

Rule 7058. Entering Judgment in Adversary Proceeding

Rule 58 F.R.Civ.P. applies in adversary proceedings. In these proceedings, the reference in Rule 58 F.R.Civ.P. to the civil docket shall be read as a reference to the docket maintained by the clerk under Rule 5003(a).

(Added Mar. 26, 2009, eff. Dec. 1, 2009.)

COMMITTEE NOTES ON RULES—2009

This rule makes Rule 58 F.R.Civ.P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021.

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 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 under 28 U.S.C. §158(c)(1) may be made only by a statement of election contained in a sepa-

rate writing filed within the time prescribed by 28 U.S.C. §158(c)(1).

(2) *Withdrawal of Election.* A request to withdraw the election may be filed only by written stipulation of all the parties to the appeal or their attorneys of record. Upon such a stipulation, the district court may either transfer the appeal to the bankruptcy appellate panel or retain the appeal in the district court.

(f) **CERTIFICATION FOR DIRECT APPEAL TO COURT OF APPEALS.**

(1) *Timely Appeal Required.* A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. §158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(2) *Court Where Certification Made and Filed.* A certification that a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. §158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. §158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. §158(a)(3). A matter is pending in a district court or bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. §158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. §158(a)(3).

(A) *Certification by Court on Request or Court's Own Initiative.*

(i) *Before Docketing or Grant of Leave to Appeal.* Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(ii) *After Docketing or Grant of Leave to Appeal.* Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(B) *Certification by All Appellants and Appellees Acting Jointly.* A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.

(3) *Request for Certification; Filing; Service; Contents.*

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. §158(d)(2), with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following: