2002 CIVIL PROCEDURE SUPPLEMENT

FOR USE WITH
ALL PLEADING AND PROCEDURE CASEBOOKS

John J. Cound Jack H. Friedenthal Arthur R. Miller John E. Sexton

INCLUDES:

Federal Rules of Civil Procedure
Selected Federal Rules of Appellate Procedure
Selected Provisions from U.S. Constitution and United States Code
Selected State Practice Statutes and Rules
Selected Sample Court Orders and Notices
Illustrative Litigation Problem with Sample Documents
Federal Local Court Rules
Proposed Federal Rules and Statutes Regulating Civil Procedure
Recent United States Supreme Court Cases

PLUS:

Litigation Flow Chart

2002 CIVIL PROCEDURE SUPPLEMENT

$\mathbf{B}\mathbf{y}$

John J. Cound

Professor of Law University of Minnesota

Jack H. Friedenthal

Freda H. Alverson Professor of Law The George Washington University Law School

Arthur R. Miller

Bruce Bromley Professor of Law Harvard University

John E. Sexton

Dean and Professor of Law New York University

AMERICAN CASEBOOK SERIES®



A THOMSON COMPANY

West Group has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West Group is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

COPYRIGHT © 1985, 1987, 1989–1991, JACK H. FRIEDENTHAL, ARTHUR R. MILLER & JOHN E. SEXTON

COPYRIGHT © 1993–1996 West Publishing Company

COPYRIGHT © 1997, 1998, 1999, 2000, 2001 WEST GROUP

COPYRIGHT © 2002 By WEST GROUP

610 Opperman Drive

P.O. Box 64526 St. Paul, MN 55164–0526 1–800–328–9352

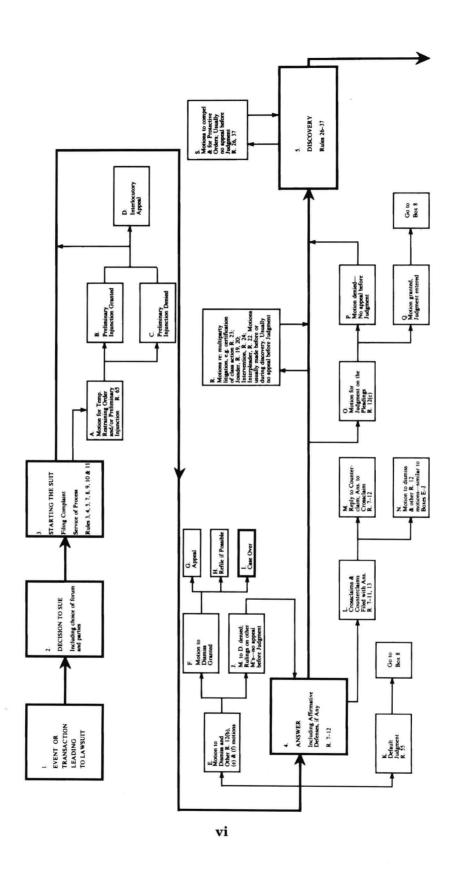
All rights reserved
Printed in the United States of America

ISBN 0-314-26413-2

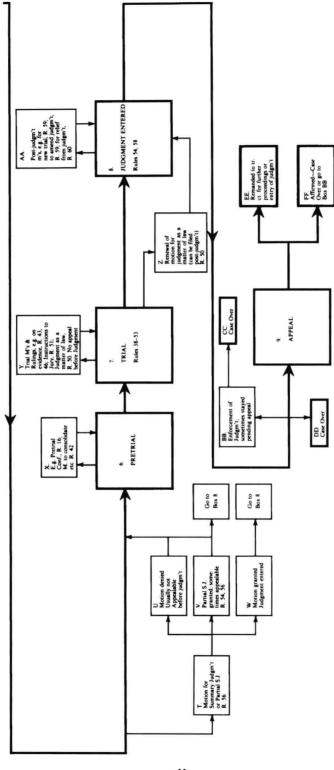




2002 CIVIL PROCEDURE SUPPLEMENT



比为试读,需要完整PDF请访问: www.ertongbook.com



This chart was prepared by Professor Michael J. Goldberg of Widener University School of Law.

