

Rule 42. Consolidation; Separate Trials, FRCP Rule 42

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title VI. Trials

Federal Rules of Civil Procedure Rule 42

Rule 42. Consolidation; Separate Trials

Currentness

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

CREDIT(S)

(Amended February 28, 1966, effective July 1, 1966; April 30, 2007, effective December 1, 2007.)

ADVISORY COMMITTEE NOTES

1937 Adoption

Subdivision (a) is based upon U.S.C., Title 28, [former] § 734 (Orders to save costs; consolidation of causes of like nature) but in so far as the statute differs from this rule, it is modified.

For comparable statutes dealing with consolidation see Ark.Dig.Stat. (Crawford & Moses, 1921) § 1081; Calif.Code Civ.Proc. (Deering, 1937) § 1048; N.M.Stat. Ann. (Courtright, 1929) § 105-828; N.Y.C.P.A. (1937) §§ 96, 96a, and 97; American Judicature Society, Bulletin XIV, (1919) Art. 26.

For severance or separate trials see Calif.Code Civ.Proc. (Deering, 1937) § 1048; N.Y.C.P.A. (1937) § 96; American Judicature Society, Bulletin XIV (1919) Art. 3, § 2 and Art. 10, § 10. See also the third sentence of Equity [Rule 29](#) (Defenses--How Presented) providing for discretionary separate hearing and disposition before trial of pleas in bar or abatement, and see also [Rule 12\(d\)](#) of these rules for preliminary hearings of defenses and objections.

For the entry of separate judgments, see [Rule 54\(b\)](#) (Judgment at Various Stages).

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1966 Amendment

In certain suits in admiralty separation for trial of the issues of liability and damages (or of the extent of liability other than damages, such as salvage and general average) has been conducive to expedition and economy, especially because of the statutory right to interlocutory appeal in admiralty cases (which is of course preserved by these Rules). While separation of issues for trial is not to be routinely ordered, it is important that it be encouraged where experience has demonstrated its worth. Cf. Weinstein, *Routine Bifurcation of Negligence Trials*, 14 Vand.L.Rev. 831 (1961).

In cases (including some cases within the admiralty and maritime jurisdiction) in which the parties have a constitutional or statutory right of trial by jury, separation of issues may give rise to problems. See *e.g.*, [United Air Lines, Inc. v. Wiener](#), 286 F.2d 302 (9th Cir.1961). Accordingly, the proposed change in Rule 42 reiterates the mandate of [Rule 38](#) respecting preservation of the right to jury trial.

2007 Amendment

The language of Rule 42 has been amended as part of the general restyling of the Civil 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.

[Notes of Decisions \(980\)](#)

Fed. Rules Civ. Proc. Rule 42, 28 U.S.C.A., FRCP Rule 42
Including Amendments Received Through 3-1-15

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