

Part 12 - Actions Under \$100,000

Rule 57 - Action for Damages Under \$100,000

Definition

57.01 In this Rule, “action under \$100,000” means an action to which this Rule applies.

Scope of Rule 57

- 57.02 (1)** This Rule provides for the economical conduct of certain defended actions by limiting pretrial and trial procedures.
- (2) A party to an action under \$100,000 must advance the claim, or conduct the defence, within the limits prescribed by this Rule.

Application of Rule 57

- 57.03 (1)** This Rule applies to an action in which the plaintiff, acting in accordance with Rule 57.04, states in a notice of action or notice of action for debt that the action is within this Rule.
- (2) Rule 57.04 applies to all actions.
- (3) A judge who continues an application as an action under Rule 6 - Choosing between Action and Application, or severs a claim in an action under Rule 37 - Consolidation and Separation, may order that this Rule 57 applies to the action, or severed claim, if the judge is satisfied the action or severed claim is within clauses (a), (b), and (c) of Rule 57.04(1).
- (4) Under Rule 58 - Action for Claim Valued under \$100,000, a judge may order that this Rule applies to an action.
- (5) A judge who is satisfied on one of the following may except an action under \$100,000 from the provisions of this Rule:
- (a) justice cannot be done by applying this Rule;

- (b) a party or the public has a significant intangible interest at stake in the outcome of the action;
- (c) a counterclaim, crossclaim, or third party claim is filed, it would be unjust to limit procedures applicable to the counterclaim, crossclaim, or third party claim as provided in this Rule, and the counterclaim, crossclaim, or third party claim is not to be separated under Rule 37 - Consolidation and Separation.

Plaintiff's statement applying Rule 57

- 57.04 (1)** A person who starts an action, other than an action to enforce a builder's lien, must do all of the following:
- (a) determine whether the claim is for damages only;
 - (b) if so, determine whether the claim is based only on debt, injury to property, personal injury, supply of goods or services, or losses caused by breach of contract, breach of trust, or dismissal from employment;
 - (c) if so, estimate whether the total of all claims, except costs and future interest, is less than \$100,000.
- (2) A plaintiff who makes the determinations and estimates under Rule 57.04(1) in the affirmative must state, in the notice of action or notice of action for debt, that the action is within this Rule.
- (3) A plaintiff who states in the notice of action, or notice of action for debt, that this Rule applies may not have judgment for more than \$99,999.99, plus interest after the day the action is started and costs.
- (4) A plaintiff who would otherwise be entitled to costs but who unreasonably states that an action is not within this Rule is disentitled to costs, including an indemnification for disbursements.
- (5) A judge who determines to order costs against a plaintiff may take an unreasonable statement that the action is not within this Rule into consideration when fixing the amount of costs.

Unreasonable counterclaim, crossclaim, or third party claim

- 57.05** A judge who finds that a party obtained an order under Rule 57.03(5) excepting an action from the provisions of this Rule on the basis of an unreasonably high counterclaim, crossclaim, or third party claim may do either of the following:

- (a) deprive the party of costs, including an indemnity for disbursements, if the party would otherwise be entitled to costs;
- (b) increase the amount of costs that would otherwise be ordered against the party.

Early date assignment conference

57.06 Despite Rule 4.13(1), of Rule 4 - Action, a party to an action under \$100,000 may obtain a date assignment conference to organize trial dates any time after pleadings close.

Preservation of electronic information

57.07 Despite Rule 16.03(4), of Rule 16 - Disclosure of Electronic Information, a party to an action under \$100,000 may preserve relevant electronic information by copying it from the original source to a storage medium, unless the parties agree or a judge orders that the information must be copied exactly.

Economical disclosure

- 57.08 (1)** A judge may, in an action under \$100,000, give directions for economical ways of making full disclosure of documents, electronic information, or other evidence.
- (2)** Each of the following is an example of directions that may provide economical ways of making full disclosure:
- (a) attend a conference of the parties with or without a judge, bring all relevant documents and electronic information to the conference, exchange copies there, and answer questions about the documents or electronic information;
 - (b) attend a conference of the parties without a judge to discuss and, if possible, agree to terms for disclosure of electronic information;
 - (c) attend a conference of the parties with a judge to settle terms for disclosure of electronic information;
 - (d) exchange copies of relevant documents and electronic information without affidavits, if the judge is satisfied each party has fully informed the other about relevant documents and electronic information in the party's control.

No interrogatories

57.09 A party to an action under \$100,000 may not demand answers under Rule 19 - Interrogatories, except a judge may give permission for a party to demand answers from a person who is not a party or an officer or employee of a party.

