GRAPHING

6 Upon motion of any party showing good
7 cause therefor and upon notice to all other
8 parties, and subject to the provisions of Rule
9 30E(b), the court in which an action is pending
10 may (1) order any party to produce and permit
11 the inspection and copying or photographing,
12 by or on behalf of the moving party, of any
13 designated documents, papers, books, accounts,
14 letters, photographs, objects, or tangible things,
15 not privileged, which constitute or contain
16 evidence relating to any of the matters within
17 the scope of the examination permitted by Rule
18 30A(b) and which are in his possession, custody,
19 or control; or (2) order any party to permit
20 entry upon designated land or other property
21 in his possession or control for the purpose of
22 inspecting, measuring, surveying, or photograph-
23 ing the property or any designated relevant
24 object or operation thereon within the scope of
25 the examination permitted by Rule 30A(b).
26 The order shall specify the time, place, and
27 manner of making the inspection and taking the
28 copies and photographs and may prescribe such
29 terms and conditions as are just.

1

Rule 32B

2

ADMISSION OF FACTS AND OF GENU-
3 INENESS OF DOCUMENTS

3

4 (a) REQUEST FOR ADMISSION. After com-
5 mencement of an action a party may serve upon
6 any other party a written request for the admis-
7 sion by the latter of the genuineness of any
8 relevant documents described in and exhibited
9 with the request or of the truth of any relevant
10 matters of fact set forth in the request. If a
11 plaintiff desires to serve a request within 10
12 days after commencement of the action leave
13 of court, granted with or without notice, must
14 be obtained. Copies of the documents shall be
15 served with the request unless copies have
16 already been furnished. Each of the matters
17 of which an admission is requested shall be
18 deemed admitted unless, within a period desig-
19 nated in the request, not less than 10 days after
20 service thereof or within such shorter or longer
21 time as the court may allow on motion and
22 notice, the party to whom the request is directed
23 serves upon the party requesting the admission
24 either (1) a sworn statement denying specifically
25 the matters of which an admission is requested
26 or setting forth in detail the reasons why he can-
27 not truthfully admit or deny those matters or (2)
28 written objections on the ground that some or
29 all of the requested admissions are privileged
30 or irrelevant or that the request is otherwise
31 improper in whole or in part, together with a
32 notice of hearing the objections at the earliest
33 practicable time. If written objections to a
34 part of the request are made, the remainder of

35 the request shall be answered within the period
 36 designated in the request. A denial shall fairly
 37 meet the substance of the requested admission,
 38 and when good faith requires that a party deny
 39 only a part or a qualification of a matter of which
 40 an admission is requested, he shall specify so
 41 much of it as is true and deny only the remainder.

42 (b) EFFECT OF ADMISSION. Any admission
 43 made by a party pursuant to such request is
 44 for the purpose of the pending action only and
 45 neither constitutes an admission by him for any
 46 other purpose nor may be used against him in
 47 any other proceeding.

1

Rule 32C

2

REFUSAL TO MAKE DISCOVERY:
CONSEQUENCES

3

* * * * *

4 (e) FAILURE TO RESPOND TO LETTERS ROG-
 5 ATORY. A subpoena may be issued as provided
 6 in Title 28 U.S.C., § 1783, under the circum-
 7 stances and conditions therein stated.

* * * * *

1

Rule 58

2

SUMMARY JUDGMENT

3 (a) FOR CLAIMANT. A party seeking to re-
 4 cover upon a claim, counterclaim, or cross-
 5 claim or to obtain a declaratory judgment may,
 6 at any time after the expiration of 20 days from
 7 the commencement of the action or after service
 8 of a motion for summary judgment by the
 9 adverse party, move with or without supporting
 10 affidavits for a summary judgment in his favor
 11 upon all or any part thereof.

12 (b) FOR DEFENDING PARTY. A party against
13 whom a claim, counterclaim, or cross-claim is
14 asserted or a declaratory judgment is sought
15 may, at any time, move with or without sup-
16 porting affidavits for a summary judgment in
17 his favor as to all or any part thereof.

18 (c) MOTION AND PROCEEDINGS THEREON.
19 The motion shall be served at least 10 days
20 before the time fixed for the hearing. The
21 adverse party prior to the day of hearing may
22 serve opposing affidavits. The judgment sought
23 shall be rendered forthwith if the pleadings,
24 depositions, and admissions on file, together with
25 the affidavits, if any, show that there is no
26 genuine issue as to any material fact and that the
27 moving party is entitled to a judgment as a
28 matter of law. A summary judgment, inter-
29 locutory in character, may be rendered on the
30 issue of liability alone although there is a genuine
31 issue as to the amount of damages.

32 (d) CASE NOT FULLY ADJUDICATED ON
33 MOTION. If on motion under this rule judgment
34 is not rendered upon the whole case or for all the
35 relief asked and a trial is necessary, the court at
36 the hearing of the motion, by examining the
37 pleadings and the evidence before it and by
38 interrogating counsel, shall if practicable ascer-
39 tain what material facts exist without substantial
40 controversy and what material facts are actually
41 and in good faith controverted. It shall there-
42 upon make an order specifying the facts that
43 appear without substantial controversy, includ-
44 ing the extent to which the amount of damages
45 or other relief is not in controversy, and directing
46 such further proceedings in the action as are

47 just. Upon the trial of the action the facts so
48 specified shall be deemed established, and the
49 trial shall be conducted accordingly.

50 (e) FORM OF AFFIDAVITS; FURTHER TESTI-
51 MONY. Supporting and opposing affidavits shall
52 be made on personal knowledge, shall set forth
53 such facts as would be admissible in evidence,
54 and shall show affirmatively that the affiant is
55 competent to testify to the matters stated
56 therein. Sworn or certified copies of all papers
57 or parts thereof referred to in an affidavit shall be
58 attached thereto or served therewith. The
59 court may permit affidavits to be supplemented
60 or opposed by depositions or by further affidavits.

61 (f) WHEN AFFIDAVITS ARE UNAVAILABLE.
62 Should it appear from the affidavits of a party
63 opposing the motion that he cannot for reasons
64 stated present by affidavit facts essential to
65 justify his opposition, the court may refuse the
66 application for judgment or may order a con-
67 tinuance to permit affidavits to be obtained or
68 depositions to be taken or discovery to be had or
69 may make such other order as is just.

70 (g) AFFIDAVITS MADE IN BAD FAITH. Should
71 it appear to the satisfaction of the court at any
72 time that any of the affidavits presented pur-
73 suant to this rule are presented in bad faith or
74 solely for the purpose of delay, the court shall
75 forthwith order the party employing them to pay
76 to the other party the amount of the reasonable
77 expenses which the filing of the affidavits caused
78 him to incur, including reasonable attorney's
79 fees, and any offending party or attorney may be
80 adjudged guilty of contempt.

1

Rule 59

2

DECLARATORY JUDGMENTS

3 The procedure for obtaining a declaratory
4 judgment pursuant to Title 28 U.S.C., § 2201,
5 shall be in accordance with these rules, and the
6 right to trial by jury may be demanded under the
7 circumstances and in the manner provided in
8 Rules 38 and 39 of the Federal Rules of Civil
9 Procedure. The existence of another adequate
10 remedy does not preclude a judgment for de-
11 claratory relief in cases where it is appropriate.
12 The Court may order a speedy hearing of an
13 action for a declaratory judgment and may
14 advance it on the calendar.

1

Rule 60

2

EFFECTIVE DATES OF AMENDMENTS

3 (a) The amendments adopted by the Supreme
4 Court on April 17, 1961, and reported to the
5 Congress on April 18, 1961, shall take effect on
6 July 19, 1961. They are applicable to all pro-
7 ceedings in suits brought after they take effect
8 and also to all further proceedings in suits then
9 pending, except to the extent that in the opinion
10 of the court their application in a particular suit
11 pending when the amendments take effect would
12 not be feasible or would work injustice, in which
13 event the former procedure applies.

