

Rule 40-III. Collection and Subrogation Cases

(a) APPLICABILITY. This rule applies to a civil action in which the complaint seeks:

(1) collection of a liquidated debt involving:

(A) a credit card or credit account;

(B) a medical bill; or

(C) a loan or other financial obligation that a commercial entity seeks to collect or enforce; or

(2) recovery as a subrogee-insurer.

(b) PARTICULAR PLEADING REQUIREMENTS.

(1) *Original Creditor*. If the plaintiff files a complaint identified in Rule 40-III(a)(1) and is not the original creditor, the complaint must include:

(A) the identity of the original creditor; and

(B) a statement that the plaintiff is the successor in interest.

(2) *Credit Card or Account*. If the plaintiff files a complaint identified in Rule 40-III(a)(1)(A), the plaintiff must attach an account statement to the complaint, and the complaint must inform the defendant that an account statement is attached.

(3) *Prejudgment Interest*.

(A) *In General*. If the plaintiff's claim includes a claim for prejudgment interest, the complaint must include:

(i) the prejudgment interest rate;

(ii) the date from which the interest has run;

(iii) the total dollar amount of prejudgment interest already accrued as of a date specified by the plaintiff and not more than 30 days prior to the filing of the action; and

(iv) if applicable, a statement that the amount of prejudgment interest is only good through the stated date and that the amount will increase after that date as interest continues to accrue.

(B) *Closed or Charged-Off Account*. In actions based on accounts described in Rule 40-III(a)(1) that have been closed or charged off, the term "prejudgment interest" refers only to interest added or charged to the account after the account closing or charge-off.

(c) TIME ALLOWED FOR SERVICE OF PROCESS. Proof of service of the materials required by Rule 4(c)(1) must be made no later than 90 days after the filing of the complaint. Failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on the parties.

(d) EXTENSION OF TIME FOR SERVICE OF PROCESS. Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this rule will not be extended unless a motion for extension of time is filed within 90 days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. If the plaintiff shows exceptional circumstances requiring an extension, the court must extend the time for an appropriate period.

(e) ASSIGNMENT TO A JUDGE'S CALENDAR. If the plaintiff does not file a consent as provided in Rule 73(a)(1) or if any party makes a jury demand, the case must be assigned to a judge's individual calendar in accordance with Rule 40-I.

COMMENT TO 2021 AMENDMENTS

Section (a) was amended to more clearly define which cases are covered by this rule. As used in this rule, “charge off” means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

Former sections (d) and (f) concerning magistrate judges were deleted because Rule 73 addresses consent and withdrawal of consent.

Former section (e) was deleted as unnecessary in light of the 2021 amendments to Rule 16, which clarify that the only provisions of Rule 16 that do not apply to cases to which Rule 40-III applies are the provisions of Rule 16(b)(2) concerning praecipes in lieu of appearance. Under Rule 16, a magistrate judge handling a collection or subrogation case will ascertain the status of the case at the outset and exercise the discretion granted by Rule 16 to enter a scheduling order appropriate to the specific case.

Former section (g) was deleted because other rules address the provisions of copies of papers to judges.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.