

(Added Apr. 23, 2008, eff. Dec. 1, 2008.)

COMMITTEE NOTES ON RULES—2008

This rule is new. It implements §351(1), which was added to the Code by the 2005 amendments. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under §351(1)(A), and subdivision (b) governs the form of notices under §351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with §351(1)(B), but because the proof of compliance may contain patient names that should or must remain confidential, it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under §107, the names, addresses, and other identifying information of patients are not to be included in the report to protect patient privacy.

Changes Made After Publication. Subdivision (b)(2) was amended to add the Attorney General of the State where a health care facility is located to the list of entities entitled to notice of the disposal of patient records.

PART VII—ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge;
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9,

chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9014 some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules also relied heavily on the F.R.Civ.P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the F.R.Civ.P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the F.R.Civ.P. Most, but not all, of the F.R.Civ.P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular F.R.Civ.P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the F.R.Civ.P., or subdivision thereof, covered by a rule in either Part V or Part IX.

F.R.Civ.P.	Rule in Part V or IX
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38,39	9015(a)–(e)
47–51	9015(f)
43,44,44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a),(b),(c)	5001
77(d)	9022(d)
79(a)–(d)	5003
81(c)	9027
83	9029
92	9030

Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§544, 545, 547, 548 and 549 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 4004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on §727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§727(d) or 1328(e); and proceedings initiated pursuant to §523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§ 1144 and 1330, to subordinate under § 510(c), other than as part of a plan, an allowed claim or interest, and to sell under § 363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. § 1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that property under § 554(b) or § 725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001–3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

Another exception is added to clause (1). A trustee may proceed by motion to recover property from the debtor.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Clauses (5) and (8) are amended to include chapter 12 plans.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

This rule is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief that is provided for in a plan under circumstances in which substantive law permits the relief. Other amendments are stylistic.

GAP Report on Rule 7001. No changes since publication, except for stylistic changes.

Rule 7002. References to Federal Rules of Civil Procedure

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rules 5, 12, 13, 14, 25, 27, 30, 41 and 52 F.R.Civ.P. are made applicable to adversary proceedings by Part VII.

Each of those rules contains a cross reference to another Federal Rule; however, the Part VII rule which incorporates the cross-referenced Federal Rule modifies the Federal Rule in some way. Under this Rule 7002 the cross reference is to the Federal Rule as modified by Part VII. For example, Rule 5 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7005, contains a reference to Rule 4 F.R.Civ.P. Under this Rule 7002, the cross reference is to Rule 4 F.R.Civ.P. as modified by Rule 7004.

Rules 7, 10, 12, 13, 14, 19, 22, 23.2, 24–37, 41, 45, 49, 50, 52, 55, 59, 60, 62 F.R.Civ.P. are made applicable to adversary proceedings by Part VII or generally to cases under the Code by Part IX. Each of those Federal Rules contains a cross reference to another Federal Rule which is not modified by the Part VII or Part IX rule which makes the cross-referenced Federal Rule applicable. Since the cross-referenced rule is not modified by a Part VII rule this Rule 7002 does not apply.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7003. Commencement of Adversary Proceeding

Rule 3 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 5005(a) requires that a complaint commencing an adversary proceeding be filed with the court in which the case under the Code is pending unless 28 U.S.C. § 1473 authorizes the filing of the complaint in another district.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(1), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(2) The clerk may sign, seal, and issue a summons electronically by putting an “s” before the clerk’s name and including the court’s seal on the summons.

(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual’s dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in

which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 10 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days after the summons is issued. If a summons is not timely delivered or mailed, another summons shall be issued and served. This subdivision does not apply to service in a foreign country.

(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a

case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

(g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P.

(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Pub. L. 103-394, title I, § 114, Oct. 22, 1994, 108 Stat. 4118; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 12, 2006, eff. Dec. 1, 2006.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) of the rule, by incorporation of Rule 4(a), (b), (d), (e) and (g)-(i) F.R.Civ.P., governs the mechanics of issuance of a summons and its form, the manner of service on parties and their representatives, and service in foreign countries.

Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.

Subdivision (c) is derived from former Bankruptcy Rule 704(d)(2).

Subdivision (d). Nationwide service of process is authorized by subdivision (d).

Subdivision (e) authorizes service by delivery on individuals and corporations in foreign countries if the party to be served is the debtor or any person required to perform the duties of the debtor and certain other persons, the adversary proceeding involves property in the custody of the bankruptcy court, or if federal or state law authorizes such service in a foreign country.