14 (b) Depositions taken prior to July 20, 1960,
15 which would have been authorized if Rules 30A
16 through 30G had been in force at the time such
17 depositions were taken, and any depositions
18 heretofore taken by consent of the parties, may

19 be used for any of the purposes specified in
20 Rule 30A(d).

2. That the Chief Justice be authorized to transmit these amendments to Congress in accordance with the provisions of Title 28, U.S.C., Sec. 2073.

3. Mr. Justice Black does not join in approval of the Rules because he believes that it would be better for Congress to act directly by legislation on the matters treated by the Rules.

4. Mr. Justice Douglas filed the following statement:

I concur in the amendments proposed to the *Rules of Practice in Admiralty and Maritime Cases*. These amendments reflect a continuing need for discovery which the Court in *Miner v. Atlass*, 363 U.S. 641, found absent from existing admiralty procedures. The Rules, as proposed, seem to me to be admirably suited for the purposes stated.

EARL WARREN,

Chief Justice of the United States.

Dated this 17th day of April, 1961.

**REPORT OF PROPOSED NEW
AND AMENDED**

**Rules of Practice in
Admiralty and Maritime
Cases**

SUBMITTED
by the
**JUDICIAL CONFERENCE OF THE
UNITED STATES**



MARCH 1961

**U. S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1951**



REPORT
of the
Judicial Conference of the United States

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, there is herewith presented to the Court for its consideration proposed new and amended Rules of Practice in Admiralty and Maritime Cases which received the approval of the Conference at its session on March 13-14, 1961.

The proposed new rules and amendments to existing rules are intended to meet the situation resulting from the recent decision of the Supreme Court in *Miner v. Atlass*, 363 U.S. 641, holding invalid Rule 32 of the Admiralty Rules of the United States District Court for the Northern District of Illinois, which provided that the "taking and use of depositions of parties and witnesses shall be governed by the Federal Rules of Civil Procedure . . ." The effect of the decision was to invalidate the practice of taking depositions in admiralty substantially in accordance with the Civil Rules in some sixteen districts. At the same time, the Court called upon the Judicial Conference and the Advisory Committee on Admiralty Rules to give "early attention" to the question whether the Rules of

Practice in Admiralty and Maritime Cases should be amended to provide for discovery depositions in admiralty, stressing the importance of ascertaining experience with such practice in the districts in which it had prevailed (363 U.S. at 651-652).

Pursuant to the Court's invitation and the request of the standing Committee on Rules of Practice and Procedure, the Advisory Committee on Admiralty Rules undertook an extensive inquiry into the experience of lawyers and judges with discovery depositions in admiralty in the districts in which the practice had been followed. In addition, inquiries were made of members of the admiralty bar in districts in which the practice had been followed, if at all, only by stipulation of the parties, in order to ascertain sentiment as to the need for and desirability of authorization of such practice. The report of the Advisory Committee states:

"The results of these inquiries overwhelmingly showed that experience with discovery depositions in admiralty in the districts where the practice had been in use had been satisfactory, and that lawyers in those districts strongly recommended amendment of the Rules of Practice in Admiralty and Maritime Cases to establish the practice in admiralty substantially in accordance with the relevant Civil Rules. In addition, many lawyers in districts in which the practice had not been available reported consequent inconvenience in the preparation and trial of cases, and a substantial majority recommended authorization of the practice in substantial conformity to the Civil Rules.

“On the basis of these investigations and of its own independent consideration of the matter, the Advisory Committee has determined to recommend amendment of the Rules of Practice in Admiralty and Maritime Cases to provide for discovery substantially in accordance with the Civil Rules. It is evident that in the opinion of all but a few admiralty practitioners discovery depositions are a most beneficial feature of modern practice, and that no substantial reason exists why the practice should not be available in admiralty as well as in civil cases. Moreover, it is generally recognized, and the Advisory Committee recognizes, that so far as possible it is desirable to maintain uniformity in the discovery practice as between civil and admiralty cases, since differences based on unsubstantial differences in the two types of cases are likely to cause confusion and misunderstanding.

“This is not to say that the Civil Rules on discovery are perfect. Complaints have been received of abuses, and various recommendations have been made as to how the rules might be improved. However, the decision in *Miner v. Atlass* brought about what may fairly be regarded as an emergency situation. It is the judgment of the Advisory Committee that action should be taken with all deliberate speed to restore the *status quo ante* in the sixteen districts most directly affected, and to extend the practice to all districts. Thereafter the Committee will proceed to study improvement of the rules in collaboration with the Advisory Committee on Rules of Civil Procedure.

“At the same time, the Advisory Committee on Admiralty Rules has reviewed the entire matter of discovery procedure in admiralty and some possible collateral effects on admiralty practice of the decision in *Miner v. Atlass*. It has determined that certain admiralty rules relating to discovery, originally borrowed from the Civil Rules, should be amended to correspond with the Civil Rules as they have been amended; and it has concluded that the Civil Rules on summary judgment and declaratory judgment should be incorporated into the admiralty rules in order to make those procedures generally available in admiralty, and to remove any doubts as to their availability in districts in which local rules or decisions have made them available.

“In some respects, which are pointed out in the explanatory notes, the discovery practice in admiralty will differ from that in civil cases even after the effective date of the proposed amendments. These differences are believed to be justified, at least temporarily, because (1) retaining them serves to restore the admiralty practice to the conditions existing prior to *Miner v. Atlass* in the districts where discovery depositions were authorized, and (2) certain features of the practice have deep roots in traditional admiralty practice. The Committee hopes that a comprehensive study of the whole subject of discovery in collaboration with the Advisory Committee on Rules of Civil Procedure may result in completely uniform rules on that subject, and that in this fashion traditional admiralty practice may contribute to improvement

in the rules of civil practice. In the meantime, while in the interest of uniformity postponing consideration of some proposals having substantial support among members of the admiralty bar, the Committee believes that certain features of the traditional admiralty practice should be preserved."

The proposed Rules 30A, 30B, 30C, 30D, 30E, 30F, 30G, 32D, 58, 59 and 60, and amendments to Rules 32, 32B and 32C(e), together with explanatory notes prepared by the Advisory Committee, were submitted to the standing Committee and widely distributed to the bench, bar, and the law schools. Comments and suggestions were received in due time and were carefully examined by the Admiralty Committee. They were overwhelmingly favorable and required no changes in the amendments as drafted, but certain clarifying changes were made in the notes accompanying the proposed amendments.

Respectfully submitted,

WARREN OLNEY III,

Director,

Administrative Office of the United States Courts.

MARCH 29, 1961



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Peyton Ford	Bernard G. Segal
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Proposed New and Amended Rules of Practice in Admiralty and Maritime Cases

I

Rules Necessary To Authorize Discovery Depositions in Admiralty and To Conform the Discovery Practice in Admiralty to That in Civil Cases, as Nearly as May Be

PRELIMINARY NOTE

The Judicial Conference of the United States recommends that the Rules of Practice in Admiralty and Maritime Cases be amended by adding eight new rules, as follows:

Rule 30A, corresponding to FRCP 26.

Rule 30B, corresponding to FRCP 27.

Rule 30C, corresponding to FRCP 28.

Rule 30D, corresponding to FRCP 29.

Rule 30E, corresponding to FRCP 30.

Rule 30F, corresponding to FRCP 31.

Rule 30G, corresponding to FRCP 32.

Rule 32D, corresponding to FRCP 45.

The proposed rules are printed below in such a way as to show as stricken ~~thus~~ the matter in the corresponding Civil Rules which is not to be included, and by underlining thus the matter not in the Civil Rules which is to be included.

