

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, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F.R.Civ.P. to the entry of judgment under Rule 58 F.R.Civ.P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a).

(As amended Mar. 26, 2009, eff. Dec. 1, 2009.)

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.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The rule is amended by limiting the time for filing post judgment motions for amended or additional findings. In 2009, Rule 52 F. R. Civ. P. was amended to extend the deadline for filing those post judgment motions to no later than 28 days after entry of the judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

The rule is amended to clarify that the reference in Rule 52 F. R. Civ. P. to Rule 58 F. R. Civ. P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

Changes Made After Publication. 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 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 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.

(As amended Apr. 23, 2012, eff. Dec. 1, 2012.)

COMMITTEE NOTES ON RULES—2012 AMENDMENT

Subdivision (b). Subdivision (b) is amended to provide more time for a party to respond to the prevailing party's bill of costs. The former rule's provision of one day's notice was unrealistically short. The change to 14 days conforms to the change made to Civil Rule 54(d). Extension from five to seven days of the time for serving a motion for court review of the clerk's action implements changes in connection with the December 1, 2009, amendment to Rule 9006(a) and the manner by which time is computed under the rules. Throughout the rules, deadlines have been amended in the following manner:

- 5-day periods became 7-day periods.
- 10-day periods became 14-day periods.
- 15-day periods became 14-day periods.
- 20-day periods became 21-day periods.
- 25-day periods became 28-day periods.

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

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, except that any motion for summary judgment must be made at least 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a different time is set by local rule or the court orders otherwise.

(As amended Apr. 23, 2012, eff. Dec. 1 2012.)

COMMITTEE NOTES ON RULES—2012 AMENDMENT

The only exception to complete adoption of Rule 56 F.R.Civ.P. involves the default deadline for filing a summary judgment motion. Rule 56(c)(1)(A) makes the default deadline 30 days after the close of all discovery. Because in bankruptcy cases hearings can occur shortly after the close of discovery, a default deadline based on the scheduled hearing date, rather than the close of discovery, is adopted. As with Rule 56(c)(1), the deadline can be altered either by local rule or court order.

Changes Made After Publication. No changes were made after 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.