Subdivision (f). The requirement of former Bankruptcy Rule 704 that the summons be served within 10 days is carried over into these rules by subdivision (f).

NOTES OF ADVISORY COMMITTEE ON RULES—1987

AMENDMENT

Subdivision (a) is amended to make Rule 4(j) F.R.Civ.P. applicable to service of the summons. If service is not completed within 120 days of the filing of the complaint, the complaint may be dismissed.

Technical amendments are made to subdivisions (a), (b), (e), and (f) to conform to recent amendments to Rule 4 F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES—1991

AMENDMENT

The United States trustee may serve as trustee in a case pursuant to 28 U.S.C. § 586(a)(2) and §§ 701(a)(2),

1202(a), and 1302(a) of the Code. This rule is amended to avoid the necessity of mailing copies of a summons and complaint or other pleadings to the Attorney General and to the United States attorney when service on the United States trustee is required only because the United States trustee is acting as a case trustee. For example, a proceeding commenced by a creditor to dismiss a case for unreasonable delay under § 707(a) is governed by Rule 9014 which requires service on the trustee pursuant to the requirements of Rule 7004 for the service of a summons and complaint. The Attorney General and the United States attorney would have no interest in receiving a copy of the motion to dismiss. Mailing to the office of the United States trustee when acting as the case trustee is sufficient in such cases.

The words "with the court" in subdivision (b)(9) are deleted as unnecessary. See Rules 5005(a) and 9001(3).

The new paragraph (10) of subdivision (b) does not affect requirements for service of process on the United States trustee when sued or otherwise a party to a litigation unrelated to its capacity as a trustee. If a proceeding is commenced against the United States trustee which is unrelated to the United States trustee's role as trustee, the requirements of paragraph (5) of subdivision (b) of this rule would apply.

Subdivision (g) is added in anticipation of substantial amendment to, and restructuring of subdivisions of, Rule 4 F.R.Civ.P. Any amendment to Rule 4 will not affect service in bankruptcy cases and proceedings until further amendment to the Bankruptcy Rules. On January 1, 1990, Rule 4 F.R.Civ.P. read as follows:

RULE 4 F.R.CIV.P.

PROCESS

(a) SUMMONS: ISSUANCE. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) SAME: FORM. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(c) SERVICE.

(1) [Not applicable.]

(2)(A) [Not applicable.]

(B) [Not applicable.]

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) [Not applicable.]

(D) [Not applicable.]

(E) [Not applicable.]

(3) [Not applicable.]

(d) SUMMONS AND COMPLAINT: PERSON TO BE SERVED. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the sum-

mons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(e) **SUMMONS: SERVICE UPON PARTY NOT INHABITANT OF OR FOUND WITHIN STATE.** Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to such a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) [Not applicable.]

(g) **RETURN.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(i) of this rule, return shall be made by the sender's filing with the court the acknowledg-

ment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(h) **AMENDMENT.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) **ALTERNATIVE PROVISIONS FOR SERVICE IN A FOREIGN COUNTRY.**

(1) *Manner.* When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) **SUMMONS: TIME LIMIT FOR SERVICE.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1996
AMENDMENT

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. and to make stylistic improvements. Rule 7004, as amended, continues to provide for service by first class mail as an alternative to the methods of personal service provided in Rule 4 F.R.Civ.P., except as provided in the new subdivision (h).

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail pursuant to Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

Subdivisions (b)(4) and (b)(5) are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United

States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

Subdivision (e), which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in 1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.

Subdivision (g) is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

Subdivision (h) and the first phrase of subdivision (b) were added by §114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106.

GAP Report on Rule 7004. After publication of the proposed amendments, Rule 7004(b) was amended and Rule 7004(h) was added by the Bankruptcy Reform Act of 1994 to provide for service by certified mail on an insured depository institution. The above draft includes those statutory amendments (without underlining new language or striking former language). No other changes have been made since publication, except for stylistic changes.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

Subdivision (e) is amended so that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

GAP Report on Rule 7004. No changes since publication.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

This amendment specifically authorizes the clerk to issue a summons electronically. In some bankruptcy cases the trustee or debtor in possession may commence hundreds of adversary proceedings simultaneously, and permitting the electronic signing and sealing of the summonses for those proceedings increases the efficiency of the clerk's office without any negative impact on any party. The rule only authorizes electronic issuance of the summons. It does not address the service requirements for the summons. Those requirements are set out elsewhere in Rule 7004, and nothing in Rule 7004(a)(2) should be construed as authorizing electronic service of a summons.

