

## **RULE 68. OFFER OF JUDGMENT**

At any time more than 10 days before the trial begins or within such shorter time as the court may approve, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer or within such shorter time as the court may order the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.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. When the 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 liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days, or such shorter time as the court may approve, prior to the commencement of hearings to determine the amount or extent of liability.

### **Advisory Committee's Note December 31, 1967**

The rule is amended to permit the court to allow offers of judgment to be made less than 10 days before trial. Not infrequently the pre-trial conference, at which issues are shaped up between the parties, is held less than 10 days before the trial is scheduled to begin. The rigid 10-day rule (which was not present in the "offer to be defaulted" statute of the pre-rules era, R.S. 1954, c. 113, § 42) may prevent what otherwise would be a meritorious simplifying of the trial. However, the court should guard against the defendant's unreasonably deferring his offer of judgment, thereby casting upon the plaintiff the burden of having substantially completed his trial preparation before the offer is made. The shortened period should remain the exception to the usual 10-day rule.

### **Explanation of Amendment (Nov. 1, 1966)**

This amendment was taken from a 1966 amendment to F.R. 68. It provides for possible use of the offer-of-judgment procedure when the issue of liability has been resolved, but the amount of damages remains to be determined.

**Reporter's Notes**  
**December 1, 1959**

This rule is the same as Federal Rule 68. This rule has a substantial basis in R.S.1954, Chap. 113, Sec. 42 ff. (repealed in 1959), establishing a procedure for offering to be defaulted as a means of minimizing costs. The rule changes the statutory procedure as follows: (1) the requirement that the offer be more than 10 days before trial begins is not in the statute; (2) the 10-day limit for acceptance of the offer is not in the statute, which provides that the court shall fix such time;\* and (3) the rule states that the fact of an unaccepted offer does not preclude a subsequent offer, a point upon which the statute is silent.

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\* [Field, McKusick & Wroth commented: “Both of the first two differences have been substantially eliminated by the amendments effective December 31, 1967. See Advisory Committee's Note . . .” 2 Field, McKusick & Wroth, *Maine Civil Practice* at 121 (2d ed. 1970)].