

**Operational Impact Assessment of Amendments
to Select Federal Rules of Procedure
(on track to become effective
December 1, 2022)**

At its March 2021 and September 2021 meetings, the Judicial Conference approved amendments to the Rules of Appellate, Civil, Criminal, and Bankruptcy Procedure. The amendments were submitted to the Supreme Court for review on October 18, 2021 and were submitted to Congress on April 11, 2022. Subject to approval by Congress, the amendments will become effective December 1, 2022.

This document, which was prepared by the District Clerks Advisory Group and the AO Court Services Office, provides a review of amendments to the Rules of Civil and Criminal Procedure identified as having possible impact on court operations. This information is not intended to identify all possible operational issues implicated by all of the pending Rules amendments, but rather to provide helpful guidance to a court as it assesses whether local rules/administrative orders, policies, procedures, processes, or forms require conforming modifications.

Pending Amendments to Federal Rules with Possible Operational Impact on District Courts
(Effective 12/1/22)

Federal Rules of Civil Procedure

Civil Rule 7.1 Disclosure Statement

Description of Amendment	Text of Amendment	Notes re Possible Operational Impact
<p>Rule 7.1(a)(1)</p> <ul style="list-style-type: none"> requires a disclosure statement by a nongovernmental corporation that seeks to intervene (conforms Rule 7.1 to similar recent amendments to Appellate Rule 26.1 and Bankruptcy Rule 8012(a)) removes the requirement to file two copies of the disclosure statement <p>Rule 7.1(a)(2)</p> <ul style="list-style-type: none"> requires a party or intervenor in a diversity action to name and disclose the citizenship of every individual or entity whose citizenship is attributed to that party or intervenor <p>Rule 7.1(b)</p> <ul style="list-style-type: none"> technical and conforming amendment to reflect the provisions in Rule 7.1(a) extending the disclosure obligation to proposed intervenors and intervenors <p>For more detailed background on amendments see:</p> <ul style="list-style-type: none"> Excerpt from <u>March 2021 Report to the Judicial Conference by the Committee on Rules of Practice and Procedure describing the amendments</u> Pending <u>Civil Rule 7.1 Committee Note</u> Excerpt from the <u>December 9, 2020 Report of the Advisory Committee on Civil Rules (revised January 5, 2021)</u> 	<p>Rule 7.1. Disclosure Statement</p> <p>(a) Who Must File; Contents.</p> <p>(1) <u>Nongovernmental Corporations.</u> A nongovernmental corporate party or a nongovernmental corporation that seeks to intervene must file 2 copies of a disclosure statement that:</p> <p>(A) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or</p> <p>(B) states that there is no such corporation.</p> <p>(2) <u>Parties or Intervenors in a Diversity Case.</u></p> <p>In an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a), a party or intervenor must, unless the court orders otherwise, file a disclosure statement. The statement must name—and identify the citizenship of—every individual or entity whose citizenship is attributed to that party or intervenor:</p> <p>(A) when the action is filed in or removed to federal court, and</p> <p>(B) when any later event occurs that could affect the court’s jurisdiction under § 1332(a).</p> <p>(b) Time to File; Supplemental Filing. A party, intervenor, or proposed intervenor must:</p> <p>(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and</p> <p style="text-align: center;">* * * * *</p>	<ul style="list-style-type: none"> Revision of the following may be necessary: <ul style="list-style-type: none"> local rules standing/administrative orders Modification or creation of local disclosure forms may be necessary Consider whether a process is needed for ensuring the filing of the disclosure statement in all diversity cases, e.g.: <ul style="list-style-type: none"> include in clerk’s office QC for diversity cases implement local CM/ECF modification to prompt the filer to include disclosure statement when the case is filed and the diversity statute is selected for jurisdiction

Federal Rules of Criminal Procedure

Criminal Rule 16 *Discovery and Inspection*

Description of Proposed Amendment	Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 16(a)(1)(G)(ii) and (b)(1)(C)(ii)</p> <ul style="list-style-type: none"> requires the court to set a time for the government and defendant to disclose expert witnesses to the opposing party the deadline for disclosure must be “sufficiently before trial to provide a fair opportunity” for each party to meet the other side’s expert evidence <p>For more detailed background on amendments see:</p> <ul style="list-style-type: none"> Excerpt from September 2021 Report to the Judicial Conference by the Committee on Rules of Practice and Procedure describing the amendments Pending Criminal Rule 16 Committee Note Excerpt from the June 1, 2021 Report of the Advisory Committee on Criminal Rules 	<p><i>Provided below are those portions of the proposed amendment identified as having a possible impact on court operations. A complete copy of the proposed amendments to Criminal Rule 16 can be found here.</i></p> <p>Rule 16. Discovery and Inspection</p> <p>(a) Government’s Disclosure.</p> <p>(1) Information Subject to Disclosure.</p> <p align="center">*****</p> <p>(G) Expert Witnesses.</p> <p align="center">*****</p> <p>(ii) Time to Disclose. <u>The court, by order or local rule, must set a time for the government to make its disclosures. The time must be sufficiently before trial to provide a fair opportunity for the defendant to meet the government’s evidence.</u></p> <p align="center">*****</p> <p>(b) Defendant’s Disclosure.</p> <p>(1) Information Subject to Disclosure.</p> <p align="center">*****</p> <p>(C) Expert Witnesses.</p> <p align="center">*****</p> <p>(ii) Time to Disclose. <u>The court, by order or local rule, must set a time for the defendant to make the defendant’s disclosures. The time must be sufficiently before trial to provide a fair opportunity for the government to meet the defendant’s evidence.</u></p>	<ul style="list-style-type: none"> This rule amendment requires the court to set deadlines for expert witness disclosures by “order or local rule.” The court will need to determine the manner in which these deadlines will be set. The expansion of the content that the parties must now disclose may require a more detailed consideration of the appropriate amount of time needed by the parties. It may be helpful to discuss the appropriate amount of time with FPD and the USAO. Revisions may be needed for the following: <ul style="list-style-type: none"> local rules standing/administrative orders form scheduling orders judicial preference/case administration orders joint discovery statement/agreement forms

