ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Washington, DC
September 26, 2017

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Washington, DC

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4. Report by the Subcommittee on Consumer Issues. (Judge Goldgar, Professor Gibson,)

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appellant in a bankruptcy appeal, if the debtor or trustee is not a party, to file a statement identifying entities that might require a judge to recuse.

Tab 7B: Memo of September 5, 2017, by Professor Gibson

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8. Item Awaiting Transmission to the Standing Rules Committee

(A) Recommendation in consideration of suggestion 12-BK-B to amend Rule 2002(f)(7) to require notice of a chapter 13 plan confirmation order. (*At spring 2017 meeting, the Advisory Committee recommended publishing the proposed amendment after the pending change to Rule 3002 goes into effect on December 1, 2017. The next available publication period would begin mid-August 2018).*

9. Items Retained for Further Consideration.

The matters listed below are part of the noticing project and will be considered at a later date in light of final approval of electronic noticing rules already under consideration

(A) Suggestion 15-BK-H (Judge Janice M. Karlin – BJAG -- Proposing an amendment to Bankruptcy Rule 9036 that would mandate electronic noticing in certain circumstances.

(B) Suggestion 14-BK-E (Richard Levin – Chair, NBC -- Proposing an amendment to Bankruptcy Rule 3001 to require a corporate creditor to specify address and authorized recipient information and the promulgation of a new rule to create a database for preferred creditor addresses under section 347. In addition, the Suggestion discusses the value to requiring electronic noticing and service on large creditors in bankruptcy cases for all purposes (other than process under Bankruptcy Rule 7004)).

(C) Comment 12-BK-040 (BCAG -- This Suggestion was submitted as a comment in response to proposed revisions to Rule 9027. It suggested that the reference to "mail" in Rule 9027(e)(3) be changed to "transmit." Because the comment did not implicate the part of Rule 9027 being amended, the comment was retained as suggestion for further consideration at a later time).

(D) Comments 12-BK-005, 12-BK-008, 12-BK-026, 12-BK-040 submitted separately by Judge Robert J. Kressel, the National Conference of Bankruptcy Judges, Judge S. Martin Teel, Jr., and the Bankruptcy Clerks Advisory Group. The comments were made response to pending amendments to Rule 8003(c)(1), and have been retained as suggestions for further consideration. They recommend that the obligation to serve a notice of appeal rest with the appellant or be permitted by electronic means.

(E) Suggestion/Comment BK-2014-0001-0062 (Chief Judge Robert E. Nugent, U.S. Bankruptcy Court for the District of Kansas, on behalf of the NCBJ -- Proposing amendments regarding service of entities under Bankruptcy Rule 7004(b) and, in turn, Bankruptcy Rules 4003(d) and 9014(b)).

(F) Informal Suggestion (David Lander, former committee member) -- Proposing rule in context of electronic noticing that would require particular notice to, or service on, a party when a motion or pleading is adverse to that party, as opposed to that party just receiving the general e-notice of a filing in the case.

8. Coordination Items.

Tab 8: Memo of September 6, 2017, by Mr. Myers.

9. Future meetings:

The spring 2018 meeting will be in San Diego, CA, on April 3, 2018.

The fall 2018 meeting will be in Washington, DC, on September 17, 2018.

10. New business.

11. Adjourn.

Proposed Consent Agenda

The Chair and Reporter have proposed the following items for study and consideration prior to the Advisory Committee's meeting**. Absent any objection, all**

recommendations will be approved by acclamation at the meeting. Any of these matters may be moved to the Discussion Agenda if a member or liaison feels that discussion or debate is required prior to Committee action. Requests to move an item to the Discussion Agenda must be brought to attention of the Chair by noon, Eastern Time, on **Tuesday, September 26, 2017**

1. Subcommittee on Forms Issues.

(A) Recommendation of No Action regarding suggestion 17-BK-C from Judge Pamela S. Hollis for revision to Official Form 423 to require most individual chapter 11 debtors to take the personal financial management course described by 11 USC § 111(d) as a condition of obtaining a discharge.

Tab Consent 1: Memo of September 1, by Professor Gibson

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair, Advisory Committee on Bankruptcy Rules	**Honorable Sandra Segal Ikuta** United States Court of Appeals Richard H. Chambers Court of Appeals Building 125 South Grand Avenue, Room 305 Pasadena, CA 91105-1621
Reporter, Advisory Committee on Bankruptcy Rules	**Professor S. Elizabeth Gibson** Burton Craige Professor of Law University of North Carolina at Chapel Hill 5073 Van Hecke-Wettach Hall C.B. #3380 Chapel Hill, NC 27599-3380
Associate Reporter, Advisory Committee on Bankruptcy Rules	**Professor Michelle M. Harner** Francis King Carey Professor of Law Director, Business Law Program University of Maryland Francis King Carey School of Law 500 West Baltimore Street Baltimore, MD 21201
Members, Advisory Committee on Bankruptcy Rules	**Honorable Thomas L. Ambro** United States Court of Appeals J. Caleb Boggs Federal Building 844 North King Street, Unit 32 Wilmington, DE 19801-3519 **Honorable Stuart M. Bernstein** United States Bankruptcy Court Alexander Hamilton Custom House One Bowling Green, Room 729 New York, NY 10004-1408 **Honorable Dennis R. Dow** United States Bankruptcy Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street, Room 6562 Kansas City, MO 64106 **Honorable A. Benjamin Goldgar** United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Room 638 Chicago, IL 60604

Members, Advisory Committee on Bankruptcy Rules *(cont'd)*	**Honorable Jean C. Hamilton** United States District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street, Room 16N St. Louis, MO 63102-1116 **Jeffery J. Hartley, Esq.** Helmsing Leach Post Office Box 2767 Mobile, AL 36652 **Honorable Melvin S. Hoffman** Chief Judge United States Bankruptcy Court John W. McCormack Post Office and Court House 5 Post Office Square, Room 1150 Boston, MA 02109-3945 **Honorable David A. Hubbert** Acting Assistant Attorney General, Tax Division (ex officio) United States Department of Justice 950 Pennsylvania Avenue N.W. Room 4141 Washington, D.C. 20530 **Richardo I. Kilpatrick, Esq.** Kilpatrick & Associates, P.C. 903 N. Opdyke Road, Suite C Auburn Hills, MI 48326 **Thomas Moers Mayer, Esq.** Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036 **Jill A. Michaux, Esq.** Neis & Michaux, P.A. 534 S. Kansas Avenue, Suite 825 Topeka, KS 66603-3446

Members, Advisory Committee on Bankruptcy Rules (*cont'd)*	**Honorable Pamela Pepper** United States District Court United States Courthouse and Federal Building 517 East Wisconsin Avenue, Room 271 Milwaukee, WI 53202 **Professor David Arthur Skeel** University of Pennsylvania Law School 3501 Sansom Street Philadelphia, PA 19104 **Honorable Amul R. Thapar** United States District Court United States Courthouse 35 West Fifth Street, Suite 473 Covington, KY 41011
Clerk of Court Representative, Advisory Committee on Bankruptcy Rules	**Kenneth S. Gardner** Clerk, United States Bankruptcy Court United States Custom House 721 19th Street, Room 116 Denver, CO 80202-2508
Consultants, Advisory Committee on Bankruptcy Rules	**Patricia S. Ketchum, Esq.** 113 Richdale Avenue #35 Cambridge, MA 02140 **James H. Wannamaker, Esq.** 330 St. Dunstans Road Baltimore, MD 21212
Liaison Member, United States Department of Justice, Executive Office for U.S. Trustees	**Ramona D. Elliott, Esq.** Deputy Director/General Counsel Executive Office for the U.S. Trustees 20 Massachusetts Avenue, N.W. - Suite 8100 Washington, DC 20530
Liaison Member, Advisory Committee on Bankruptcy Rules	**Honorable Susan P. Graber** *(Standing)* United States Court of Appeals Pioneer Courthouse 700 S.W. Sixth Avenue, Suite 211 Portland, OR 97204
Liaison Member, Committee on the Administration of the Bankruptcy System	**Honorable Erithe A. Smith** United States Bankruptcy Court Ronald Reagan Federal Building and United States Courthouse 411 West Fourth Street, Room 5040 Santa Ana, CA 92701