vii

TABLE OF CONTENTS

		Page
PART	I: Federal Rules of Civil Procedure for the United States District Courts and Comparative Federal and State Provisions	1
PART	II: Selected Provisions of The Constitution of the United States and of Titles 28 and 42, United States Code plus Comparative Federal and State Provisions	221
PART	III: Selected State Jurisdictional Statutes and Selected State Statutes Governing the Powers of Appellate Courts	279
PART	IV: Selected Portions of the Federal Rules of Appellate Procedure	286
PART	V: Selected Sample Court Orders and Notices for Controlling Discovery, Pretrial Conferences, and Settlement of Class Action	327
PART	VI: Illustrative Litigation Problem with Sample Documents	352
PART	VII: Local (Civil) Rules for the United States District Courts for the Southern and Eastern Districts of New York	382
PART	VIII: Proposed Federal Rules and Statutes Regulating Civil Procedure	427
PART	IX: Recent United States Supreme Court Cases	446
PART	X: Index to Comparative Provisions	455

Part I

Federal Rules of Civil Procedure for the United States District Courts

and

Comparative Federal and State Provisions

TABLE OF CONTENTS

Federal Rules of Civil Procedure

I. Scope of Rules-One Form of Action

Rule 1. 2.	Scope of Rules One Form of Action	Page 11 11
	II. Commencement of Action; Service of Process, Pleadings, Motions and Orders	
3. 4.	Commencement of Action Summons (a) Form. (b) Issuance. (c) Service With Complaint; by Whom Made. (d) Waiver of Service; Duty to Save Costs of Service; Request to Waive. (e) Service Upon Individuals Within a Judicial District of the United States. (f) Service Upon Individuals in a Foreign Country. (g) Service Upon Infants and Incompetent Persons. (h) Service Upon Corporations and Associations. (i) Serving the United States, Its Agencies, Corporations, Officers, or Employees. (j) Service Upon Foreign, State or Local Governments. (k) Territorial Limits of Effective Service. (l) Proof of Service.	111
4.1	 (m) Time Limit for Service. (n) Seizure of Property; Service of Summons Not Feasible. Service of Other Process (a) Generally. 	22
5.	 (b) Enforcement of Orders; Commitment for Civil Contempt. Service and Filing Pleadings and Other Papers (a) Service: When Required. (b) Making Service. 	23

Rule		Page
	(c) Same: Numerous Defendants.(d) Filing; Certificate of Service.	
0	(e) Filing With the Court Defined.	24
6.	Time	44
	(b) Enlargement.	
	(c) Rescinded.	
	 (d) For Motions—Affidavits. (e) Additional Time After Service under Rule 5(b)(2)(B), (C), or (D). 	
	III. Pleadings and Motions	
7.	Pleadings Allowed; Form of Motions	26
	(a) Pleadings.(b) Motions and Other Papers.	
	(c) Demurrers, Pleas, etc., Abolished.	
8.	General Rules of Pleading	27
	(a) Claims for Relief.	
	(b) Defenses; Form of Denials.	
	(c) Affirmative Defenses.(d) Effect of Failure to Deny.	
	(e) Pleading to Be Concise and Direct; Consistency.	
	(f) Construction of Pleadings.	
9.	Pleading Special Matters	32
	(a) Capacity.	
	(b) Fraud, Mistake, Condition of the Mind.(c) Conditions Precedent.	
	(d) Official Document or Act.	
	(e) Judgment.	
	(f) Time and Place.	
	(g) Special Damage.	
10	(h) Admiralty and Maritime Claims.	0.5
10.	Form of Pleadings	35
	(b) Paragraphs; Separate Statements.	
	(c) Adoption by Reference; Exhibits.	
11.	Signing of Pleadings, Motions, and Other Papers; Representations to	
	Court; Sanctions	36
	(a) Signature.	
	(b) Representations to Court.(c) Sanctions.	
	(d) Inapplicability to Discovery.	
12.	Defenses and Objections—When and How Presented—By Pleading or	
	Motion—Motion for Judgment on the Pleadings	39
	(a) When Presented.	
	(b) How Presented.	
	(c) Motion for Judgment on the Pleadings.(d) Preliminary Hearings.	
	(e) Motion for More Definite Statement.	
	(f) Motion to Strike.	
	(g) Consolidation of Defenses in Motion.	
	(h) Waiver or Preservation of Certain Defenses.	
13.	Counterclaim and Cross-Claim	47
	(a) Compulsory Counterclaims.(b) Permissive Counterclaims.	
	(c) Counterclaim Exceeding Opposing Claim.	
	o - FL	