Changes Made After Publication and Comment. No changes were made after publication.

COMMITTEE NOTES ON RULES—2006 AMENDMENT

Under current Rule 7004, an entity may serve a summons and complaint upon the debtor by personal service or by mail. If the entity chooses to serve the debtor by mail, it must also serve a copy of the summons and complaint on the debtor's attorney by mail. If the entity effects personal service on the debtor, there is no requirement that the debtor's attorney also be served.

Subdivision (b)(9). The rule is amended to delete the reference in subdivision (b)(9) to the debtor's address as set forth in the statement of financial affairs. In 1991, the Official Form of the statement of financial affairs was revised and no longer includes a question regarding the debtor's current residence. Since that time, Official Form 1, the petition, has required the debtor to list both the debtor's residence and mailing address. Therefore, the subdivision is amended to delete the statement of financial affairs as a document that might contain an address at which the debtor can be served.

Subdivision (g). The rule is amended to require service on the debtor's attorney whenever the debtor is served

with a summons and complaint. The amendment makes this change by deleting that portion of Rule 7004(b)(9) that requires service on the debtor's attorney when the debtor is served by mail, and relocates the obligation to serve the debtor's attorney into new subdivision (g). Service on the debtor's attorney is not limited to mail service, but may be accomplished by any means permitted under Rule 5(b) F.R.Civ.P.

Changes Made After Publication. The Committee Note was amended to add the final [second] paragraph of the Note. The new paragraph describes the reason for the deletion of the reference in the rule to the statement of affairs as a source for the debtor's address. This was a secondary reason for amending the rule, and even in the absence of public comment on the proposed amendment, the Advisory Committee believes that the additional explanation in the Committee Note is appropriate.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 3 of the Federal Deposit Insurance Act, referred to in subd. (h), is classified to section 1813 of Title 12, Banks and Banking.

AMENDMENT BY PUBLIC LAW

1994—Subd. (b). Pub. L. 103-394, §114(1), substituted "Except as provided in subdivision (h), in addition" for "In addition".

Subd. (h). Pub. L. 103-394, §114(2), added subd. (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

Rule 7005. Service and Filing of Pleadings and Other Papers

Rule 5 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 5 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7007. Pleadings Allowed

Rule 7 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7007.1. Corporate Ownership Statement

(a) **REQUIRED DISCLOSURE.** Any corporation that is a party to an adversary proceeding, other than the debtor or a governmental unit, shall file two copies of a statement that identifies any corporation, other than a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or states that there are no entities to report under this subdivision.

(b) **TIME FOR FILING.** A party shall file the statement required under Rule 7007.1(a) with its

first appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

(Added Mar. 27, 2003, eff. Dec. 1, 2003; amended Apr. 30, 2007; eff. Dec. 1, 2007.)

COMMITTEE NOTES ON RULES—2003 AMENDMENT

This rule is derived from Rule 26.1 of the Federal Rules of Appellate Procedure. The information that parties shall supply will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c) of the Code of Conduct for United States Judges. This rule does not cover all of the circumstances that may call for disqualification under the subjective financial interest standard of Canon 3C, and does not deal at all with other circumstances that may call for disqualification. Nevertheless, the required disclosures are calculated to reach the majority of circumstances that are likely to call for disqualification under Canon 3C(1)(c).

The rule directs nongovernmental corporate parties to list those corporations that hold significant ownership interests in them. This includes listing membership interests in limited liability companies and similar entities that fall under the definition of a corporation in Bankruptcy Code § 101.

Under subdivision (b), parties must file the statement with the first document that they file in any adversary proceeding. The rule also requires parties and other persons to file supplemental statements promptly whenever changed circumstances require disclosure of new or additional information.

The rule does not prohibit the adoption of local rules requiring disclosures beyond those called for in Rule 7007.1.

Changes Made After Publication and Comments. No changes since publication.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F. R. Civ. P.

Changes After Publication. No changes were made after publication.

Rule 7008. General Rules of Pleading

(a) **APPLICABILITY OF RULE 8 F.R.CIV.P.** Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.