Secretary, Standing Committee and Rules Committee Officer	**Rebecca A. Womeldorf** Secretary, Committee on Rules of Practice & Procedure and Rules Committee Officer Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 7-240 Washington, DC 20544 Phone 202-502-1820; Fax 202-502-1755 Rebecca_Womeldorf@ao.uscourts.gov

LIAISON MEMBERS

Liaisons for the Advisory Committee on Appellate Rules	**Gregory G. Garre, Esq.**	***(Standing)***
	Judge Pamela Pepper	***(Bankruptcy)***
Liaison for the Advisory Committee on Bankruptcy Rules	**Judge Susan P. Graber**	***(Standing)***
Liaisons for the Advisory Committee on Civil Rules	**Judge A. Benjamin Goldgar**	***(Bankruptcy)***
	Peter D. Keisler, Esq.	***(Standing)***
Liaison for the Advisory Committee on Criminal Rules	**Judge Amy J. St. Eve**	***(Standing)***
Liaisons for the Advisory Committee on Evidence Rules	**Judge James C. Dever III**	***(Criminal)***
	Judge Solomon Oliver, Jr.	***(Civil)***
	Judge Richard C. Wesley	***(Standing)***

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Rebecca A. Womeldorf
Secretary, Committee on Rules of Practice &
Procedure and Rules Committee Officer
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-1820 Fax 202-502-1755
Rebecca_Womeldorf@ao.uscourts.gov

Julie Wilson
Attorney Advisor
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-3678 Fax 202-502-1755
Julie_Wilson@ao.uscourts.gov

Scott Myers
Attorney Advisor (Bankruptcy)
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-1913 Fax 202-502-1755
Scott_Myers@ao.uscourts.gov

Bridget M. Healy
Attorney Advisor
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-240
Washington, DC 20544
Phone 202-502-1313 Fax 202-502-1755
Bridget_Healy@ao.uscourts.gov

Shelly Cox
Administrative Specialist
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-4487 Fax 202-502-1755
Shelly_Cox@ao.uscourts.gov

Frances F. Skillman
Paralegal Specialist
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-3945 Fax 202-502-1755
Frances_Skillman@ao.uscourts.gov

FEDERAL JUDICIAL CENTER

Tim Reagan *(Rules of Practice & Procedure)* Senior Research Associate Federal Judicial Center Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 6-436 Washington, DC 20002 Phone 202-502-4097 Fax 202-502-4199	**Marie Leary** *(Appellate Rules Committee)* Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4069 Fax 202-502-4199 mleary@fjc.gov
Molly T. Johnson *(Bankruptcy Rules Committee)* Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 315-824-4945 mjohnson@fjc.gov	**Emery G. Lee** *(Civil Rules Committee)* Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4078 Fax 202-502-4199 elee@fjc.gov
Laural L. Hooper *(Criminal Rules Committee)* Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4093 Fax 202-502-4199 lhooper@fjc.gov	**Timothy T. Lau** *(Evidence Rules Committee)* Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4089 Fax 202-502-4199 tlau@fjc.gov

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TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 6, 2017
Nashville, Tennessee

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Thomas L. Ambro
District Judge Pamela Pepper
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
David Hubbert, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Thomas Moers Mayer, Esquire
Jill Michaux, Esquire
Professor David Skeel

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Daniel R. Coquillette, reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office

Discussion Agenda

1. Greetings and introductions

Judge Ikuta welcomed the members and guests to the meeting and introduced the U.S. Marshals. Members and guests introduced themselves to the group.

2. Approval of minutes of Washington D.C. meeting on November 14, 2016

The draft minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) June 3, 2017 meeting of the Committee on Rules of Practice and Procedure

Professor Harner reported on the January 2017 meeting of the Standing Committee. The bankruptcy rules action items were approved. The Standing Committee discussed the five-year report regarding the work of the rules committees and determined to submit one report on behalf of all of the rules committees. The Standing Committee voiced its support for the need to continue coordinating the work of the rules committees.

