

TITLE III PLEADINGS AND MOTIONS

Proposed Amendments to Rule 7

Rule 7 is amended as follows:

Rule 7. Pleadings Allowed; Consultation; Oral Argument; Response Time; Show Cause Order; Form of Motions **and Other Papers**

(a) Pleadings. [~~There shall be a complaint and, except for an action described in 28 U.S.C. § 1581(c), an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer]~~

Only these pleadings are allowed:

(1) a complaint;

(2) except for an action described in 28 U.S.C. § 1581(c), an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

~~[(b) Motions; Consultation. Before a motion for an extension of time as prescribed in Rule 6(b), a motion for intervention as prescribed in Rule 24(a), a motion for a preliminary injunction to enjoin the liquidation of entries, a motion for a hearing as prescribed in Rule 56.2(e), a motion for the designation of a test case or suspension as~~

~~prescribed in Rule 84, or a motion for an order compelling disclosure or discovery as prescribed in Rule 37(a), is made, the moving party shall consult with all other parties to the action to attempt to reach agreement, in good faith, on the issues involved in the motion. If the court finds that a party willfully refused to consult, or, having consulted, willfully refused to attempt to reach agreement in good faith, the court may impose such sanctions as it deems proper.]~~

(b) Form of Motions and Other Papers.

(1) *In General.* A request for a court order must be made by motion.

The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order;

(C) for motions that require consultation between counsel before being made as prescribed by subdivision (f) of this rule, describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and recite the date and time of such consultation, as well as the names of all persons participating;

(D) state the relief sought; and

(E) be accompanied by a proposed order.

(2) *Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) Oral Argument. ~~Upon~~ **On** motion of a party, or ~~upon~~ **on** its own [initiative], the court may direct oral argument on a motion at a time and place designated as prescribed in Rule 77(c). A motion for oral argument on a motion ~~shall~~ **must** be filed no later than 20 days after service of the response to the motion, or 20 days after the expiration of the period of time allowed for service of a response.

(d) Time To Respond. Unless otherwise prescribed by these rules, or by order of the court, a response to a motion ~~shall~~ **must** be served within 10 days after service of such motion, except that a response to a dispositive motion ~~shall~~ **must** be served within 30 days after service of such motion. The ~~moving party shall have~~ **movant has** 10 days after service of the response to a dispositive motion to serve a reply.

(e) Order To Show Cause. No order to show cause to bring on a motion ~~shall~~ **may** be granted except ~~upon~~ **on** a clear and specific showing by affidavit of good and specific reasons why procedure other than regular motion is necessary or why the time to respond should be shortened.

~~[(f) Form of Motions and Other Papers.]~~

~~[(1) An application to the court for an order shall be by motion, properly designated, which, unless made during a hearing or trial, shall be in writing and shall state, with particularity, the grounds therefor. Motions which require consultation between counsel before being made as prescribed by subdivision (b) of this rule shall describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and shall also recite the date and time of such consultation, as well as the names of all persons participating. All motions~~

~~shall set forth the relief or order sought, and shall be accompanied by a proposed order.~~

~~(2) The rules applicable to the captions, signing, and other matters of form of pleadings apply to all motions and other papers prescribed by these rules.~~

~~(3) All motions shall be signed in accordance with Rule 11.]~~

(f) Motions; Consultation. Before a motion for an extension of time as prescribed in Rule 6(b), a motion for intervention as prescribed in Rule 24(a), a motion for a preliminary injunction to enjoin the liquidation of entries, a motion for a hearing as prescribed in Rule 56.2(e), a motion for the designation of a test case or suspension as prescribed in Rule 84, or a motion for an order compelling disclosure or discovery as prescribed in Rule 37(a), is made, the movant must consult with all other parties to the action to attempt to reach agreement, in good faith, on the issues involved in the motion. If the court finds that a party willfully refused to consult, or, having consulted, willfully refused to attempt to reach agreement in good faith, the court may impose such sanctions as it deems proper.

(g) Dispositive Motions Defined. Dispositive motions include: motions for judgment on the pleadings; motions for summary judgment; motions for judgment ~~[upon]~~ **on** an agency record; motions to dismiss an action; and any other motion for a final determination of an action.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and

entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: When a preliminary injunction (“PI”), temporary restraining order (“TRO”), or show cause order requiring action within a time period shorter than provided for under the Court’s Rules is sought in conjunction with the filing of a new action, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk’s Office at 212-264-2971, and, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.

Further, in all other situations when a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court’s Rules, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk’s Office at 212-264-2971.

Further, when notifying the Clerk's Office that a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, counsel are also encouraged simultaneously, if not sooner, to provide courtesy notice of the intended application to all other parties to the litigation; if any captioned party has not yet appeared through counsel, counsel are encouraged to provide courtesy notice to all relevant parties as identified in USCIT R. 4(a).

PRACTICE COMMENT: Consistent with 28 U.S.C. § 2632(d) and the Federal Rules of Civil Procedure, Rule 7(a) does not list a summons as a pleading. Practitioners should note, however, that in DaimlerChrysler Corp. v. United States, 442 F.3d 1313, 1317-18 (Fed. Cir. 2006), the United States Court of Appeals for the Federal Circuit determined that the summons acts as the initial pleading in an action commenced under 28 U.S.C. § 1581(a).

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; _____, 2008, eff. _____, 2009.)

Advisory Committee Note

The language of Rule 7 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

There has been some reordering of the subdivisions of Rule 7 to make them consistent with the Federal Rules of Civil Procedure. In particular, former Rule 7(f) (Form of Motions and Other Papers) has been moved to subsection 7(b), and former Rule 7(b) (Motions; Consultations) has been moved to subsection 7(f). Further, a Practice Comment has been added to alert practitioners to the unique function of a summons in certain types of cases that come before the CIT.