Rule		Page
	(d) Counterclaim Against the United States.	
	(e) Counterclaim Maturing or Acquired After Pleading.	
	(f) Omitted Counterclaim.	
	(g) Cross-Claim Against Co-party.	
	(h) Joinder of Additional Parties.	
1.1	(i) Separate Trials; Separate Judgments.	49
14.	Third Party Practice	49
	(a) When Defendant May Bring in Third Party. (b) When Plaintiff May Bring in Third Party.	
	(c) Admiralty and Maritime Claims.	
15.	Amended and Supplemental Pleadings	50
10.	(a) Amendments.	00
	(b) Amendments to Conform to the Evidence.	
	(c) Relation Back of Amendments.	
	(d) Supplemental Pleadings.	
16.	Pretrial Conferences; Scheduling; Management	53
	(a) Pretrial Conferences; Objectives.	
	(b) Scheduling and Planning.	
	(c) Subjects for Consideration at Pretrial Conferences.	
	(d) Final Pretrial Conference.	
	(e) Pretrial Orders.	
	(f) Sanctions.	
	IV. Parties	
	P-1-10 P-10 P	
17.	Parties Plaintiff and Defendant; Capacity	57
	(a) Real Party in Interest.	
	(b) Capacity to Sue or Be Sued.	
18.	(c) Infants or Incompetent Persons. Joinder of Claims and Remedies	58
10.	(a) Joinder of Claims.	90
	(b) Joinder of Remedies; Fraudulent Conveyances.	
19.	Joinder of Persons Needed for Just Adjudication	59
	(a) Persons to Be Joined if Feasible.	00
	(b) Determination by Court Whenever Joinder Not Feasible.	
	(c) Pleading Reasons for Nonjoinder.	
	(d) Exception of Class Actions.	
20.	Permissive Joinder of Parties	61
	(a) Permissive Joinder.	
_	(b) Separate Trials.	
21.	Misjoinder and Non-joinder of Parties	62
22.	Interpleader	62
23.	Class Actions	64
	(a) Prerequisites to a Class Action.	
	(b) Class Actions Maintainable.	
	(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.	
	(d) Orders in Conduct of Actions.	
	(e) Dismissal or Compromise.	
	(f) Appeals.	
23.1	Derivative Actions by Shareholders	69
	Actions Relating to Unincorporated Associations	70
24.	Intervention	70
	(a) Intervention of Right.	10
	(b) Permissive Intervention.	
	(c) Procedure.	

		Page
Rule 25.	Substitution of Parties	72
20.	(a) Death.	
	(b) Incompetency.	
	(c) Transfer of Interest.	
	(d) Public Officers; Death or Separation From Office.	
	V. Depositions and Discovery	
26.	General Provisions Governing Discovery; Duty of Disclosure	73
	(2) Disclosure of Expert Testimony.(3) Pretrial Disclosures.	
	(4) Form of Disclosures.(5) Methods to Discover Additional Matter.	
	(b) Discovery Scope and Limits.	
	(1) In General.	
	(2) Limitations.(3) Trial Preparation: Materials.	
	(4) Trial Preparation: Experts.	
	(5) Claims of Privilege or Protection of Trial Preparation Materials.	
	(c) Protective Orders.	
	(d) Timing and Sequence of Discovery.	
	(e) Supplementation of Disclosures and Responses.(f) Conference of Parties; Planning for Discovery.	
	(g) Signing of Disclosures, Discovery Requests, Responses, and Ob-	
	jections.	
27.	Depositions Before Action or Pending Appeal	89
	(a) Before Action. (1) Petition.	
	(2) Notice and Service.	
	(3) Order and Examination.	
	(4) Use of Deposition.	
	(b) Pending Appeal.	
28.	(c) Perpetuation by Action. Persons Before Whom Depositions May Be Taken	90
20.	(a) Within the United States.	30
	(b) In Foreign Countries.	
	(c) Disqualification for Interest.	250 800
29.	Stipulations Regarding Discovery Procedure	92
30.	Depositions Upon Oral Examination	93
	(b) Notice of Examination: General Requirements; Method of Re-	
	cording; Production of Documents and Things; Deposition of	
	Organization: Deposition by Telephone.	
	(c) Examination and Cross-Examination; Record of Examination;	
	Oath; Objections. (d) Schedule and Duration; Motion to Terminate or Limit Examina-	
	tion.	
	(e) Review by Witness; Changes; Signing.(f) Certification and Filing by Officer; Exhibits; Copies; Notice of	
	Filing.	
31.	(g) Failure to Attend or to Serve Subpoena; Expenses.	ΩĐ
51.	Depositions Upon Written Questions	98
	(b) Officer to Take Responses and Prepare Record.	
	(c) Notice of Filing.	