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)¹

Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 1. Review of Social Security Decisions Under 42 U.S.C. § 405(g)</p> <p>(a) Applicability of These Rules. These rules govern an action under 42 U.S.C. § 405(g) for review on the record of a final decision of the Commissioner of Social Security that presents only an individual claim.</p> <p>(b) Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure also apply to a proceeding under these rules, except to the extent that they are inconsistent with these rules.</p> <p><i>Committee Note Excerpt</i> <i>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.</i> <i>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.</i> <i>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.</i></p>	<ul style="list-style-type: none"> Given the limitation on the types of Social Security cases covered by these rules, courts may need to review their own existing local rules and procedures for Social Security cases to determine the extent to which the new rules will be adopted for the types of cases not covered (though such other cases may be rare).

¹ General background on these new Rules

- Excerpt from September 2021 Report to the Judicial Conference by the Committee on Rules of Practice and Procedure describing the amendments
- Excerpt from the May 21, 2021 Report of the Advisory Committee on Civil Rules
- Pending Social Security Rules Committee Note

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)

Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 2. Complaint</p> <p>(a) Commencing Action. An action for review under these rules is commenced by filing a complaint with the court.</p> <p>(b) Contents.</p> <p>(1) The complaint must:</p> <p style="padding-left: 40px;">(A) state that the action is brought under § 405(g);</p> <p style="padding-left: 40px;">(B) identify the final decision to be reviewed, including any identifying designation provided by the Commissioner with the final decision;</p> <p style="padding-left: 40px;">(C) state the name and the county of residence of the person for whom benefits are claimed;</p> <p style="padding-left: 40px;">(D) name the person on whose wage record benefits are claimed; and</p> <p style="padding-left: 40px;">(E) state the type of benefits claimed.</p> <p>(2) The complaint may include a short and plain statement of the grounds for relief.</p> <p><u>Committee Note Excerpt</u> <i>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.</i></p>	<ul style="list-style-type: none"> • No operational impact was identified. This proposed rule appears to reflect the current general practice.

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)

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<p>Rule 3. Service</p> <p>The court must notify the Commissioner of the commencement of the action by transmitting a Notice of Electronic Filing to the appropriate office within the Social Security Administration’s Office of General Counsel and to the United States Attorney for the district where the action is filed. If the complaint was not filed electronically, the court must notify the plaintiff of the transmission. The plaintiff need not serve a summons and complaint under Civil Rule 4.</p> <p><i><u>Committee Note Excerpt</u></i> <i>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.</i></p>	<ul style="list-style-type: none"> • Courts that have not already adopted this noticing procedure may need take steps to implement, including: <ul style="list-style-type: none"> ○ CM/ECF modifications ○ Training of court staff ○ Making conforming revisions to the following: <ul style="list-style-type: none"> ▪ internal policies and procedures ▪ local rules ▪ standing/administrative orders

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)

Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 4. Answer; Motions; Time</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> <p><i>Committee Note Excerpt</i> <i>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.</i></p> <p><i>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.</i></p>	<ul style="list-style-type: none"> • May require local CM/ECF modifications to track the deadlines for these responsive pleadings. • This rule amendment permits the court to set a different time to answer after a motion under Rule 4(c). The court may want to consider whether a different deadline should be set by local rule. • Conforming revisions to the following may be necessary: <ul style="list-style-type: none"> ○ internal policies and procedures ○ local rules ○ standing/administrative orders • Training of court staff may be needed

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)

Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 5. Presenting the Action for Decision</p> <p>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.</p> <p><i>Committee Note Excerpt</i> 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.</p> <p><i>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.</i></p>	<ul style="list-style-type: none"> • No operational impact was identified.
<p>Rule 6. Plaintiff's Brief</p> <p>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.</p> <p><i>Committee Note Excerpt</i> 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.</p>	<ul style="list-style-type: none"> • May require local CM/ECF modifications to track the deadlines for these briefs. • Conforming revisions to the following may be necessary: <ul style="list-style-type: none"> ○ internal policies and procedures ○ local rules ○ standing/administrative orders • Training of court staff may be needed
<p>Rule 7. Commissioner's Brief</p> <p>The Commissioner must file a brief and serve it on the plaintiff within 30 days after service of the plaintiff's brief.</p> <p><i>Committee Note Excerpt</i> [See notes for Rule 6 above.]</p>	<ul style="list-style-type: none"> • May require local CM/ECF modifications to track the deadlines for these briefs. • Conforming revisions to the following may be necessary: <ul style="list-style-type: none"> ○ internal policies and procedures ○ local rules ○ standing/administrative orders • Training of court staff may be needed

NEW Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g)

Text of Proposed Amendment	Notes re Possible Operational Impact
<p>Rule 8. Reply Brief</p> <p>The plaintiff may file a reply brief and serve it on the Commissioner within 14 days after service of the Commissioner's brief.</p> <p><i>Committee Note Excerpt</i> <i>[See notes for Rule 6 above.]</i></p>	<ul style="list-style-type: none"> • May require local CM/ECF modifications to track the deadlines for these briefs. • Conforming revisions to the following may be necessary: <ul style="list-style-type: none"> ○ internal policies and procedures ○ local rules ○ standing/administrative orders • Training of court staff may be needed