1

Rule 26 30A

2

DEPOSITIONS PENDING ACTION

3

(a) ~~WHEN~~ DEPOSITIONS MAY BE TAKEN.

4

Any party may take the testimony of any person,

5

including a party, by deposition upon oral

6 examination or written interrogatories for the
7 purpose of discovery or for use as evidence in the
8 action or for both purposes. After commence-
9 ment of the action the deposition may be taken
10 without leave of court, except that leave, granted
11 with or without notice, must be obtained if
12 notice of the taking is served by the plaintiff
13 within 20 days after commencement of the
14 action. The attendance of witnesses may be
15 compelled by the use of subpoena as provided in
16 Rule 45 32D. Depositions shall be taken only
17 in accordance with these rules, except that
18 depositions may also be taken under and used in
19 accordance with sections 863, 864, and 865 of the
20 Revised Statutes (see note preceding 28 U.S.C.
21 §1781). The deposition of a person confined in
22 prison may be taken only by leave of court on
23 such terms as the court prescribes.

24 (b) SCOPE OF EXAMINATION. Unless other-
25 wise ordered by the court as provided by Rule
26 ~~30(b)~~ or ~~(d)~~ 30E(b) or (d), the deponent may
27 be examined regarding any matter, not privi-
28 leged, which is relevant to the subject matter
29 involved in the pending action, whether it
30 relates to the claim or defense of the examining
31 party or to the claim or defense of any other
32 party, including the existence, description, na-
33 ture, custody, condition and location of any
34 books, documents, or other tangible things and
35 the identity and location of persons having
36 knowledge of relevant facts. It is not ground
37 for objection that the testimony will be inadmis-
38 sible at the trial if the testimony sought appears
39 reasonably calculated to lead to the discovery
40 of admissible evidence.

41 (c) EXAMINATION AND CROSS-EXAMINATION.
42 Examination and cross-examination of deponents
43 may proceed as permitted at the trial under the
44 provisions of Rule ~~43(b)~~ 46A.

45 (d) USE OF DEPOSITIONS. At the trial or
46 upon the hearing of a motion or an interlocutory
47 proceeding, any part or all of a deposition, so
48 far as admissible under the rules of evidence,
49 may be used against any party who was present
50 or represented at the taking of the deposition or
51 who had due notice thereof, in accordance with
52 any one of the following provisions:

53 (1) Any deposition may be used by any party
54 for the purpose of contradicting or impeaching
55 the testimony of deponent as a witness.

56 (2) The deposition of a party or of any one
57 who at the time of taking the deposition was an
58 officer, director, or managing agent of a public or
59 private corporation, partnership, or association
60 which is a party may be used by an adverse
61 party for any purpose.

62 (3) The deposition of a witness, whether or
63 not a party, may be used by any party for any
64 purpose if the court finds: 1, that the witness is
65 dead; or 2, that the witness is at a greater dis-
66 tance than 100 miles from the place of trial or
67 hearing, or is out of the United States, unless
68 it appears that the absence of the witness was
69 procured by the party offering the deposition;
70 or 3, that the witness is unable to attend or
71 testify because of age, sickness, infirmity, or
72 imprisonment; or 4, that the party offering the
73 deposition has been unable to procure the
74 attendance of the witness by subpoena; or 5,
75 upon application and notice, that such excep-

76 tional circumstances exist as to make it desirable,
77 in the interest of justice and with due regard to
78 the importance of presenting the testimony of
79 witnesses orally in open court, to allow the
80 deposition to be used.

81 (4) If only part of a deposition is offered in
82 evidence by a party, an adverse party may
83 require him to introduce all of it which is relevant
84 to the part introduced, and any party may
85 introduce any other parts.

86 Substitution of parties does not affect the
87 right to use depositions previously taken; and,
88 when an action in any court of the United States
89 or of any state has been dismissed and another
90 action involving the same subject matter is
91 afterward brought between the same parties or
92 their representatives or successors in interest,
93 all depositions lawfully taken and duly filed in
94 the former action may be used in the latter as
95 if originally taken therefor.

96 (e) OBJECTIONS TO ADMISSIBILITY. Subject
97 to the provisions of Rule ~~32(e)~~ 30G(c), objection
98 may be made at the trial or hearing to receiving
99 in evidence any deposition or part thereof for
100 any reason which would require the exclusion of
101 the evidence if the witness were then present
102 and testifying.

103 (f) EFFECT OF TAKING OR USING DEPOSITIONS.
104 A party shall not be deemed to make a person
105 his own witness for any purpose by taking his
106 deposition. The introduction in evidence of the
107 deposition or any part thereof for any purpose
108 other than that of contradicting or impeaching
109 the deponent makes the deponent the witness
110 of the party introducing the deposition, but this

111 shall not apply to the use by an adverse party
112 of a deposition as described in paragraph (2) of
113 subdivision (d) of this rule. At the trial or
114 hearing any party may rebut any relevant
115 evidence contained in a deposition whether
116 introduced by him or by any other party.

ADVISORY COMMITTEE'S NOTE ¹

Note to Subdivision (a)

(1) The so-called de bene esse statute, sections 863-65 of the Revised Statutes, is applicable only in admiralty, having been superseded by the Federal Rules of Civil Procedure in civil cases and in certain other proceedings to which the Civil Rules have been made applicable. This procedure has long been in use in admiralty cases, even in districts in which the Civil Rules on discovery depositions have been followed in accordance with district-court rules or otherwise. For the time being, at least, the Advisory Committee on Admiralty Rules believes it advisable to retain the de bene esse statute for admiralty cases rather than to supersede it, as it has been superseded for civil cases. In part this is for the reason that this manner of treating the problem will have the effect of restoring the practice as it was prior to the decision in *Miner v. Atlass* in those districts following the Civil Rules as to discovery depositions. In part, also, this is for the reason that ultimately the question whether the de bene esse statute should be retained for admiralty is interrelated with other questions concerning discovery practice, which are to be the subject of coordinated study by the Advisory Committee on Admiralty Rules and the Advisory Committee on Civil Rules.

(2) Among the lawyers and judges who responded to the Committee's inquiries as to experience with discovery depositions in admiralty a substantial number, although not a majority, indicated a belief that there should be eliminated from FRCP 26(a) the provision requiring leave of court where notice is served by the plaintiff within 20 days after

¹ In succeeding pages "Note" will be used to designate "Advisory Committee's Note".

commencement of the action. In the interest of uniformity, and in order to facilitate prompt action concerning the basic problem, the Advisory Committee determined that no change should be made in the rule for admiralty purposes at least at this time. The matter is one of those that will be comprehensively studied in collaboration with the Advisory Committee on Civil Rules. In the meantime, the provision retaining the de bene esse statute for admiralty cases will to some extent alleviate the difficulties complained of by those who would eliminate the 20-day rule, since that statute contains no requirement of leave of court.

General Note

Except as noted in the explanation pertaining to subdivision (a), and except for editorial adaptations, proposed Rule 30A is identical with FRCP 26.

For simplicity, throughout the proposed amendments the Committee has employed the terminology of the Federal Rules of Civil Procedure, without attempting to substitute equivalent terms traditional in admiralty. This is not a novel practice. Thus existing Admiralty Rules 32, 32A, and 32C use the terms "action" and "judgment" instead of the traditional admiralty terms "suit" and "decree." Similarly, in the proposed amendments such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1

Rule ~~27~~ 30B

2 DEPOSITIONS BEFORE ACTION OR
3 PENDING APPEAL

4 (a) BEFORE ACTION.

5 (1) PETITION. A person who desires to per-
6 petuate his own testimony or that of another
7 person regarding any matter that may be
8 cognizable in any court of the United States
9 may file a verified petition in the United States

10 district court in the district of the residence of
11 any expected adverse party.