Rule	Use of Depositions in Court Proceedings	Page 99
32.	(a) Use of Depositions.	33
	(b) Objections to Admissibility.	
	(c) Form of Presentation.	
	(d) Effect of Errors and Irregularities in Depositions.	
	(1) As to Notice.	
	(2) As to Disqualification of Officer.(3) As to Taking of Deposition.	
	(4) As to Completion and Return of Deposition.	
33.	Interrogatories to Parties	102
00.	(a) Availability.	
	(b) Answers and Objections.	
	(c) Scope; Use at Trial.	
	(d) Option to Produce Business Records.	
34.	Production of Documents and Things and Entry Upon Land for	
	Inspection and Other Purposes	105
	(a) Scope.(b) Procedure.	
	(c) Persons Not Parties.	
35.	Physical and Mental Examination of Persons	107
00.	(a) Order for Examination.	101
	(b) Report of Examiner.	
36.	Requests for Admission	108
	(a) Request for Admission.	
	(b) Effect of Admission.	
37.	Failure to Make or Cooperate in Discovery: Sanctions	111
	(a) Motion for Order Compelling Disclosure or Discovery.	
	(1) Appropriate Court.(2) Motion.	
	(3) Evasive or Incomplete Disclosure, Answer, or Response.	
	(4) Expenses and Sanctions.	
	(b) Failure to Comply With Order.	
	(1) Sanctions by Court in District Where Deposition Is Taken.	
	(2) Sanctions by Court in Which Action Is Pending.	
	(c) Failure to Disclose; False or Misleading Disclosure; Refusal to	
	Admit.	
	(d) Failure of Party to Attend at Own Deposition or Serve Answers	
	to Interrogatories or Respond to Request for Inspection. (e) [Abrogated.]	
	(f) [Repealed.]	
	(g) Failure to Participate in the Framing of a Discovery Plan.	
	VI. Trials	9
38.	Jury Trial of Right	116
	(a) Right Preserved.	
	(b) Demand.	
	(c) Same: Specification of Issues.	
	(d) Waiver.	
39.	(e) Admiralty and Maritime Claims.	110
JJ.	Trial by Jury or by the Court	118
	(b) By the Court.	
	(c) Advisory Jury and Trial by Consent.	
40.	Assignment of Cases for Trial	118

Rule		Page
41.	Dismissal of Actions	118
	(a) Voluntary Dismissal: Effect Thereof.	
	(1) By Plaintiff; by Stipulation.	
	(2) By Order of Court.	
	(b) Involuntary Dismissal: Effect Thereof.	
	(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.(d) Costs of Previously-Dismissed Action.	
40	Consolidation; Separate Trials	121
42.	(a) Consolidation.	121
	(b) Separate Trials.	
43.	Taking of Testimony	121
10.	(a) Form.	
	(b), (c) [Abrogated.]	
	(d) Affirmation in Lieu of Oath.	
	(e) Evidence on Motions.	
	(f) Interpreters.	17.252
44.	Proof of Official Record	122
	(a) Authentication.	
	(1) Domestic.	
	(2) Foreign.(b) Lack of Record.	
	(c) Other Proof.	
44 1	Determination of Foreign Law	123
45.	Subpoena	124
10.	(a) Form; Issuance.	
	(b) Service.	
	(c) Protection of Persons Subject to Subpoenas.	
	(d) Duties in Responding to Subpoena.	
	(e) Contempt.	
46.	Exceptions Unnecessary	128
47.	Jurors	128
	(a) Examination of Jurors.	
	(b) Peremptory Challenges.(c) Excuse.	
48.	Number of Jurors—Participation in Verdict	128
49.	Special Verdicts and Interrogatories	129
10.	(a) Special Verdicts.	120
	(b) General Verdict Accompanied by Answer to Interrogatories.	
50.	Judgment as a Matter of Law in Jury Trials; Alternative Motion for	
	New Trial; Conditional Rulings	130
	(a) Judgment as a Matter of Law.	
	(b) Renewal of Motion for Judgment After Trial; Alternative Motion	
	for New Trial.	
	(c) Granting Renewed Motion for Judgment as a Matter of Law;	
	Conditional Rulings; New Trial Motion.	
51.	(d) Same: Denial of Motion for Judgment as a Matter of Law. Instructions to Jury: Objection	133
52.	Findings by the Court; Judgment on Partial Findings	135
02.	(a) Effect.	100
	(b) Amendment.	
	(c) Judgment on Partial Findings.	
53.	Masters	136
	(a) Appointment and Compensation.	
	(b) Reference.	
	(c) Powers.	
	(d) Proceedings.	
	(1) Meetings.	

