

## Proposed Amendments to Rule 54

Rule 54 is amended as follows:

### Rule 54. Judgment[s]; Costs

(a) Definition; [-]Form. “Judgment” as used in these rules includes a decree and any order from which an appeal lies. A judgment ~~[shall]~~**should** not ~~[contain a recital]~~**include recitals** of pleadings, ~~[the report of]~~ a master’s **report**, or ~~[the]~~**a** record of prior proceedings.

(b) Judgment [Upon]on Multiple Claims or Involving Multiple Parties. When **an action presents** more than one claim for relief ~~[is presented in an action,]~~ -- whether as a claim, counterclaim, ~~[cross claim]~~**crossclaim**, or third-party claim – or when multiple parties are involved, the court may direct ~~[the]~~ entry of a final judgment as to one or more, but fewer than all ~~[of the]~~, claims or parties only ~~[upon an express determination]~~ **if the court expressly determines** that there is no just reason for delay ~~[and upon an express direction for the entry of judgment. In the absence of such determination and direction]~~. **Otherwise**, any order or other ~~[form of]~~ decision, however~~;~~ designated, ~~[which]~~**that** adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties ~~[shall]~~**does** not ~~[terminate]~~**end** the action as to any of the claims or parties ~~[, and the order or other form of decision is subject to revision]~~**and may be revised** at any time before the entry of **a** judgment adjudicating all the claims and **all the parties’** ~~[the]~~ rights and liabilities ~~[of all the parties.]~~.

(c) Demand for Judgment; Relief to be Granted. A **default** judgment ~~[by default shall]~~**must** not ~~[be different]~~**differ** in kind from, or exceed in amount ~~[that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by~~

default, every], **what is demanded in the pleadings. Every other** final judgment [shall] **should** grant the relief to which [the party in whose favor is rendered] **each party** is entitled, even if the party has not demanded [such] **that** relief in [the party's pleadings.] **its pleadings.**

(d) Costs; Attorney's Fees.

(1) Costs **Other** [other] than Attorney's Fees. [-Except when express provision therefor is made either in a statute of the United States or in] **Unless a federal statute,** these rules, **or a court order provides otherwise,** costs[;] – other than [attorneys'] **attorney's** fees -- [shall] **should** be allowed [as of course] to the prevailing party [-unless the court otherwise directs; but]. **But** costs against the United States, its officers, and **its** agencies [shall] **may** be imposed only to the extent [permitted] **allowed** by law. [Such costs may be taxed by the] **The** clerk **may tax costs** on [one] **1** day's notice. On motion served within **the next** 5 days [thereafter], the [action of] **court may review** the clerk [may be reviewed by the court]'s **action.**

(2) Attorney's Fees.

(A) [Claims] **Claim to Be by Motion. A claim** for attorney's fees and related [non-taxable] **nontaxable** expenses [shall] **must** be made by motion unless the substantive law [governing the action provides for the recovery of such fees] **requires those fees to be proved at trial** as an element of damages [to be provided at trial:].

(B) **Timing and Contents of the Motion.** Unless [otherwise provided by] **a** statute or **a court** order [of the court] **provides otherwise,** the motion must:

(i) be filed no later than 14 days after **the** entry of judgment; [must]

(ii) specify the judgment and the statute, rule, or other grounds entitling the [moving party] **movant** to the award; [and must]

(iii) state the amount **sought** or provide a fair estimate of [the amount sought. If directed by the court, the motion shall also] **it; and**

(iv) disclose, **if the court so orders**, the terms of any agreement [with respect to] **about** fees [to be paid] for the services for which **the** claim is made.

(C) [~~On request of~~] **Proceedings. The court must, on** a party's or a class member [, the court shall afford]'s **request, give** an opportunity for adversary submissions [with respect to] **on** the motion in accordance with Rule 43(c) [~~or Rule 78~~]. The Court may [determine] **decide** issues of liability for fees before receiving submissions [bearing on issues of evaluation] **on the value** of services [for which liability is imposed by the court]. The court [shall] **must** find the facts and state its conclusions of law as provided in Rule 52(a).

[~~(D) By court rules,~~] **(D) Special Procedures; Reference to a Master.** **T**[t]he court may establish special procedures [by which] **to resolve fee-related** issues [relating to such fees may be resolved] without extensive evidentiary hearings. **Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a).**

[~~(E) The provisions of subparagraphs (1) through (4)~~] **(E) Exceptions.** **Subparagraphs (A)-(D)** do not apply to claims for fees and expenses as

sanctions for ~~violations of~~ **violating** these rules or **as sanctions** under 28 U.S.C. § 1927.

**PRACTICE COMMENT:** The USCIT Guidelines for Bill of Costs set forth in full the procedures to be followed when a prevailing party files a Bill of Costs pursuant to Rule 54(d)(1). The Guidelines shall have the same force and effect as the provisions of this Rule. The failure of a prevailing party either to timely file a Bill of Costs or to comply with these Guidelines shall constitute a waiver of any claim for costs.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; \_\_\_\_\_, **2008, eff. \_\_\_\_\_, 2009.**)

#### **Advisory Committee Note**

Rule 54 has been amended stylistically to conform to the 2007 amendments to the Fed. R. Civ. P.