12 The petition shall be entitled in the name of
13 the petitioner and shall show: 1, that the
14 petitioner expects to be a party to an action
15 cognizable in a court of the United States but
16 is presently unable to bring it or cause it to be
17 brought, 2, the subject matter of the expected
18 action and his interest therein, 3, the facts
19 which he desires to establish by the proposed
20 testimony and his reasons for desiring to per-
21 petuate it, 4, the names or a description of the
22 persons he expects will be adverse parties and
23 their addresses so far as known, and 5, the
24 names and addresses of the persons to be
25 examined and the substance of the testimony
26 which he expects to elicit from each, and shall
27 ask for an order authorizing the petitioner to
28 take the depositions of the persons to be ex-
29 amined named in the petition, for the purpose
30 of perpetuating their testimony.

31 (2) NOTICE AND SERVICE. The petitioner
32 shall thereafter serve a notice upon each person
33 named in the petition as an expected adverse
34 party, together with a copy of the petition,
35 stating that the petitioner will apply to the
36 court, at a time and place named therein, for
37 the order described in the petition. At least 20
38 days before the date of hearing the notice shall
39 be served either within or without the district
40 or state in the manner provided in Rule 4(d)
41 of the Federal Rules of Civil Procedure for
42 service of summons; but if such service cannot
43 with due diligence be made upon any expected
44 adverse party named in the petition, the court

45 may make such order as is just for service by
46 publication or otherwise, and shall appoint, for
47 persons not served in the manner provided in
48 Rule 4(d) of the Federal Rules of Civil Pro-
49 cedure, an attorney who shall represent them,
50 and, in case they are not otherwise represented,
51 shall cross-examine the deponent. If any ex-
52 pected adverse party is a minor or incompetent
53 the provisions of Rule 17(c) of the Federal
54 Rules of Civil Procedure apply.

55 (3) ORDER AND EXAMINATION. If the court
56 is satisfied that the perpetuation of the testi-
57 mony may prevent a failure or delay of justice,
58 it shall make an order designating or describing
59 the persons whose depositions may be taken and
60 specifying the subject matter of the examination
61 and whether the depositions shall be taken upon
62 oral examination or written interrogatories.
63 The depositions may then be taken in accord-
64 ance with these rules, and the court may make
65 orders of the character provided for by Rules
66 ~~34 and 35~~ 32 and 32A. For the purpose of
67 applying these rules to depositions for per-
68 petuating testimony, each reference therein to
69 the court in which the action is pending shall
70 be deemed to refer to the court in which the
71 petition for such deposition was filed.

72 (4) USE OF DEPOSITION. If a deposition to
73 perpetuate testimony is taken under these rules
74 or if, although not so taken, it would be ad-
75 missible in evidence in the courts of the state
76 in which it is taken, it may be used in any
77 action involving the same subject matter sub-
78 sequently brought in a United States district
79 court, in accordance with the provisions of Rule
80 ~~26(d)~~ 30A(d).

81 (b) PENDING APPEAL. If an appeal has been
82 taken from a judgment of a district court or
83 before the taking of an appeal if the time therefor
84 has not expired, the district court in which the
85 judgment was rendered may allow the taking
86 of the depositions of witnesses to perpetuate their
87 testimony for use in the event of further pro-
88 ceedings in the district court. In such case
89 the party who desires to perpetuate the testi-
90 mony may make a motion in the district court
91 for leave to take the depositions, upon the same
92 notice and service thereof as if the action was
93 pending in the district court. The motion shall
94 show (1) the names and addresses of persons
95 to be examined and the substance of the testi-
96 mony which he expects to elicit from each; (2)
97 the reasons for perpetuating their testimony.
98 If the court finds that the perpetuation of the
99 testimony is proper to avoid a failure or delay
100 of justice, it may make an order allowing the
101 depositions to be taken and may make orders
102 of the character provided for by Rules ~~34~~ and
103 35 32 and 32A, and thereupon the depositions
104 may be taken and used in the same manner and
105 under the same conditions as are prescribed in
106 these rules for depositions taken in actions
107 pending in the district court.
108 (c) PERPETUATION BY ACTION. This rule
109 does not limit the power of a court to entertain
110 an action to perpetuate testimony.

NOTE

Except for necessary editorial adaptations, proposed Rule 30B is identical with FRCP 27.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of

Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1

Rule 28 30C2 PERSONS BEFORE WHOM DEPOSITIONS
3 MAY BE TAKEN

4 (a) WITHIN THE UNITED STATES. Within the
5 United States or within a territory or insular
6 possession subject to the dominion of the United
7 States, depositions shall be taken before an
8 officer authorized to administer oaths by the
9 laws of the United States or of the place where
10 the examination is held, or before a person
11 appointed by the court in which the action is
12 pending. A person so appointed has power to
13 administer oaths and take testimony.

14 (b) IN FOREIGN COUNTRIES. In a foreign
15 state or country depositions shall be taken (1)
16 on notice before a secretary of embassy or
17 legation, consul general, consul, vice consul, or
18 consular agent of the United States, or (2)
19 before such person or officer as may be appointed
20 by commission or under letters rogatory. A
21 commission or letters rogatory shall be issued
22 only when necessary or convenient, on applica-
23 tion and notice, and on such terms and with
24 such directions as are just and appropriate.
25 Officers may be designated in notices or commis-
26 sions either by name or descriptive title and
27 letters rogatory may be addressed "To the
28 Appropriate Judicial Authority in [here name
29 the country]".

30 (c) DISQUALIFICATION FOR INTEREST. No dep-
31 osition shall be taken before a person who is a
32 relative or employee or attorney or counsel of
33 any of the parties, or is a relative or employee
34 of such attorney or counsel, or is financially
35 interested in the action.

NOTE

Proposed Rule 30C is identical with FRCP 28.

1

Rule ~~29~~ 30D

2 STIPULATIONS REGARDING THE TAK-
3 ING OF DEPOSITIONS

4 If the parties so stipulate in writing, deposi-
5 tions may be taken before any person, at any
6 time or place, upon any notice, and in any
7 manner and when so taken may be used like
8 other depositions.

NOTE

Proposed Rule 30D is identical with FRCP 29.

1

Rule ~~30~~ 30E

2 DEPOSITIONS UPON ORAL
3 EXAMINATION

4 (a) NOTICE OF EXAMINATION: TIME AND
5 PLACE. A party desiring to take the deposition
6 of any person upon oral examination shall give
7 reasonable notice in writing to every other party
8 to the action. The notice shall state the time and
9 place for taking the deposition and the name and
10 address of each person to be examined, if known,
11 and, if the name is not known, a general descrip-

12 tion sufficient to identify him or the particular
13 class or group to which he belongs. On motion
14 of any party upon whom the notice is served, the
15 court may for cause shown enlarge or shorten the
16 time.

17 (b) ORDERS FOR THE PROTECTION OF PARTIES
18 AND DEPONENTS. After notice is served for tak-
19 ing a deposition by oral examination, upon mo-
20 tion seasonably made by any party or by the per-
21 son to be examined and upon notice and for good
22 cause shown, the court in which the action is
23 pending may make an order that the deposition
24 shall not be taken, or that it may be taken only
25 at some designated place other than that stated
26 in the notice, or that it may be taken only on
27 written interrogatories, or that certain matters
28 shall not be inquired into, or that the scope of the
29 examination shall be limited to certain matters,
30 or that the examination shall be held with no one
31 present except the parties to the action and their
32 officers or counsel, or that after being sealed the
33 deposition shall be opened only by order of the
34 court, or that secret processes, developments, or
35 research need not be disclosed, or that the parties
36 shall simultaneously file specified documents or
37 information enclosed in sealed envelopes to be
38 opened as directed by the court; or the court may
39 make any other order which justice requires to
40 protect the party or witness from annoyance,
41 embarrassment, or oppression.