Rule		Page
	(2) Witnesses.	
	(3) Statement of Accounts.	
	(e) Report.	
	(1) Contents and Filing.	
	(2) In Non-jury Actions.	
	(3) In Jury Actions.	
	(4) Stipulation as to Findings.	
	(5) Draft Report.	
	(f) Application to Magistrate Judge.	
	VII. Judgment	
54.	Judgments; Costs	139
04.	(a) Definition; Form.	100
	(b) Judgment Upon Multiple Claims or Involving Multiple Parties.	
	(c) Demand for Judgment.	
	(d) Costs; Attorneys' Fees.	
	(1) Costs Other Than Attorneys' Fees.	
	(2) Attorneys' Fees.	
55.	Default	142
	(a) Entry.	
	(b) Judgment.	
	(1) By the Clerk.	
	(2) By the Court.	
	(c) Setting Aside Default.	
	(d) Plaintiffs, Counterclaimants, Cross-Claimants.	
Missister	(e) Judgment Against the United States.	
56.	Summary Judgment	143
	(a) For Claimant.	
	(b) For Defending Party.	
	(c) Motion and Proceedings Thereon.	
	(d) Case Not Fully Adjudicated on Motion.	
	(e) Form of Affidavits; Further Testimony; Defense Required.	
	(f) When Affidavits Are Unavailable.	
E7	(g) Affidavits Made in Bad Faith.	140
57.	Declaratory Judgments	148
58. 59.	Entry of Judgment	149
<i>υ</i> θ.	New Trials; Amendment of Judgments	150
	(b) Time for Motion.	
	(c) Time for Serving Affidavits.	
	(d) On Initiative of Court.	
	(e) Motion to Alter or Amend a Judgment.	
60.	Relief From Judgment or Order	151
	(a) Clerical Mistakes.	101
	(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered	
	Evidence; Fraud, etc.	
61.	Harmless Error	153
62.	Stay of Proceedings to Enforce a Judgment	153
	(a) Automatic Stay; Exceptions-Injunctions, Receiverships, and	
	Patent Accountings.	
	(b) Stay on Motion for New Trial or for Judgment.	
	(c) Injunction Pending Appeal.	
	(d) Stay Upon Appeal.	
	(e) Stay in Favor of the United States or Agency Thereof.	
	(f) Stay According to State Law.	

Rule		Page
63.	(g) Power of Appellate Court Not Limited.(h) Stay of Judgment as to Multiple Claims or Multiple Parties.Inability of a Judge to Proceed	155
	VIII. Provisional and Final Remedies	
64.	Seizure of Person or Property	155
65.	Injunctions	156
	(b) Temporary Restraining Order; Notice; Hearing; Duration.(c) Security.	
	 (d) Form and Scope of Injunction or Restraining Order. (e) Employer and Employee; Interpleader; Constitutional Cases. (f) Copyright Impoundment. 	
65.1	Security: Proceedings Against Sureties	159
66.	Receivers Appointed by Federal Courts	159
67.	Deposit in Court	159
68. 69.	Offer of Judgment	$\frac{160}{161}$
09.	(a) In General.	101
	(b) Against Certain Public Officers.	
70.	Judgment for Specific Acts; Vesting Title	165
71.	Process in Behalf of and Against Persons Not Parties	165
	IX. Special Proceedings	
71A.	Condemnation of Property	165
	(a) Applicability of Other Rules. (b) Joinder of Properties.	
	(c) Complaint.	
	(1) Caption.	
	(2) Contents.	
	(3) Filing.	
	(d) Process.	
	(1) Notice; Delivery.	
	(2) Same; Form.	
	(3) Service of Notice.(4) Return; Amendment.	
	(e) Appearance or Answer.	
	(f) Amendment of Pleadings.	
	(g) Substitution of Parties.	
	(h) Trial.	
	(i) Dismissal of Action.	
	(1) As of Right.	
	(2) By Stipulation.(3) By Order of the Court.	
	(4) Effect.	
	(j) Deposit and Its Distribution.	
	(k) Condemnation Under a State's Power of Eminent Domain.	
	(l) Costs.	
72.	Magistrates; Pretrial Matters	170
	(a) Nondispositive Matters.	
	(b) Dispositive Motions and Prisoner Petitions.	

