

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE¹**

1 **Rule 7.1. Disclosure Statement**

2 **(a) Who Must File; Contents.**

3 **(1) Nongovernmental Corporations.** A

4 nongovernmental corporate party or a
5 nongovernmental corporation that seeks to
6 intervene must file ~~2 copies of a disclosure~~
7 statement that:

8 ~~(1)(A)~~ identifies any parent corporation and
9 any publicly held corporation owning
10 10% or more of its stock; or

11 ~~(2)(B)~~ states that there is no such
12 corporation.

13 **(2) Parties or Intervenors in a Diversity Case.**

14 In an action in which jurisdiction is based on
15 diversity under 28 U.S.C. § 1332(a), a party

¹ New material is underlined; matter to be omitted is lined through.

16 or intervenor must, unless the court orders
17 otherwise, file a disclosure statement. The
18 statement must name—and identify the
19 citizenship of—every individual or entity
20 whose citizenship is attributed to that party or
21 intervenor:

22 (A) when the action is filed in or removed
23 to federal court, and

24 (B) when any later event occurs that
25 could affect the court’s jurisdiction
26 under § 1332(a).

27 **(b) Time to File; Supplemental Filing.** A party,
28 intervenor, or proposed intervenor must:

29 **(1)** file the disclosure statement with its first
30 appearance, pleading, petition, motion,
31 response, or other request addressed to the
32 court; and

33 * * * * *

Committee Note

Rule 7.1(a)(1). Rule 7.1 is amended to require a disclosure statement by a nongovernmental corporation that seeks to intervene. This amendment conforms Rule 7.1 to similar recent amendments to Appellate Rule 26.1 and Bankruptcy Rule 8012(a).

Rule 7.1(a)(2). Rule 7.1 is further amended to require a party or intervenor in an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a) to name and disclose the citizenship of every individual or entity whose citizenship is attributed to that party or intervenor. The disclosure does not relieve a party that asserts diversity jurisdiction from the Rule 8(a)(1) obligation to plead the grounds for jurisdiction, but is designed to facilitate an early and accurate determination of jurisdiction.

Two examples of attributed citizenship are provided by § 1332(c)(1) and (2), addressing direct actions against liability insurers and actions that include as parties a legal representative of the estate of a decedent, an infant, or an incompetent. Identifying citizenship in such actions is not likely to be difficult, and ordinarily should be pleaded in the complaint. But many examples of attributed citizenship arise from noncorporate entities that sue or are sued as an entity. A familiar example is a limited liability company, which takes on the citizenship of each of its owners. A party suing an LLC may not have all the information it needs to plead the LLC's citizenship. The same difficulty may arise with respect to other forms of noncorporate entities, some of them familiar—such as partnerships and limited partnerships—and some of them more exotic, such as “joint ventures.” Pleading on information and belief is acceptable at the pleading stage, but disclosure is necessary both to ensure that diversity jurisdiction exists and to protect against the waste

that may occur upon belated discovery of a diversity-destroying citizenship. Disclosure is required by a plaintiff as well as all other parties and intervenors.

What counts as an “entity” for purposes of Rule 7.1 is shaped by the need to determine whether the court has diversity jurisdiction under § 1332(a). It does not matter whether a collection of individuals is recognized as an entity for any other purpose, such as the capacity to sue or be sued in a common name, or is treated as no more than a collection of individuals for all other purposes. Every citizenship that is attributable to a party or intervenor must be disclosed.

Discovery should not often be necessary after disclosures are made. But discovery may be appropriate to test jurisdictional facts by inquiring into such matters as the completeness of a disclosure’s list of persons or the accuracy of their described citizenships. This rule does not address the questions that may arise when a disclosure statement or discovery responses indicate that the party or intervenor cannot ascertain the citizenship of every individual or entity whose citizenship may be attributed to it.

The rule recognizes that the court may limit the disclosure in appropriate circumstances. Disclosure might be cut short when a party reveals a citizenship that defeats diversity jurisdiction. Or the names of identified persons might be protected against disclosure to other parties when there are substantial interests in privacy and when there is no apparent need to support discovery by other parties to go behind the disclosure.

Disclosure is limited to individuals and entities whose citizenship is attributed to a party or intervenor. The rules that govern attribution, and the time that controls the determination of complete diversity, are matters of subject-

matter jurisdiction that this rule does not address. A supplemental statement is required if an event occurs after initial filing in federal court or removal to it that requires a determination of citizenships as they exist at a time after the initial filing or removal.

