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Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Secretary:

This letter includes my comments on the proposed civil forms. Most comments are of a style nature, though some may be characterized as substantive.

First of all, those who worked on the civil forms are to be commended. They did an excellent job. The proposed forms are a vast improvement over the existing forms.

I understand that it was your goal to resist substantive changes in this revision. Still, I cannot help but say that, in my view, it is time to delete all or most of the complaint forms. The forms sanction a method of pleading that may not comply with existing pleading rules. At a minimum, the forms are out of sync with existing practice.

You asked for comments about the manner in which pre-judgment and post-judgment is treated in the forms. I agree with the overall manner in which you have dealt with interest, and I would not add a phrase like "as available under existing law." Some specific comments about the manner in which interest is demanded are set forth below.

The remainder of my comments are more easily understood in the context of the form itself. Therefore, for ease of reference, I have included relevant portions of the forms, with my comments in red.

Form 3. Summons.

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3)(A) or (B).)

It took me a little while to understand the last part of this sentence. I would suggest the following:

(Use 60 days if the defendant is the United States, a United States agency, or an officer or employee of the United States sued in the capacities provided for in Rule 12(a)(3)(A) and (B).

Form 6. Waiver of the Service of Summons.

Duty to Avoid Unnecessary Costs of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary costs of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in

the United States will be required to pay the costs of service, unless the defendant shows good cause for the failure. "Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property. I suggest a change in the paragraphing, as shown here. This puts the general into the first paragraph, using "defendant," and the specific, using "you," in the next paragraph.

If the waiver is signed and returned, you can still make all defenses and objections, but you cannot object to the absence of a summons or of service. If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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Form 11. Complaint for Negligence.

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

2. On date, at place, the defendant negligently drove a motor vehicle against the plaintiff. I realize that use of the word "against" is in the current form. It sounds particularly odd, however, when the rest of the verbiage is eliminated. Perhaps the use of "into" would be better. The same comment holds true for Form 12.

Form 17. Complaint for Specific Performance of a Contract to Convey Land.

Therefore, the plaintiff demands that:

(a) the defendant be required to specifically perform the agreement and pay damages of \$ _____, plus interest and costs; or

(b) the defendant be required to pay damages of \$ _____, plus interest and costs, if specific performance is not ordered.

I think you should conform whether to use "that" before or after the colon. See my comments in Form 21 below.

Also, it seems that a demand for interest in paragraph (b) should be added for purposes of consistency.

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Form 18. Complaint for Patent Infringement.

4. The plaintiff has complied with the statutory requirement of placing a notice of the Letters Patent on all electric motors it manufactures and sells, and has given the defendant written notice of the infringement.

Therefore, the plaintiff demands:

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- (a) a preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages; and
- (c) interest and costs.

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Deleted: against the defendant

Form 19. Complaint for Copyright Infringement and Unfair Competition.

Therefore, the plaintiff demands that:

(a) until this case is decided, the defendant and the defendant's agents be enjoined from disposing of any copies of the defendant's book by sale or otherwise;

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(b) the defendant account for and pay as damages to the plaintiff all profits and advantages gained from unfair trade practices and unfair competition in selling the defendant's book, and for all profits and advantages gained from infringing the plaintiff's copyright (but no less than the statutory minimum);

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(c) the defendant deliver for impoundment all copies of the book in the defendant's possession or control and deliver for destruction all infringing copies and all plates, molds, and other materials for making infringing copies;

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(d) the defendant pay the plaintiff interest, costs, and reasonable attorney's fees;

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and

(e) the plaintiff be awarded any other just relief.

Deleted: that

Form 20. Complaint for Interpleader and Declaratory Relief.

Therefore, the plaintiff demands that:

(a) each defendant be restrained from commencing any action against the plaintiff on the policy; and

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(b) a judgment, plus costs, be entered declaring that no defendant is entitled to the proceeds of the policy or any part of it, or, if the court determines that the policy was in effect at the time of the insured's death, declaring that the defendants be required to interplead and settle among themselves their rights to the proceeds, and that the plaintiff be discharged from all liability except to the defendant determined to be entitled to the proceeds. In my view, the addition of the comma after "proceeds" makes the sentence ambiguous. Without the comma, it is clear that a discharge of the plaintiff occurs only if the court has determined that the policy was in effect at the time of the insured's death.

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Deleted: (c) that the plaintiff recover its costs.

Form 21. Complaint on a Claim for a Debt and to Set Aside a Fraudulent Conveyance Under Rule 18(b).

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4. On date, defendant name conveyed all of defendant's real and personal property if less than all, describe it fully to defendant name for the purpose of defrauding the plaintiff and hindering or delaying the collection of the debt.

Therefore, the plaintiff demands that: I note that on this form the word "that" precedes the colon and is not repeated below. This is also true in Form 31.

(a) judgment for \$ _____, plus costs, be entered against defendant(s) name(s);
and

(b) the conveyance to defendant name be declared void and any judgment granted be made a lien on the property.

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Form 30. Answer Presenting Defenses Under Rule 12(b).

Counterclaim

(Set forth any counterclaim against an opposing party in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)

Crossclaim

(Set forth any crossclaim against a co-party in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)

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Form 31. Answer to a Complaint for Money Had and Received with a Counterclaim for Interpleader.

Therefore, the defendant demands that:

...

(d) the defendant recover costs and attorney's fees.

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Form 50. Request to Produce Documents and Tangible Things, or to Enter onto Land Under Rule 34.

The plaintiff name requests that the defendant name respond within _____ days to the following requests: I understand that the blank for filling in the number of days to respond is carried forward from the current form. However, the blank invites filling in an inaccurate time requirement. I would suggest that it say: "... respond within the time provided by Rule 34 ... :". I have the same comment with respect to Form 51.

Form 70. Judgment on a Jury Verdict.

It is ordered that:

[the plaintiff name recover from the defendant name the amount of \$ _____ with pre-judgment interest at the rate of __%, post-judgment interest, and costs.]

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In Maryland, the interest rate is relevant with respect to pre-judgment interest only because the amount of pre-judgment interest varies depending on the circumstances of the case (usually 6% unless a contract or statute provides otherwise). The percentage rate for post-judgment interest, on the other hand, is automatic and is governed exclusively by statute (usually 10%, though there are exceptions).

Under Maryland law, a verdict and a court decision must set forth pre-judgment interest separately. See Maryland Rule 2-604(a). It would seem important to do that in a federal court judgment as well because enforcement of the judgment in state court may otherwise become difficult.

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[the plaintiff recover nothing, a judgment be entered in favor of the defendant, and the defendant name recover costs from the plaintiff name.]

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It seems inaccurate to say that a case is "dismissed" on the merits after a jury has rendered a verdict. I have the same comment with respect to Form 71.

I hope you find these comments useful.

Very truly yours,

/s/

Linda M. Schuett