42 (c) RECORD OF EXAMINATION; OATH; OBJEC-
43 TIONS. The officer before whom the deposition
44 is to be taken shall put the witness on oath and
45 shall personally, or by some one acting under
46 his direction and in his presence, record the testi-

47 mony of the witness. The testimony shall be
48 be taken stenographically and transcribed unless
49 the parties agree otherwise. All objections made
50 at the time of the examination to the qualifica-
51 tions of the officer taking the deposition, or to the
52 manner of taking it, or to the evidence presented,
53 or to the conduct of any party, and any other
54 objection to the proceedings, shall be noted by
55 the officer upon the deposition. Evidence ob-
56 jected to shall be taken subject to the objections.
57 In lieu of participating in the oral examination,
58 parties served with notice of taking a deposition
59 may transmit written interrogatories to the
60 officer, who shall propound them to the witness
61 and record the answers verbatim.

62 (d) MOTION TO TERMINATE OR LIMIT EXAMI-
63 NATION. At any time during the taking of the
64 deposition, on motion of any party or of the
65 deponent and upon a showing that the examina-
66 tion is being conducted in bad faith or in such
67 manner as unreasonably to annoy, embarrass, or
68 oppress the deponent or party, the court in which
69 the action is pending or the court in the district
70 where the deposition is being taken may order
71 the officer conducting the examination to cease
72 forthwith from taking the deposition, or may
73 limit the scope and manner of the taking of the
74 deposition as provided in subdivision (b). If
75 the order made terminates the examination, it
76 shall be resumed thereafter only upon the order
77 of the court in which the action is pending. Upon
78 demand of the objecting party or deponent, the
79 taking of the deposition shall be suspended for
80 the time necessary to make a motion for an
81 order. In granting or refusing such order the

82 court may impose upon either party or upon the
83 witness the requirement to pay such costs or
84 expenses as the court may deem reasonable.

85 (e) SUBMISSION TO WITNESS; CHANGES; SIGN-
86 ING. When the testimony is fully transcribed
87 the deposition shall be submitted to the witness
88 for examination and shall be read to or by him,
89 unless such examination and reading are waived
90 by the witness and by the parties. Any changes
91 in form or substance which the witness desires
92 to make shall be entered upon the deposition by
93 the officer with a statement of the reasons given
94 by the witness for making them. The deposi-
95 tion shall then be signed by the witness, unless
96 the parties by stipulation waive the signing or
97 the witness is ill or cannot be found or refuses
98 to sign. If the deposition is not signed by the
99 witness, the officer shall sign it and state on the
100 record the fact of the waiver or of the illness or
101 absence of the witness or the fact of the refusal
102 to sign together with the reason, if any, given
103 therefor; and the deposition may then be used
104 as fully as though signed, unless on a motion to
105 suppress under Rule ~~32(d)~~ 30G(d) the court holds
106 that the reasons given for the refusal to sign
107 require rejection of the deposition in whole or in
108 part.

109 (f) CERTIFICATION AND FILING BY OFFICER;
110 COPIES; NOTICE OF FILING.

111 (1) The officer shall certify on the deposition
112 that the witness was duly sworn by him and
113 that the deposition is a true record of the testi-
114 mony given by the witness. He shall then
115 securely seal the deposition in an envelope in-
116 dorsed with the title of the action and marked

117 "Deposition of [here insert name of witness]"
118 and shall promptly file it with the court in
119 which the action is pending or send it by regis-
120 tered mail to the clerk thereof for filing.

121 (2) Upon payment of reasonable charges
122 therefor, the officer shall furnish a copy of the
123 deposition to any party or to the deponent.

124 (3) The party taking the deposition shall give
125 prompt notice of its filing to all other parties.

126 (g) FAILURE TO ATTEND OR TO SERVE SUB-
127 POENA; EXPENSES.

128 (1) If the party giving the notice of the taking
129 of a deposition fails to attend and proceed
130 therewith and another party attends in person
131 or by attorney pursuant to the notice, the court
132 may order the party giving the notice to pay to
133 such other party the amount of the reasonable
134 expenses incurred by him and his attorney in so
135 attending, including reasonable attorney's fees.

136 (2) If the party giving the notice of the taking
137 of a deposition of a witness fails to serve a
138 subpoena upon him and the witness because of
139 such failure does not attend, and if another
140 party attends in person or by attorney because
141 he expects the deposition of that witness to be
142 taken, the court may order the party giving the
143 notice to pay to such other party the amount of
144 the reasonable expenses incurred by him and
145 his attorney in so attending, including reasonable
146 attorney's fees.

NOTE

Except for necessary editorial adaptations, proposed Rule 30E is identical with FRCP 30.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of

Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1 Rule ~~31~~ 30F

2 DEPOSITIONS OF WITNESSES UPON
3 WRITTEN INTERROGATORIES

4 (a) SERVING INTERROGATORIES; NOTICE. A
5 party desiring to take the deposition of any
6 person upon written interrogatories shall serve
7 them upon every other party with a notice
8 stating the name and address of the person who
9 is to answer them and the name or descriptive
10 title and address of the officer before whom the
11 deposition is to be taken. Within 10 days
12 thereafter a party so served may serve cross
13 interrogatories upon the party proposing to
14 take the deposition. Within 5 days thereafter
15 the latter may serve redirect interrogatories
16 upon a party who has served cross interrogatories.
17 Within 3 days after being served with redirect
18 interrogatories, a party may serve recross inter-
19 rogatories upon the party proposing to take the
20 deposition.

21 (b) OFFICER TO TAKE RESPONSES AND PRE-
22 PREPARE RECORD. A copy of the notice and
23 copies of all interrogatories served shall be
24 delivered by the party taking the deposition to
25 the officer designated in the notice, who shall
26 proceed promptly, in the manner provided by
27 Rule ~~30~~ 30E (c), (e), and (f), to take the testi-
28 mony of the witness in response to the inter-
29 rogatories and to prepare, certify, and file or
30 mail the deposition, attaching thereto the copy

31 of the notice and the interrogatories received
32 by him.

33 (c) NOTICE OF FILING. When the deposition
34 is filed the party taking it shall promptly give
35 notice thereof to all other parties.

36 (d) ORDERS FOR THE PROTECTION OF PARTIES
37 AND DEPONENTS. After the service of inter-
38 rogatories and prior to the taking of the testi-
39 mony of the deponent, the court in which the
40 action is pending, on motion promptly made by
41 a party or a deponent, upon notice and good
42 cause shown, may make any order specified in
43 Rule ~~30~~ 30E which is appropriate and just or
44 an order that the deposition shall not be taken
45 before the officer designated in the notice or
46 that it shall not be taken except upon oral
47 examination.

NOTE

Except for necessary editorial adaptations, proposed Rule 30F is identical with FRCP 31.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1

Rule ~~32~~ 30G

2

EFFECT OF ERRORS AND IRREGULARI- 3 TIES IN DEPOSITIONS

3

4

(a) AS TO NOTICE. All errors and irregulari-
5 ties in the notice for taking a deposition are
6 waived unless written objection is promptly
7 served upon the party giving the notice.

5

6

7

8 (b) AS TO DISQUALIFICATION OF OFFICER.
9 Objection to taking a deposition because of
10 disqualification of the officer before whom it is
11 to be taken is waived unless made before the
12 taking of the depositions begins or as soon
13 thereafter as the disqualification becomes known
14 or could be discovered with reasonable diligence.

15 (c) AS TO TAKING OF DEPOSITION.