Rule 7.1(b). Rule 7.1(b) is amended to reflect the provisions in Rule 7.1(a) that extend the disclosure obligation to proposed intervenors and intervenors.

SUPPLEMENTAL RULES FOR SOCIAL SECURITY
ACTIONS UNDER 42 U.S.C. § 405(g)

1 **Rule 1. Review of Social Security Decisions Under 42**
2 **U.S.C. § 405(g)**

3 **(a) Applicability of These Rules.** These rules govern an
4 action under 42 U.S.C. § 405(g) for review on the
5 record of a final decision of the Commissioner of
6 Social Security that presents only an individual
7 claim.

8 **(b) Federal Rules of Civil Procedure.** The Federal
9 Rules of Civil Procedure also apply to a proceeding
10 under these rules, except to the extent that they are
11 inconsistent with these rules.

1 **Rule 2. Complaint**

2 **(a) Commencing Action.** An action for review under
3 these rules is commenced by filing a complaint with
4 the court.

5 **(b) Contents.**

6 **(1)** The complaint must:

7 **(A)** state that the action is brought under
8 § 405(g);

9 **(B)** identify the final decision to be
10 reviewed, including any identifying
11 designation provided by the
12 Commissioner with the final
13 decision;

14 **(C)** state the name and the county of
15 residence of the person for whom
16 benefits are claimed;

17 **(D)** name the person on whose wage
18 record benefits are claimed; and

19 (E) state the type of benefits claimed.

20 (2) The complaint may include a short and plain

21 statement of the grounds for relief.

1 **Rule 3. Service**

2 The court must notify the Commissioner of the
3 commencement of the action by transmitting a Notice of
4 Electronic Filing to the appropriate office within the Social
5 Security Administration's Office of General Counsel and to
6 the United States Attorney for the district where the action is
7 filed. If the complaint was not filed electronically, the court
8 must notify the plaintiff of the transmission. The plaintiff
9 need not serve a summons and complaint under Civil Rule 4.

1 **Rule 4. Answer; Motions; Time**

2 **(a) Serving the Answer.** An answer must be served on
3 the plaintiff within 60 days after notice of the action
4 is given under Rule 3.

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

9 **(c) Motions Under Civil Rule 12.** A motion under Civil
10 Rule 12 must be made within 60 days after notice of
11 the action is given under Rule 3.

12 **(d) Time to Answer After a Motion Under Rule 4(c).**
13 Unless the court sets a different time, serving a
14 motion under Rule 4(c) alters the time to answer as
15 provided by Civil Rule 12(a)(4).

1 **Rule 5. Presenting the Action for Decision**

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

1 **Rule 6. Plaintiff's Brief**

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

1 **Rule 7. Commissioner's Brief**

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

1 **Rule 8. Reply Brief**

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

Committee Note

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, so long as it provides a means of electronic access to the complaint. Notice to the Commissioner is sent to the appropriate office. The plaintiff need not serve a summons and complaint under Civil Rule 4.

Rule 4's provisions for the answer build from this part of § 405(g): "As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are made." In addition to filing the record, the Commissioner must plead any affirmative defenses under Civil Rule 8(c). Civil Rule 8(b) does not apply, but the Commissioner is free to answer any allegations that the Commissioner may wish to address in the pleadings.

The time to answer or to file a motion under Civil Rule 12 is set at 60 days after notice of the action is given under Rule 3. If a timely motion is made under Civil Rule 12, the time to answer is governed by Civil Rule 12(a)(4) unless the court sets a different time.

Rule 5 states the procedure for presenting for decision on the merits a § 405(g) review action that is governed by the Supplemental Rules. Like an appeal, the briefs present the action for decision on the merits. This procedure displaces summary judgment or such devices as a joint statement of facts as the means of review on the administrative record. Rule 5 also displaces local rules or practices that are inconsistent with the simplified procedure established by these Supplemental Rules for treating the action as one for review on the administrative record.

All briefs are similar to appellate briefs, citing to the parts of the administrative record that support an assertion that the final decision is not supported by substantial evidence or is contrary to law.

Rules 6, 7, and 8 set the times for serving the briefs: 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) for the plaintiff's brief, 30 days after service of the plaintiff's brief for the Commissioner's brief, and 14 days after service of the Commissioner's brief for a reply brief. The court may revise these times when appropriate.