(B) Meeting of the Advisory Committee on Civil Rules

No report. Next meeting scheduled for April 25-26, 2017.

(C) Meeting of the Advisory Committee on Appellate Rules

No report. Next meeting scheduled for May 2, 2017.

(D) January 2017 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Bernstein reported on the January 2017 meeting. Several proposals were of interest to the Committee, including a potential venue provision change. The proposal is under study, and a further report will be provided at the next meeting of the Bankruptcy Committee. Another proposal related to acceptance of findings of facts of a bankruptcy judge, but this proposal was rescinded given recent Supreme Court decisions. Finally, Judge Bernstein reported on the suggestion from this Committee regarding the change of address form, and it is still under consideration.

Another issue discussed by the Bankruptcy Committee was judgeships, and a recommendation was made regarding the number of judgeships and changing duty stations for bankruptcy judges.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues

(A) Recommendation concerning Proposed Amendments to Rule 5005(a)(2)

Professor Harner provided the report. Several comments were received on the published rule, including one regarding electronic filing by *pro se* parties. The commenter suggested that *pro se* parties be given the option to file electronically or in paper form unless the court for good cause requires electronic filing. Information was received from other rules committees regarding comparable rule proposals. The subcommittee's working group focused on proposing language regarding electronic signatures to allow for potential changes to electronic filing based on future technological developments. The working group considered how to strike a balance for *pro se* parties and electronic filing, recognizing that while some *pro se* parties are sophisticated users with the resources to file electronically, others do not have access to those capabilities. For this and other reasons discussed during its conference call, the subcommittee did not recommend any changes to the proposed language in the rule regarding electronic filing by *pro se* parties.

The group discussed the use of the term "authorized" and the determination to approach the rule more generally. The subcommittee wanted to ensure the rule was flexible enough to permit various approaches by courts to electronic filing. Professor Harner explained that some of the changes to the proposed rule were made to conform to the proposed language of the other rules committees. The proposed rule amendment was approved by motion and vote.

(B) Recommendation concerning Proposed Amendments to Rule 3002.1(b) and (e)

Professor Gibson reported that amendments were proposed to Rule 3002.1 to address home equity lines of credit and objections to notices of payment changes. Several comments were received, including one from the National Conference of Bankruptcy Judges (NCBJ). A number of the NCBJ's suggestions were accepted, and a revised version of the proposed rule was included in the materials. Conforming changes were made to the Committee Note to reflect the proposed changes, and the revised Committee Note was included with the materials.

The group discussed a few stylistic issues, and a minor edit was made to add "if no motion was filed by the day before" in place of the proposed language in the version of the rule

in the materials. Language will be added to the Committee Note to clarify the new language. The revised proposed rule amendment and Committee Note were approved by motion and vote.

(C) Recommendation regarding Suggestion 16-BK-D for possible amendment to Rule 4001(c) that would simplify notice requirements for obtaining credit in Chapter 13 cases

Judge Goldgar reported on this issue, explaining the origin of the suggestion, mainly that there are many procedural hoops for debtors in chapter 13 cases to obtain post-petition credit. The original suggestion was to amend the rule to make it less stringent for chapter 13 debtors, as the current rule contains many requirements. Professor Harner completed some research on the issue and determined that courts handle post-petition chapter 13 credit in a variety of ways. The different approaches adopted by courts may relate to the structure of the Bankruptcy Code (sections 364 and 1304), rather than the rules, and whether chapter 13 debtors not engaged in business can obtain credit under section 364. Some courts have concluded that section 364 (and Rule 4001(c)) apply only to chapter 13 debtors engaged in business. The subcommittee determined that the best resolution was to add a new subdivision (4) to Rule 4001(c) to exclude chapter 13 cases from the application that subdivision.

The Committee discussed the proposed amendment, noting its practicality. One member asked about the potential risks for post-petition lenders if chapter 13 cases are excluded from the subdivision. Others suggested leaving such matters to local practice. In response, a suggestion was made to amend the Committee Note to explain the effect of the rule change. The proposed amendment was approved for publication by motion and vote, along with the amendment to the Committee Note.