(b) **ATTORNEY'S FEES.** A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

Proceedings before a bankruptcy judge are either core or non-core. 28 U.S.C. § 157. A bankruptcy judge

may enter a final order or judgment in a core proceeding. In a non-core proceeding, absent consent of the parties, the bankruptcy judge may not enter a final order or judgment but may only submit proposed findings of fact and conclusions of law to the district judge who will enter the final order or judgment. 28 U.S.C. § 157(c)(1). The amendment to subdivision (a) of this rule requires an allegation as to whether a proceeding is core or non-core. A party who alleges that the proceeding is non-core shall state whether the party does or does not consent to the entry of a final order or judgment by the bankruptcy judge. Failure to include the statement of consent does not constitute consent. Only express consent in the pleadings or otherwise is effective to authorize entry of a final order or judgment by the bankruptcy judge in a non-core proceeding. Amendments to Rule 7012 require that the defendant admit or deny the allegation as to whether the proceeding is core or non-core.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7009. Pleading Special Matters

Rule 9 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7010. Form of Pleadings

Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Reference to the Official Form number is deleted in anticipation of future revision and renumbering of the Official Forms.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7012. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) **WHEN PRESENTED.** If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a

cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) **APPLICABILITY OF RULE 12(b)–(i) F.R.Civ.P.** Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 23, 2008, eff. Dec. 1, 2008.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Subdivision (a) continues the practice of former Bankruptcy Rule 712(a) by requiring that the answer to a complaint be filed within 30 days after the issuance of the summons. Under Rule 7004(f), the summons must be served within 10 days of issuance. The other pleading periods in adversary proceedings are the same as those in civil actions before the district courts, except that the United States is allowed 35 rather than 60 days to respond.

Rule 12(b)(7) and (h)(2) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 these references are to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendment to subdivision (b) requires a response to the allegation that the proceeding is core or non-core. A final order of judgment may not be entered in a non-core proceeding heard by a bankruptcy judge unless all parties expressly consent. 28 U.S.C. §157(c).

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7013. Counterclaim and Cross-Claim

Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court

amend the pleading, or commence a new adversary proceeding or separate action.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 13(h) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7014. Third-Party Practice

Rule 14 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule does not purport to deal with questions of jurisdiction. The scope of the jurisdictional grant under 28 U.S.C. §1471 and whether the doctrines of pendent or ancillary jurisdiction are applicable to adversary proceedings will be determined by the courts.

Rule 14 F.R.Civ.P. refers to Rules 12 and 13 F.R.Civ.P. Pursuant to Rule 7002 those references are to Rules 12 and 13 as incorporated and modified by Rules 7012 and 7013.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7015. Amended and Supplemental Pleadings

Rule 15 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7016. Pre-Trial Procedure; Formulating Issues

Rule 16 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7017. Parties Plaintiff and Defendant; Capacity

Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rules 2010(d) and 5008(d), which implement §§322 and 345 of the Code, authorize a party in interest to prosecute a claim on the bond of a trustee or depository in the name of the United States.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

Reference to Rule 5008(d) is deleted because of the abrogation of Rule 5008.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7018. Joinder of Claims and Remedies

Rule 18 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7019. Joinder of Persons Needed for Just Determination

Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceedings and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. §1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule addresses a situation different from that encountered by the district court when its jurisdiction is based on diversity of citizenship under 28 U.S.C. §1332. Joining of a party whose citizenship is the same as that of an adversary destroys the district court's jurisdiction over the entire civil action but under 28 U.S.C. §1471 the attempted joinder of such a person would not affect the bankruptcy court's jurisdiction over the original adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The rule is amended to delete the reference to retention of the adversary proceeding if venue is improper. See 28 U.S.C. §1412.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7020. Permissive Joinder of Parties

Rule 20 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7021. Misjoinder and Non-Joinder of Parties

Rule 21 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7022. Interpleader

Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements—and does not limit—the joinder of parties allowed by Rule 7020.

(As amended Apr. 23, 2008, eff. Dec. 1, 2008.)

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7023. Class Proceedings

Rule 23 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7023.1. Derivative Actions

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

(As amended Apr. 23, 2008, eff. Dec. 1, 2008.)

