

Amendments to Select Federal Rules of Procedure *and Their Relation to U.S. District Court - Colorado Local Rules*

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.



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

Federal Rules of Civil Procedure		
Civil Rule 7.1 <i>Disclosure Statement</i>		
Description of Amendment	Text of Amendment	Court Notes re: Impact on Local Rules
<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 March 2021 Report to the Judicial Conference by the Committee on Rules of Practice and Procedure describing the amendments Pending Civil Rule 7.1 Committee Note Excerpt from the December 9, 2020 Report of the Advisory Committee on Civil Rules (revised January 5, 2021) 	<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>(1)(A) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or</p> <p>(2)(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 align="center">*****</p>	<p>As there is no local rule equivalent, no local rule or practice is superseded by this new federal rule.</p>

Federal Rules of Criminal Procedure

Criminal Rule 16 *Discovery and Inspection*

Description of Proposed Amendment	Text of Proposed Amendment	Court Notes re: Impact on Local Rules
<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 style="text-align: center;">*****</p> <p>(G) Expert Witnesses.</p> <p style="text-align: center;">*****</p> <p>(ii) Time to Disclose. 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.</p> <p style="text-align: center;">*****</p> <p>(b) Defendant’s Disclosure.</p> <p>(1) Information Subject to Disclosure.</p> <p style="text-align: center;">*****</p> <p>(C) Expert Witnesses.</p> <p style="text-align: center;">*****</p> <p>(ii) Time to Disclose. 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.</p>	<p>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 and the presiding district judge and/or referral magistrate judge.</p> <p>The District of Colo. notes that while there is no local rule superseded by these additions to Federal Criminal Rule 16, it is important to remember the directives in Local Criminal Rule LCrR 17.1.1:</p> <p>D.C.COLO.LCrR 17.1.1 PRETRIAL CONFERENCE</p> <p><i>A magistrate judge shall enter a Discovery Conference Memorandum and Order at the time of or no later than 14 days after the arraignment, and direct counsel to obtain from the district judge assigned to the case deadlines for filing pretrial motions and a trial date.</i></p> <p>[Note that under Local Crim. Rule 17.1.1 - the pretrial conference rule - directs the Court to confer with the parties and enter the Discovery Conference Memorandum and Order; while it doesn’t mandate a specific, fixed deadline, it leaves it up to the Court on a case-by-case basis to set those dates for the government and the defendants(s). The Discovery Conference Memorandum, on the Court's Forms page of the website, then addresses and sets Rule 16 disclosures and their deadlines, including expert witness disclosures.]</p>

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

Text of Proposed Amendment

Court Notes re: Impact on Local Rules

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

- (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.
- (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.

Committee Note Excerpt

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.

NOTE: The U.S. District Court employs its own procedures through the existing "AP" local rules re: Social Security cases, which comprehensively and effectively establish an effective case management system for such cases.

The Federal Supplemental Rules for Social Security Actions impact two District of Colo. AP rules:

D.C.COLO.LAPR 10.2 COMMENCEMENT OF ACTION AND FORM OF PLEADING (see next page for the rule's text)

and

D.C.COLO.LAPR 16.1 AP CASE MANAGEMENT

(b) Briefing Schedule for Social Security Appeals.

(1) Briefing Schedule. Unless otherwise ordered, the opening brief of the plaintiff shall be filed no later than 40 days after the Commissioner files the administrative record. The response brief of the Commissioner shall be filed no later than 70 days after the filing of the administrative record. The plaintiff may file a reply brief no later than 85 days after the filing of the administrative record.

(2) Page Limitations. Unless otherwise ordered and excluding the cover page, jurisdictional statement, table of contents, statement of facts, and procedural history, opening and response briefs shall be no more than 20 pages, and reply briefs shall be no more than 10 pages.

(c) Motions for Summary Judgment. Motions for summary judgment shall not be filed.

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

Court Notes re: Impact on Local Rules

Rule 2. Complaint

- (a) Commencing Action.** An action for review under these rules is commenced by filing a complaint with the court.
- (b) Contents.**
- (1)** The complaint must:
- (A)** state that the action is brought under § 405(g);
 - (B)** identify the final decision to be reviewed, including any identifying designation provided by the Commissioner with the final decision;
 - (C)** state the name and the county of residence of the person for whom benefits are claimed;
 - (D)** name the person on whose wage record benefits are claimed; and
 - (E)** state the type of benefits claimed.
- (2)** The complaint may include a short and plain statement of the grounds for relief.

Existing local AP Rule D.C.COLO.LAPR 10.2 conforms to new Rule 2 Complaint guidelines and its need for specificity.

LAPR 10.2 provides:

D.C.COLO.LAPR 10.2 COMMENCEMENT OF ACTION AND FORM OF PLEADING

(a) Social Security Appeals.

(1) Review of a decision of the Commissioner of Social Security shall be commenced by filing a “Complaint and

Petition for Review” which shall identify the specific order or decision for which review is sought and the date of issuance of that order or decision.

(2) As an answer to the complaint, the Commissioner shall file a certified copy of the transcript of the relevant administrative record and any affirmative defense, which if not then filed, shall be waived.

Committee Note Excerpt

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.

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

Text of Proposed Amendment

Court Notes re: Impact on Local Rules

Rule 3. Service

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.

The U.S. District Court has already adopted this noticing procedure:

- See [User Guide - Attorney Civil Case Opening "Searching and Adding the SSA Noticing Party,"](#) p.20, available on the U.S. District Court's website here:

<http://www.cod.uscourts.gov/CourtOperations/CMECF.aspx>

Committee Note Excerpt

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. 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).

These pleading and motion deadlines do not conflict with D.C.COLO.LAPR 10.2 Commencement of Action and Form of Pleading, because no deadlines are set. LAPR 10.2 only defines a complaint and answer and reinforces the administrative nature of actions submitted 42 U.S.C. § 405(g).

Committee Note Excerpt

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.

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

Text of Proposed Amendment

Court Notes re: Impact on Local Rules

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.

Committee Note Excerpt

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.

Supp.R. 5 recognizes that summary judgment motions are unnecessary; as D.C.COLO.LAPR 16.1(c) does.

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.

Committee Note Excerpt

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.

Note that local rule LAPR 16.1(b) (1)'s established 40-70-85 briefing schedule differs from Supp.R. 6:

(b) Briefing Schedule for Social Security Appeals.

(1) (1) Briefing Schedule. Unless otherwise ordered, the opening brief of the plaintiff shall be filed no later than 40 days after the Commissioner files the administrative record. The response brief of the Commissioner shall be filed no later than 70 days after the filing of the administrative record. The plaintiff may file a reply brief no later than 85 days after the filing of the administrative record.

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.

Committee Note Excerpt

[See notes for Rule 6 above.]

Please also note that "The court may revise these times when appropriate."

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

Text of Proposed Amendment

Court Notes re: Impact on Local Rules

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.

See Note on previous page.

[Committee Note Excerpt](#)
[See notes for Rule 6 above.]