

REFERENCES IN TEXT

Civil Rule 4, referred to in text, probably means Rule 4 of the Federal Rules of Civil Procedure, which is set out in this Appendix.

CODIFICATION

For discussion of establishment and application of procedure under these supplemental rules, see Committee Notes on Rules—2022, set out as a note under Rule 8.

Rule 4. Answer; Motions; Time

(a) **SERVING THE ANSWER.** An answer must be served on the plaintiff within 60 days after notice of the action is given under Rule 3.

(b) **THE ANSWER.** An answer may be limited to a certified copy of the administrative record, and to any affirmative defenses under Civil Rule 8(c). Civil Rule 8(b) does not apply.

(c) **MOTIONS UNDER CIVIL RULE 12.** A motion under Civil Rule 12 must be made within 60 days after notice of the action is given under Rule 3.

(d) **TIME TO ANSWER AFTER A MOTION UNDER RULE 4(C).** Unless the court sets a different time, serving a motion under Rule 4(c) alters the time to answer as provided by Civil Rule 12(a)(4).

(As added Apr. 11, 2022, eff. Dec. 1, 2022.)

REFERENCES IN TEXT

Civil Rules, referred to in subs. (b) to (d), probably means the Federal Rules of Civil Procedure, which are set out in this Appendix.

CODIFICATION

For discussion of establishment and application of procedure under these supplemental rules, see Committee Notes on Rules—2022, set out as a note under Rule 8.

Rule 5. Presenting the Action for Decision

The action is presented for decision by the parties' briefs. A brief must support assertions of fact by citations to particular parts of the record.

(As added Apr. 11, 2022, eff. Dec. 1, 2022.)

CODIFICATION

For discussion of establishment and application of procedure under these supplemental rules, see Committee Notes on Rules—2022, set out as a note under Rule 8.

Rule 6. Plaintiff's Brief

The plaintiff must file and serve on the Commissioner a brief for the requested relief within 30 days after the answer is filed or 30 days after entry of an order disposing of the last remaining motion filed under Rule 4(c), whichever is later.

(As added Apr. 11, 2022, eff. Dec. 1, 2022.)

CODIFICATION

For discussion of establishment and application of procedure under these supplemental rules, see Committee Notes on Rules—2022, set out as a note under Rule 8.

Rule 7. Commissioner's Brief

The Commissioner must file a brief and serve it on the plaintiff within 30 days after service of the plaintiff's brief.

(As added Apr. 11, 2022, eff. Dec. 1, 2022.)

CODIFICATION

For discussion of establishment and application of procedure under these supplemental rules, see Committee Notes on Rules—2022, set out as a note under Rule 8.

Rule 8. Reply Brief

The plaintiff may file a reply brief and serve it on the Commissioner within 14 days after service of the Commissioner's brief.

(As added Apr. 11, 2022, eff. Dec. 1, 2022.)

COMMITTEE NOTES ON RULES—2022

Actions to review a final decision of the Commissioner of Social Security under 42 U.S.C. §405(g) have been governed by the Civil Rules. These Supplemental Rules, however, establish a simplified procedure that recognizes the essentially appellate character of actions that seek only review of an individual's claims on a single administrative record, including a single claim based on the wage record of one person for an award to be shared by more than one person. These rules apply only to final decisions actually made by the Commissioner of Social Security. They do not apply to actions against another agency under a statute that adopts §405(g) by considering the head of the other agency to be the Commissioner. There is not enough experience with such actions to determine whether they should be brought into the simplified procedures contemplated by these rules. But a court can employ these procedures on its own if they seem useful, apart from the Rule 3 provision for service on the Commissioner.

Some actions may plead a claim for review under §405(g) but also join more than one plaintiff, or add a defendant or a claim for relief beyond review on the administrative record. Such actions fall outside these Supplemental Rules and are governed by the Civil Rules alone.

The Civil Rules continue to apply to actions for review under §405(g) except to the extent that the Civil Rules are inconsistent with these Supplemental Rules. Supplemental Rules 2, 3, 4, and 5 are the core of the provisions that are inconsistent with, and supersede, the corresponding rules on pleading, service, and presenting the action for decision.

These Supplemental Rules establish a uniform procedure for pleading and serving the complaint; for answering and making motions under Rule 12; and for presenting the action for decision by briefs. These procedures reflect the ways in which a civil action under §405(g) resembles an appeal or a petition for review of administrative action filed directly in a court of appeals.

Supplemental Rule 2 adopts the procedure of Civil Rule 3, which directs that a civil action be commenced by filing a complaint with the court. In an action that seeks only review on the administrative record, however, the complaint is similar to a notice of appeal. Simplified pleading is often desirable. Jurisdiction is pleaded under Rule 2(b)(1)(A) by identifying the action as one brought under §405(g). The Social Security Administration can ensure that the plaintiff is able to identify the administrative proceeding and record in a way that enables prompt response by providing an identifying designation with the final decision. In current practice, this designation is called the Beneficiary Notice Control Number. The elements of the claim for review are adequately pleaded under Rule 2(b)(1)(B), (C), (D), and (E). Failure to plead all the matters described in Rule 2(b)(1)(B), (C), (D), and (E), moreover, should be cured by leave to amend, not dismissal. Rule 2(b)(2), however, permits a plaintiff to plead more than Rule 2(b)(1) requires.

Rule 3 provides a means for giving notice of the action that supersedes Civil Rule 4(i)(2). The Notice of Electronic Filing sent by the court suffices for service,