16 (1) Objections to the competency of a witness
17 or to the competency, relevancy, or materiality
18 of testimony are not waived by failure to make
19 them before or during the taking of the deposi-
20 tion, unless the ground of the objection is one
21 which might have been obviated or removed if
22 presented at that time.

23 (2) Errors and irregularities occurring at the
24 oral examination in the manner of taking the
25 deposition, in the form of the questions or
26 answers, in the oath or affirmation, or in the
27 conduct of parties and errors of any kind which
28 might be obviated, removed, or cured if promptly
29 presented, are waived unless seasonable objection
30 thereto is made at the taking of the deposition.

31 (3) Objections to the form of written inter-
32 rogatories submitted under Rule ~~34~~ 30F are
33 waived unless served in writing upon the party
34 propounding them within the time allowed for
35 serving the succeeding cross or other interroga-
36 tories and within 3 days after service of the last
37 interrogatories authorized.

38 (d) AS TO COMPLETION AND RETURN OF
39 DEPOSITION. Errors and irregularities in the
40 manner in which the testimony is transcribed or
41 the deposition is prepared, signed, certified,
42 sealed, indorsed, transmitted, filed, or otherwise

43 dealt with by the officer under Rules ~~30 and 31~~
 44 30E and 30F are waived unless a motion to
 45 suppress the deposition or some part thereof is
 46 made with reasonable promptness after such
 47 defect is, or with due diligence might have been,
 48 ascertained.

NOTE

Except for necessary editorial adaptations, proposed Rule 30G is identical with FRCP 32.

1 Rule 45 32D

2 SUBPOENA

3 (a) FOR ATTENDANCE OF WITNESSES; FORM;
 4 ISSUANCE. Every subpoena shall be issued
 5 by the clerk under the seal of the court, shall
 6 state the name of the court and the title of
 7 the action, and shall command each person to
 8 whom it is directed to attend and give testimony
 9 at a time and place therein specified. The clerk
 10 shall issue a subpoena, or a subpoena for the
 11 production of documentary evidence, signed and
 12 sealed but otherwise in blank, to a party re-
 13 questing it, who shall fill it in before service.

14 (b) FOR PRODUCTION OF DOCUMENTARY EVI-
 15 DENCE. A subpoena may also command the
 16 person to whom it is directed to produce the
 17 books, papers, documents, or tangible things
 18 designated therein; but the court, upon motion
 19 made promptly and in any event at or before the
 20 time specified in the subpoena for compliance
 21 therewith, may (1) quash or modify the sub-
 22 poena if it is unreasonable and oppressive or
 23 (2) condition denial of the motion upon the
 24 advancement by the person in whose behalf the
 25 subpoena is issued of the reasonable cost of

26 producing the books, papers, documents, or
27 tangible things.

28 (c) SERVICE. A subpoena may be served by
29 the marshal, by his deputy, or by any other
30 person who is not a party and is not less than
31 18 years of age. Service of a subpoena upon
32 a person named therein shall be made by deliver-
33 ing a copy thereof to such person and by tender-
34 ing to him the fees for one day's attendance and
35 the mileage allowed by law. When the sub-
36 poena is issued on behalf of the United States
37 or an officer or agency thereof, fees and mileage
38 need not be tendered.

39 (d) SUBPOENA FOR TAKING DEPOSITIONS;
40 PLACE OF EXAMINATION.

41 (1) Proof of service of a notice to take a depo-
42 sition as provided in Rules ~~30(a)~~ and ~~31(a)~~
43 30E(a) and 30F(a) constitutes a sufficient au-
44 thorization for the issuance by the clerk of the
45 district court for the district in which the
46 deposition is to be taken of subpoenas for the
47 persons named or described therein. The sub-
48 poena may command the person to whom it is
49 directed to produce designated books, papers,
50 documents, or tangible things which constitute
51 or contain evidence relating to any of the matters
52 within the scope of the examination permitted
53 by Rule ~~26(b)~~ 30A(b), but in that event the
54 subpoena will be subject to the provisions of
55 subdivision (b) of Rule ~~30~~ 30E and subdivision
56 (b) of this Rule ~~45~~ 32D.

57 (2) A resident of the district in which the
58 deposition is to be taken may be required to
59 attend an examination only in the county
60 wherein he resides or is employed or transacts
61 his business in person, or at such other con-

62 venient place as is fixed by an order of court.
63 A nonresident of the district may be required
64 to attend only in the county wherein he is
65 served with a subpoena, or within 40 miles from
66 the place of service, or at such other convenient
67 place as is fixed by an order of court.

68 (e) SUBPOENA FOR A HEARING OR TRIAL.

69 (1) At the request of any party subpoenas
70 for attendance at a hearing or trial shall be
71 issued by the clerk of the district court for the
72 district in which the hearing or trial is held. A
73 subpoena requiring the attendance of a witness
74 at a hearing or trial may be served at any place
75 within the district, or at any place without the
76 district that is within 100 miles of the place of
77 the hearing or trial specified in the subpoena;
78 and, when a statute of the United States provides
79 therefor, the court upon proper application and
80 cause shown may authorize the service of a
81 subpoena at any other place.

82 (2) A subpoena directed to a witness in a
83 foreign country shall issue under the circum-
84 stances and in the manner and be served as
85 provided in Title 28, U.S.C., § 1783.

86 (f) CONTEMPT. Failure by any person with-
87 out adequate excuse to obey a subpoena served
88 upon him may be deemed a contempt of the
89 court from which the subpoena issued.

NOTE

Civil Rules 26(a) and 30(g), which pursuant to the recommendation of the Advisory Committee on Admiralty Rules would be incorporated in the Rules of Practice in Admiralty and Maritimes cases as Rules 30A(a) and 30E(g), respectively, refer to subpoena. The Rules of Practice in Admiralty and Maritime cases contain no provisions for subpoenas. In order to make those Rules complete and self-

contained in this respect, and in order to insure uniformity between the Civil and Admiralty subpoena powers, FRCP 45 is included as Rule 32D.

Except for necessary editorial adaptations, proposed Rule 32D is identical with FRCP 45.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

II

Amendment of Present Rules on Discovery To Conform to the Corresponding Civil Rules as Amended

PRELIMINARY NOTE

Certain Rules of Practice in Admiralty and Maritime Cases relating to discovery, originally borrowed from the Civil Rules, were not amended to conform to the corresponding Civil Rules as amended in 1946, effective in 1948. These are:

Rule 31, corresponding to FRCP 33

Rule 32, corresponding to FRCP 34

Rule 32B, corresponding to FRCP 36

Rule 32C(e), corresponding to FRCP 37(e)

With respect to Rule 31, it is the recommendation of the Advisory Committee on Admiralty Rules that consideration of an amendment to make the Rule conform to the corresponding Civil Rule as amended be deferred for the time being. The reasons for the amendment of the Civil Rule in 1948 are set out in full in the Committee Note of 1946 to Amended (Civil) Rule 33, reprinted in 4 Moore's Federal Practice pp. 2255-57, and need not be repeated here. The reason for this Committee's decision to take no action at this time to conform Rule 31 to its civil

counterpart is that the 1948 amendment of the Civil Rule added a requirement of leave of court where interrogatories are served by the plaintiff within ten days after commencement of the action. It has been traditional admiralty practice to attach interrogatories to the libel, and this practice has obtained in those districts in which the Civil practice as to discovery depositions has been followed. By taking no action with respect to Rule 31 at this time the Committee intends (1) to preserve the *status quo ante* in those districts in which the civil practice as to discovery depositions has prevailed, (2) to preserve, at least for the time being, a traditional feature of the admiralty practice, and (3) to note for further consideration, in collaboration with the Advisory Committee on Civil Rules, the question whether uniformity can be achieved as between Rule 31 and FRCP 33.

The Advisory Committee recommends that Rules 32, 32B, and 32C(e) be amended so that the same shall read as follows:*

1 Rule 32

2 DISCOVERY AND PRODUCTION OF

3 DOCUMENTS AND THINGS FOR

4 INSPECTION, COPYING, OR PHOTO-

5 GRAPHING

6 Upon motion of any party showing good

7 cause therefor and upon notice to all other

8 parties, and subject to the provisions of Rule

9 30E(b),¹ the court in which an action is pending

10 may (1) order any party to produce and permit

*New matter is indicated by underlining thus. Stricken matter is indicated ~~thus~~. Differences from the corresponding Civil Rules are indicated by footnotes.

¹ Civil Rule 34 refers to FRCP 30(b).

11 the inspection and copying or photographing,
 12 by or on behalf of the moving party, of any
 13 designated documents, papers, books, accounts,
 14 letters, photographs, objects, or tangible things,
 15 not privileged, which constitute or contain
 16 evidence ~~material to any matter involved in the~~
 17 ~~action~~ relating to any of the matters within the
 18 scope of the examination permitted by Rule
 19 30A(b)² and which are in his possession, custody,
 20 or control; or (2) order any party to permit
 21 entry upon designated land or other property
 22 in his possession or control for the purpose of
 23 inspecting, measuring, surveying, or photograph-
 24 ing the property or any designated relevant
 25 object or operation thereon within the scope of
 26 the examination permitted by Rule 30A(b).³
 27 The order shall specify the time, place, and
 28 manner of making the inspection and taking the
 29 copies and photographs and may prescribe such
 30 terms and conditions as are just.

NOTE

The reasons for the 1948 amendments to the corresponding Civil Rules, to which Rule 32 is hereby conformed, are fully stated in the Committee Note of 1946 to Amended (Civil) Rule 34, reprinted in 4 Moore's Federal Practice pp. 2423-24, and need not be repeated here. The Advisory Committee regards this amendment as noncontroversial.

1 Rule 32B
 2 ADMISSION OF FACTS AND OF GENU-
 3 INENESS OF DOCUMENTS
 4 (a) REQUEST FOR ADMISSION. At any time
 5 after the pleadings are closed, After commence-
 6 ment of an action a party may serve upon any

^{2 3} Civil Rule 34 refers to FRCP 26 (b).

7 other party a written request for the admission
8 by the latter of the genuineness of any relevant
9 documents described in and exhibited with the
10 request or of the truth of any relevant matters
11 of fact set forth ~~therein~~ in the request. If a
12 plaintiff desires to serve a request within 10
13 days after commencement of the action, leave of
14 court, granted with or without notice, must be
15 obtained. Copies of the documents shall be
16 ~~delivered~~ served with the request unless copies
17 have already been furnished. Each of the
18 matters of which an admission is requested shall
19 be deemed admitted unless, within a period
20 designated in the request, not less than 10 days
21 after service thereof or within such ~~further~~
22 shorter or longer time as the court may allow
23 on motion and notice, the party to whom the
24 request is directed serves upon the party request-
25 ing the admission either (1) a sworn statement
26 either denying specifically the matters of which
27 an admission is requested or setting forth in
28 detail the reasons why he cannot truthfully
29 either admit or deny those matters or (2)
30 written objections on the ground that some or
31 all of the requested admissions are privileged
32 or irrelevant or that the request is otherwise
33 improper in whole or in part, together with a
34 notice of hearing the objections at the earliest
35 practicable time. If written objections to a
36 part of the request are made, the remainder of
37 the request shall be answered within the period
38 designated in the request. A denial shall fairly
39 meet the substance of the requested admission,
40 and when good faith requires that a party deny
41 only a part or a qualification of a matter of which

42 an admission is requested, he shall specify so
 43 much of it as is true and deny only the remainder.

44 (b) EFFECT OF ADMISSION. Any admission
 45 made by a party pursuant to such request
 46 is for the purpose of the pending action only and
 47 neither constitutes an admission by him for any
 48 other purpose nor may be used against him
 49 in any other proceeding.

NOTE

The reasons for the 1948 amendments to the corresponding Civil Rule, to which Admiralty Rule 32B is hereby conformed, are fully stated in the Note of 1946 to Amended (Civil) Rule 36, reprinted in 4 Moore's Federal Practice pp. 2703-04, and need not be repeated here. The Advisory Committee regards this amendment as noncontroversial.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1 Rule 32C
 2 REFUSAL TO MAKE DISCOVERY:
 3 CONSEQUENCES

4 * * * * *

5 (e) FAILURE TO RESPOND TO LETTERS ROG-
 6 ATORY. A subpoena may be issued as provided
 7 in the Act of July 3, 1926, c 762, § 1 (44 Stat.

8 ~~835~~, USC, Title 28, § 71, Title 28 U.S.C., § 1783,
 9 under the circumstances and conditions therein
 10 stated.

11 * * * * *

NOTE

The sole purpose of this amendment is to conform the rule to a change in the relevant statute. See 4 Moore's Federal Practice p. 2803.

III

Proposed Rules Authorizing Summary Judgments and Declaratory Judgments

PRELIMINARY NOTE

The summary judgment and the declaratory judgment are generally regarded, and are regarded by the Advisory Committee, as valuable features of a modern procedural system which should be available in admiralty as well as in civil cases. To a limited extent summary judgment has been available in admiralty either because some districts had "catch-all" rules making the Federal Rules of Civil Procedure applicable to matters not covered by the Rules of Practice in Admiralty and Maritime Cases, or because of the view that the district court sitting in admiralty had inherent power to mold its procedure. See *Miner v. Atlass*, 363 U.S. 641, 652 n. 1 (dissenting opinion); *Murphy v. Light*, 211 F. 2d 824 (5th Cir. 1954); cf. *Purofied Down Products Corp. v. Travelers Fire Ins. Co.*, 171 F. Supp. 399 (S.D.N.Y. 1959). The same is true as to declaratory judgments, the use of which finds added support in the view that the statute (28 U.S.C. §2201) is self-executing, so that the procedure is available without an implementing rule. See *Leonard v.*

Liberty Mutual Ins. Co., 165 F. Supp. 154 (E.D. Pa. 1958), rev'd on other grounds, 267 F. 2d 421 (3d Cir. 1959); *Longview Tugboat Co. v. Jameson*, 218 F. 2d 547 (9th Cir. 1955); *Sun Oil Co. v. Transcontinental Gas Pipe Line Corp.*, 108 F. Supp. 280 (E.D. Pa. 1952), aff'd 203 F. 2d 957 (3d Cir. 1953). *Miner v. Atlass*, however, has cast doubt on the power of the district courts to provide for such matters by local rule; and since that decision even the view that the declaratory judgment statute is self-executing has been challenged. *States Marine Lines v. United States*, N.D. Cal., Adm. No. 28008, 1960 (unreported).

Independently of the decision in *Miner v. Atlass*, the Committee believes that the summary judgment and the declaratory judgment should be made available in admiralty. Action on the matter at this time is peculiarly appropriate in view of the doubts raised by that decision.

The Advisory Committee therefore recommends that the Rules of Practice in Admiralty and Maritime cases be amended by adding two new rules, to be numbered 58 (corresponding to FRCP 56) and 59 (corresponding to FRCP 57), as follows:

1

Rule 58

2

SUMMARY JUDGMENT

3

(a) FOR CLAIMANT. A party seeking to re-

4

cover upon a claim, counter-claim, or cross-

5

claim or to obtain a declaratory judgment may,

6

at any time after the expiration of 20 days from

7

the commencement of the action or after service

8

of a motion for summary judgment by the

9 adverse party, move with or without supporting
10 affidavits for a summary judgment in his favor
11 upon all or any part thereof.

