

Proposed Amendments to Rule 68

Rule 68 is amended as follows:

Rule 68. Offer of Judgment:

~~_____ At any time more~~ **(a) Making an Offer; Judgment on an Accepted Offer.**

More than 10 days before the trial begins, a party defending against a claim may serve upon the adverse **on an opposing** party an offer to allow judgment to be taken against the defending party for the money or property or to the effect **on** specified in the offer **terms**, with **the** costs then accrued. If, within 10 days after the service of the offer the adverse **being served, the opposing** party serves written notice that **accepting** the offer is accepted, either party may then file the offer and notice of acceptance together with, **plus** proof of service thereof, and thereupon the **. The** clerk shall **will then** enter **the** judgment. ~~An offer not accepted shall be deemed withdrawn and evidence thereof~~

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs. ~~If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.~~

(c) Offer After Liability Is Determined. When the **one party's** liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged **held** liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is. **It must be** served within a reasonable time not less

than— **but at least** 10 days prior to the commencement of hearings— **before a hearing** to determine the amount or extent of liability.

(d) Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

~~**PRACTICE COMMENT:** Pursuant to the renumbering of the Rules, the former Rule 68 now will be identified as Rule 54.1. New Rule 68 conforms to Rule 68 of the Federal Rules of Civil Procedure.~~

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Sept. 30, 2003, eff. Jan. 1, 2004; _____, 2009, eff. _____, 2010.)

Advisory Committee Note

The language of Rule 68 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. Further, the Practice Comment to Rule 68 has been deleted as no longer necessary.