Economical discovery

- 57.10 (1)** Discovery in an action under \$100,000 is restricted to the witnesses, the length of time, and the number of sessions provided in this Rule 57.10.
- (2)** A party to an action under \$100,000 may only discover, or seek a discovery subpoena addressed to, an individual party, a designated manager of a corporate party, and one other officer or employee of a corporate party.
- (3)** A party to an action under \$100,000 who is not represented by the same counsel as another party and who is adverse in interest to all other parties, and parties who are represented by the same counsel or are not adverse in interest, must complete all discoveries required by the party, or parties, in no more than three hours, over no more than two sessions.
- (4)** The parties may agree to or a judge may permit an extension of the length of time for discovery, or number of sessions of discovery, or the obtaining of a discovery subpoena not otherwise permitted under this Rule 57.10.
- (5)** A judge who permits an extension on the obtaining of a subpoena must be satisfied that, despite the need for economy, permission is necessary because a claim is sufficiently complex, a witness is uncooperative in answering questions efficiently, or there are other similar grounds.
- (6)** The three hours of discovery allowed to parties who are not adverse in interest must be divided evenly among them, whether or not a party is represented by the same counsel as another party.

Economical trial

- 57.11 (1)** A date assignment conference judge must take into account the need for economy in an action under \$100,000 when setting the number of days for trial.
- (2)** The parties must do everything that is reasonable to keep the trial within the time allotted by the date assignment conference judge.
- (3)** A presiding judge may apportion time for examinations and preclude a party from examining a witness beyond the apportioned time.

No jury trial

- 57.12** For the purpose of Section 34 of the *Judicature Act*, an action under \$100,000 must be tried without a jury.

Witnesses

- 57.13 (1)** A party to an action under \$100,000 must, before a date assignment conference, deliver to each other party a list of the witnesses the party intends to call, and a description of the subjects about which each witness may testify.
- (2)** Before the finish date, the party must deliver to each other party a final list of witnesses the party will call at trial and a will-say statement for each witness on the list who is not an expert or who has not been discovered.
- (3)** A party may only call a witness whose name is on the final witness list, unless the presiding judge is satisfied the party could not reasonably have been aware of the witness before the finish date and, as soon as the party became aware, the party disclosed the name of the witness and what the witness will say to each other party.
- (4)** A party who calls a witness may lead evidence only on subjects expressly covered in the will-say statement, unless the presiding judge is satisfied the subject was left out of the statement for reasons beyond the control of the party.

Rule 58 - Action for Claim Valued Under \$100,000

Scope of Rule 58

- 58.01 (1)** This Rule allows for the economical conduct of both of the following kinds of actions:
- (a) an action that is not for damages, or not exclusively for damages, but in which the value of the interest in dispute is less than \$100,000;
 - (b) an action for damages valued at less than \$100,000 and based on a cause of action not mentioned in Rule 57.04(1)(b), of Rule 57 - Action for Damages Under \$100,000.
- (2)** The parties to a defended action may agree to economical limits on interrogatories, discovery, the time for trial or examination of witnesses, or any other procedure.
- (3)** A party who is unable to obtain an agreement for economical limits may seek to limit pretrial and trial procedures in certain actions valued under \$100,000, in accordance with this Rule.

Motion for economical procedures

- 58.02 (1)** A party to a defended action may make a motion for an order applying Rule 57 - Action for Damages Under \$100,000, to an action to which Rule 57 does not otherwise apply.
- (2)** The party must satisfy the judge hearing the motion on each of the following:
- (a) the value of the claims in the action can be estimated in money, and there is no significant intangible interest at stake in the outcome of the action;
 - (b) the fair estimated value of the plaintiff's claims is less than \$100,000 and no counterclaim, crossclaim, or third party claim has a fair estimated value in excess of \$100,000;
 - (c) the expense of taking the action to its conclusion will be out of proportion to the interests at stake in the action unless provisions of Rule 57 apply, or directions to similar effect are given.

Order for economical procedures

58.03 A judge who is satisfied in accordance with Rule 58.02(2) may order that Rule 57 - Action for Damages Under \$100,000 applies to the action, or do any of the following:

- (a) give directions for full disclosure of documents, electronic information, and other evidence to make disclosure more economical than otherwise is the case;
- (b) order limitations on discovery, or the time for trial and examination;
- (c) direct disclosure of witnesses and delivery of summaries of the expected testimony or will-say statements;
- (d) give any other directions to make the cost of procedures proportionate to the interests at stake in the action.