12 (b) FOR DEFENDING PARTY. A party against
13 whom a claim, counterclaim, or cross-claim is
14 asserted or a declaratory judgment is sought
15 may, at any time, move with or without sup-
16 porting affidavits for a summary judgment in
17 his favor as to all or any part thereof.

18 (c) MOTION AND PROCEEDINGS THEREON.
19 The motion shall be served at least 10 days
20 before the time fixed for the hearing. The
21 adverse party prior to the day of hearing may
22 serve opposing affidavits. The judgment sought
23 shall be rendered forthwith if the pleadings,
24 depositions, and admissions on file, together with
25 the affidavits, if any, show that there is no
26 genuine issue as to any material fact and that the
27 moving party is entitled to a judgment as a
28 matter of law. A summary judgment, inter-
29 locutory in character, may be rendered on the
30 issue of liability alone although there is a genuine
31 issue as to the amount of damages.

32 (d) CASE NOT FULLY ADJUDICATED ON
33 MOTION. If on motion under this rule judgment
34 is not rendered upon the whole case or for all the
35 relief asked and a trial is necessary, the court at
36 the hearing of the motion, by examining the
37 pleadings and the evidence before it and by
38 interrogating counsel, shall if practicable ascer-
39 tain what material facts exist without substantial
40 controversy and what material facts are actually
41 and in good faith controverted. It shall there-
42 upon make an order specifying the facts that
43 appear without substantial controversy, includ-
44 ing the extent to which the amount of damages

45 or other relief is not in controversy, and directing
46 such further proceedings in the action as are
47 just. Upon the trial of the action the facts so
48 specified shall be deemed established, and the
49 trial shall be conducted accordingly.

50 (e) FORM OF AFFIDAVITS; FURTHER TESTI-
51 MONY. Supporting and opposing affidavits shall
52 be made on personal knowledge, shall set forth
53 such facts as would be admissible in evidence,
54 and shall show affirmatively that the affiant is
55 competent to testify to the matters stated
56 therein. Sworn or certified copies of all papers
57 or parts thereof referred to in an affidavit shall be
58 attached thereto or served therewith. The
59 court may permit affidavits to be supplemented
60 or opposed by depositions or by further affidavits.

61 (f) WHEN AFFIDAVITS ARE UNAVAILABLE.
62 Should it appear from the affidavits of a party
63 opposing the motion that he cannot for reasons
64 stated present by affidavit facts essential to
65 justify his opposition, the court may refuse the
66 application for judgment or may order a con-
67 tinuance to permit affidavits to be obtained or
68 depositions to be taken or discovery to be had or
69 may make such other order as is just.

70 (g) AFFIDAVITS MADE IN BAD FAITH. Should
71 it appear to the satisfaction of the court at any
72 time that any of the affidavits presented pur-
73 suant to this rule are presented in bad faith or
74 solely for the purpose of delay, the court shall
75 forthwith order the party employing them to pay
76 to the other party the amount of the reasonable
77 expenses which the filing of the affidavits caused
78 him to incur, including reasonable attorney's
79 fees, and any offending party or attorney may be
80 adjudged guilty of contempt.

NOTE

This rule is identical with FRCP 56.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

1 Rule 59

2 DECLARATORY JUDGMENTS

3 The procedure for obtaining a declaratory
4 judgment pursuant to Title 28 U.S.C., § 2201,
5 shall be in accordance with these rules, and the
6 right to trial by jury may be demanded under the
7 circumstances and in the manner provided in
8 Rules 38 and 39 of the Federal Rules of Civil
9 Procedure. The existence of another adequate
10 remedy does not preclude a judgment for de-
11 claratory relief in cases where it is appropriate.
12 The Court may order a speedy hearing of an
13 action for a declaratory judgment and may ad-
14 vance it on the calendar.

NOTE

This rule is identical with FRCP 57 except for the editorial reference to the Federal Rules of Civil Procedure.

In general, of course, there is no right to jury trial in admiralty, and adoption of this rule will confer no such right. In a narrowly defined class of admiralty cases, however, a statutory right to jury trial has existed since 1845. See 28 U.S.C. § 1873 (the "Great Lakes Act"), derived from 5 Stat. 726-27. Although the matter may be of limited practical importance, it seems appropriate to preserve the reference to jury trial in this rule because of the existence of the statutory right, the more so since preservation of the

reference preserves uniformity as between this rule and the corresponding civil rule.

As is more fully stated in the explanatory note following proposed Rule 30A, the terminology of the Federal Rules of Civil Procedure is followed throughout the proposed amendments, and such terms as "action," "judgment," and "plaintiff" are used as generic terms, including and interchangeable with their analogues in admiralty.

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IV

2 **Rule Necessary to Fix the Effective Date of the**
 3 **Amendments and to Validate Depositions Hereto-**
 4 **fore Taken**

5

Rule 60

6 **EFFECTIVE DATES OF AMENDMENTS**

7 (a) The amendments adopted by the Supreme
 8 Court on _____, 1961, and reported
 9 to the Congress on _____, 1961, shall
 10 take effect on _____, 1961. They are
 11 applicable to all proceedings in suits brought
 12 after they take effect and also to all further
 13 proceedings in suits then pending, except to
 14 the extent that in the opinion of the court their
 15 application in a particular suit pending when
 16 the amendments take effect would not be fea-
 17 sible or would work injustice, in which event
 18 the former procedure applies.

19 (b) Depositions taken prior to July 20, 1960,
 20 which would have been authorized if Rules 30A
 21 through 30G had been in force at the time such
 22 depositions were taken, and any depositions
 23 heretofore taken by consent of the parties, may

24 be used for any of the purposes specified in Rule
25 30A(d).

NOTE

With regard to the applicability of the amendments to cases pending on their effective date subdivision (a) of the rule follows the formula heretofore utilized in promulgating and amending the Federal Rules of Civil Procedure. See FRCP 86. With respect to the effective date itself it follows the terms of the Enabling Act, 28 U.S.C. § 2073.

The validating provision of subdivision (b) may not be necessary, but is included to avoid unnecessary litigation over a desirable result. The purpose is to make available for all authorized purposes depositions taken in reliance on local rules or practices, as well as all depositions taken by consent of the parties, to the same extent as if they had been authorized by valid rules. In general, depositions taken in reliance on local practice will have been taken prior to June 20, 1960, when *Miner v. Atlass* was decided. It is possible, however, that some such depositions were taken shortly thereafter, the parties being unaware of the decision; and for this reason a grace period of one month is recognized. In effect the rule establishes a conclusive presumption that depositions taken prior to July 20, 1960 were taken in reliance on local practice, and that those taken thereafter (except those taken by consent) were not.

The rule validating depositions taken in reliance on a local practice or rule later held invalid is believed to be fully supported by authorities upholding the power of legislative and rule-making bodies to promulgate "curative" rules having retrospective operation. See, e.g., *Graham & Foster v. Goodsell*, 282 U.S. 409 (1931); *Paramino Co. v. Marshall*, 309 U.S. 370 (1940); *McFaddin v. Evans-Snyder-Buell Co.*, 185 U.S. 505 (1902); *Freeborn v. Smith*, 2 Wall. 160 (1864); *Sampeyreac v. United States*, 7 Pet. 222 (1833); *United States v. Heinzen & Co.*, 206 U.S. 370 (1907); *Tiaco v. Forbes*, 228 U.S. 549 (1913); *Swayne & Hoyt Ltd. v. United States*, 300 U.S. 297 (1937); *Addison v. Holly Hill Co.*, 322 U.S. 607 (1944).

The Advisory Committee intimates no opinion as to whether depositions taken in reliance on the local practices invalidated by *Miner v. Atlass* may be used prior to the effective date of these amendments, and no inference bearing on the resolution of that question should be drawn from the inclusion of a validating provision in this rule.