COMMITTEE NOTES ON RULES—2008 AMENDMENT

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations

Rule 23.2 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7024. Intervention

Rule 24 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

A person may seek to intervene in the case under the Code or in an adversary proceeding relating to the case under the Code. Intervention in a case under the Code is governed by Rule 2018 and intervention in an adversary proceeding is governed by this rule. Intervention in a case and intervention in an adversary proceeding must be sought separately.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7025. Substitution of Parties

Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 25 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 4 as incorporated and modified by Rule 7004.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7026. General Provisions Governing Discovery

Rule 26 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal

Rule 27 F.R.Civ.P. applies to adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 27(a)(2) F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 the reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7028. Persons Before Whom Depositions May Be Taken

Rule 28 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7029. Stipulations Regarding Discovery Procedure

Rule 29 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7030. Depositions Upon Oral Examination

Rule 30 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 30 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is a reference to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7031. Deposition Upon Written Questions

Rule 31 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7032. Use of Depositions in Adversary Proceedings

Rule 32 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7033. Interrogatories to Parties

Rule 33 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

Rule 34 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7035. Physical and Mental Examination of Persons

Rule 35 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7036. Requests for Admission

Rule 36 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7037. Failure to Make Discovery: Sanctions

Rule 37 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7040. Assignment of Cases for Trial

Rule 40 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7041. Dismissal of Adversary Proceedings

Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to

the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Dismissal of a complaint objecting to a discharge raises special concerns because the plaintiff may have been induced to dismiss by an advantage given or promised by the debtor or someone acting in his interest. Some courts by local rule or order have required the debtor and his attorney or the plaintiff to file an affidavit that nothing has been promised to the plaintiff in consideration of the withdrawal of the objection. By specifically authorizing the court to impose conditions in the order of dismissal this rule permits the continuation of this salutary practice.

Rule 41 F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The United States trustee has standing to object to the debtor's discharge pursuant to §727(c) and may have refrained from commencing an adversary proceeding objecting to discharge within the time limits provided in Rule 4004 only because another party commenced such a proceeding. The United States trustee may oppose dismissal of the original proceeding.

The rule is also amended to clarify that the court may direct that other persons receive notice of a plaintiff's motion to dismiss a complaint objecting to discharge.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7042. Consolidation of Adversary Proceedings; Separate Trials

Rule 42 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7052. Findings by the Court

Rule 52 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Rule 52(a) F.R.Civ.P. refers to Rule 12 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 12 F.R.Civ.P. as incorporated and modified by Rule 7012.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7054. Judgments; Costs

(a) **JUDGMENTS.** Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings.

(b) **COSTS.** The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and

agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7055. Default

Rule 55 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7056. Summary Judgment

Rule 56 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F.R.Civ.P. applies in adversary proceedings.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 26, 1999, eff. Dec. 1, 1999.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

The additional exceptions set forth in this rule make applicable to those matters the consequences contained in Rule 62(c) and (d) with respect to orders in actions for injunctions.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

This rule is amended to include as additional exceptions to Rule 62(a) an order granting relief from the automatic stay of actions against codebtors provided by §1201 of the Code, the sale or lease of property of the estate under §363, and the assumption or assignment of an executory contract under §365.

COMMITTEE NOTES ON RULES—1999 AMENDMENT

The additional exceptions to Rule 62(a) consist of orders that are issued in contested matters. These exceptions are deleted from this rule because of the amendment to Rule 9014 that renders this rule inapplicable in contested matters unless the court orders otherwise. *See also* the amendments to Rules 3020, 3021, 4001, 6004, and 6006 that delay the implementation of certain types of orders for a period of ten days unless the court otherwise directs.

GAP Report on Rule 7062. No changes since publication.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7064. Seizure of Person or Property

Rule 62 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7065. Injunctions

Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7067. Deposit in Court

Rule 67 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7068. Offer of Judgment

Rule 68 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7069. Execution

Rule 69 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7070. Judgment for Specific Acts; Vesting Title

Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The reference to court is used in the amendment because the district court may preside over an adversary proceeding.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7071. Process in Behalf of and Against Persons Not Parties

Rule 71 F.R.Civ.P. applies in adversary proceedings.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7087. Transfer of Adversary Proceeding

On motion and after a hearing, the court may transfer an adversary proceeding or any part

thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).

(As amended Mar. 30, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The reference to the venue section of title 28 is amended to conform to the 1984 amendments to title 28.

PART VIII—APPEALS TO DISTRICT COURT
OR BANKRUPTCY APPELLATE PANEL**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals**

(a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) VOLUNTARY DISMISSAL.

(1) *Before Docketing.* If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) *After Docketing.* If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

[(d) EFFECT OF TAKING A DIRECT APPEAL TO THE COURT OF APPEALS] (Abrogated Mar. 30, 1987, eff. Aug. 1, 1987)

(e) ELECTION TO HAVE APPEAL HEARD BY DISTRICT COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL; WITHDRAWAL OF ELECTION.

(1) *Separate Writing for Election.* An election to have an appeal heard by the district court