an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co., supra, Kelso v. MacLaren, supra*, and *In re Hills, supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier, *supra* ¶57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D. Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. *In re Friedmann*, 1 Am. B. R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim as of right by filing a notice of withdrawal before the trustee filed an objection under §57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205–06 (1964).

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

This amendment is stylistic. Notice of the hearing need not be given to committees of equity security holders appointed pursuant to §1102 or committees of retired employees appointed pursuant to §1114 of the Code.

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.

(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

(1) they duplicate other claims;

(2) they have been filed in the wrong case;

(3) they have been amended by subsequently filed proofs of claim;

(4) they were not timely filed;

(5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;

(7) they are interests, rather than claims; or

(8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.

(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall:

(1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;

(2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims;

(3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;

(4) state in the title the identity of the objector and the grounds for the objections;

(5) be numbered consecutively with other omnibus objections filed by the same objector; and

(6) contain objections to no more than 100 claims.

(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983

This rule is derived from §47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.

While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to §502(a) of the Code, however, any party in interest may object to a claim. But

under §704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The words ''with the court'' are deleted as unnecessary. See Rules 5005(a) and 9001(3).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present a significant opportunity for the efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment. Moreover, use of an omnibus objection generally does not preclude the objecting party from raising a subsequent objection to the claim on other grounds. See Restatement (Second) of Judgments §26(1)(d) (1982) (generally applicable rule barring multiple actions based on same transaction or series of transactions is overridden when a statutory scheme permits splitting of claims).

Changes Made After Publication. There were several changes made to the rule after its publication. The Advisory Committee declined to follow Mr. Sabino's suggestion, concluding that the rule as proposed includes sufficient flexibility, and that expanding the flexibility might lead to excessive deviation from the appropriate format for omnibus claims objections. The Advisory Committee also declined to follow Mr. Horsley's suggestion because the deadline for filing a proof of claim varies based on the nature of the creditor (governmental units have different deadlines from other creditors) as well as on the chapter under which the case is pending. The Advisory Committee rejected Judge Grant's suggestion that a party proposing an omnibus claims objection be required to demonstrate some special cause to allow the joinder of the objections. The Advisory Committee concluded that the rule includes sufficient protections for claimants such that omnibus objections should be allowed without the need for a special showing by the claims objector that joinder is proper.

The Advisory Committee did accept several of Judge Grant's suggestions, and the rule was amended by deleting the grounds for objection to claims based on the filing of a superceding proof of claim under proposed subdivision (d)(3) and the transfer of claims under proposed subdivision (d)(4). Subdivision (d)(3) now permits objections to claims that have been amended by a subsequently filed proof of claim and the paragraphs within subdivision (d) have been renumbered to reflect the deletion. The Committee Note also no longer includes any reliance on §502(j) for the statement indicating that a subsequent claim objection can be filed to a claim that was previously included in an omnibus claim objection.

Rule 3008. Reconsideration of Claims

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

NOTES OF ADVISORY COMMITTEE ON RULES—1983

Section 502(j) of the Code deals only with the reconsideration of allowed claims as did former §57k of the Act and General Order 21(b). It had sometimes been held that a referee had no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant. See, *e.g.*, *In re Gouse*, 7 F. Supp. 106 (M.D. Pa. 1934); *In re Tomlinson & Dye, Inc.*, 3 F. Supp. 800 (N.D. Okla. 1933). This view disregarded §2a(2) of the Act and the ''ancient and elementary power'' of a referee as a court to reconsider orders. *In re Pottasch Brow. Co., Inc.*, 79 F.2d 613, 616 (2d Cir. 1935); *Castaner v. Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, is generally exercised by the trustee if one has qualified and is performing the duties of that office with reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwith-