

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