Rule 73.	Magistrate Judges; Trial by Consent and Appeal Options	Page 170
	X. District Courts and Clerks	
77.	District Courts and Clerks (a) District Courts Always Open. (b) Trials and Hearings; Orders in Chambers. (c) Clerk's Office and Orders by Clerk. (d) Notice of Orders or Judgments.	171
78.	Motion Day	172
79.	Books and Records Kept by the Clerk and Entries Therein	172
	(d) Other Books and Records of the Clerk.	
80.	Stenographer; Stenographic Report or Transcript as Evidence (a), (b) [Abrogated.] (c) Stenographic Report or Transcript as Evidence.	173
	XI. General Provisions	
81.	Applicability in General	173
82.	(f) References to Officer of the United States. Jurisdiction and Venue Unaffected	176
83.	Rules by District Courts	182
84.	Forms	176
85. 86.	Title	$\begin{array}{c} 177 \\ 177 \end{array}$
Form	 (a) [Effective Date of Original Rules]. (b) Effective Date of Amendments. (c) Effective Date of Amendments. (d) Effective Date of Amendments. (e) Effective Date of Amendments. 	177
1.	Summons	179
1A. 1B.	Notice of Lawsuit and Request for Waiver of Service of Summons Waiver of Service of Summons	180
2.	Allegation of Jurisdiction	181 182
3.	Complaint on a Promissory Note	183
4.	Complaint on an Account	183
5.	Complaint for Goods Sold and Delivered	184
6. 7.	Complaint for Money Lent	184
4 .	Complaint for Money Faid by Mistake	184

Forr		
8.		84
9.		84
10.	Complaint for Negligence Where Plaintiff Is Unable to Determine	
	Definitely Whether the Person Responsible Is C.D. or E.F. or	
	Whether Both Are Responsible and Where His Evidence May	
		85
11.		86
12.		86
13.		87
14.		87
15.		88
16.		88
17.		88
18.		91
18 - 1		92
19.	Motion to Dismiss, Presenting Defenses of Failure to State a Claim,	
	of Lack of Service of Process, of Improper Venue, and of Lack of	
		92
20.		93
21.	Answer to Complaint Set Forth in Form 8, With Counterclaim for	
		94
22.	Motion to Bring in Third-Party Defendant [Eliminated] 19	-
22-1		
22–		
23.	Motion to Intervene as a Defendant Under Rule 24	
24.	Request for Production of Documents, etc., Under Rule 34	
25.	Request for Admission Under Rule 36	
26.	Allegation of Reason for Omitting Party	
27.	Notice of Appeal to Court of Appeals Under Rule 73(b) [Abrogated.] 20	
28.	Notice: Condemnation 20	
29.	Complaint: Condemnation 20	
30.	Suggestion of Death Upon the Record Under Rule 25(a)(1) 20	
31.	Judgment on Jury Verdict20	
32.	Judgment on Decision by the Court)4
33.	Notice of Availability of a Magistrate Judge to Exercise Jurisdiction	
0.4	and Appeal Option 20)4
34.	Consent to Exercise of Jurisdiction by a United States Magistrate	
244	Judge, Election of Appeal to District Judge	-
34A 35.		727
55.	Report of Parties' Planning Meeting 20	Jb
1	Supplemental Rules for Certain Admiralty and Maritime Claims	
Rule		~~
	Scope of Rules	
B.	In Personam Actions: Attachment and Garnishment 20	
	In Rem Actions: Special Provisions 21	-
	Possessory, Petitory, and Partition Actions 21	
	Actions in Rem and Quasi in Rem: General Provisions 21	
F.	Limitation of Liability 21	
100 100		

Comparative Federal and State Provisions

(See Index to Comparative State Provisions, Part X, infra.)