(D) Recommendations regarding Suggestion 12-BK-B proposing amendment to Rule 2002(f)(7) to require notice of an order confirming a chapter 13 plan, and Suggestion 12-BK-M proposing amendments to Bankruptcy Rule 2002(h) to include Chapter 13

Professor Harner addressed this issue. She reviewed the suggestions, explaining that the first suggestion related to Rule 2002(f)(7) and the absence of the order confirming a chapter 13 plan from the subdivision. The second proposed amendment concerned Rule 2002(h) and the absence of chapter 13 creditors from the rule, which limits notice in certain circumstances. She explained that after completing some research into past deliberations of the Committee, she

discovered that there was no clear reason for excluding chapter 13 from these two subdivisions of Rule 2002.

After discussion, the subcommittee determined to add language referencing chapter 13 to Rules 2002(f)(7). With regard to Rule 2002(h), the subcommittee agreed that given the amount of notice received in chapter 13 cases, adding chapter 13 cases to the subdivision (h) limitation made sense. In completing its review, the subcommittee noted that there are pending amendments to Rule 2002. For this reason, the subcommittee recommended that the amendments to Rule 2002(f) and (h) be approved, but held until after the 2017 amendments to Rule 2002 become effective to avoid confusion.

A Committee member asked why chapter 12 was excluded from subdivision (h), noting that the lack of a clear reason for its exclusion could lead to the same confusion that exists regarding chapter 13 if a similar suggestion is made in the future. Professor Harner advised that the subcommittee could consider this suggestion. Another member suggested that current practices lead to wasted noticing in bankruptcy cases, suggesting that the creditor matrix maintained by the court should be updated to remove non-claimants once the amendments to Rule 2002 go into effect. Judge Ikuta advised that this suggestion could be relayed to the appropriate group at the Administrative Office, and Ken Gardner supported the suggestion.

Professor Harner reviewed the recommendation: the subcommittee recommended that the proposed amendments to Rule 2002(f)(7) and (h) be approved, but held (and not provided to the Standing Committee for publication) until the current proposed amendments to Rule 2002 take effect to avoid any potential confusion. She noted that this would permit the subcommittee to consider the suggestion to include chapter 12 cases in subdivision (h). Judge Ikuta supported the suggestion to hold the proposed amendments until after the effective date of the current Rule 2002 amendments, noting that these proposed amendments to Rule 2002 are subject to possible further amendment.

The proposed amendments were approved for publication by motion and vote, with the provision that any proposed amendments be held until after the effective date of the current pending amendments to Rule 2002.

5. Report by the Subcommittee on Business Issues.

(A) Recommendations concerning Electronic Notice and Service

Professor Harner reported on the issues to be considered by the Committee at the meeting. She advised that the subcommittee will consider several additional issues related to noticing in bankruptcy cases at a later date.

Professor Harner explained the subcommittee's proposed approach for implementing a move towards enhanced electronic notice and service in bankruptcy cases. First, a proposed amendment to the proof of claim form (Official Form 410) would add a checkbox regarding consent to electronic noticing and service via email for non-registered users. A draft of the amended form was included in the agenda materials. Second, a corresponding amendment to Rule 2002(g) would permit creditors to expand their choices for receiving notice by email. Third, a proposed amendment to Rule 9036 would broaden the rule to include any party serving a paper under the rule to permit the party to serve electronically on registered users and parties who consent to service electronically, including those who consent via the proof of claim form. Some analysis was done on the term "in writing" and whether a check box on the proof of claim form would constitute "in writing," and the consensus was that it would meet the requirements.

In response to a question regarding why the subcommittee focused on amending the proof of claim form, Professor Harner explained that the proof of claim form appeared to be the best method for addressing the concerns of commenters regarding large filers and broader use of electronic notice and service. A member raised an issue regarding notice to security holders rather than claim holders. Judge Ikuta advised that the concern regarding security holders should be submitted as a suggestion for consideration.

Ken Gardner explained the mechanics of the proposed change to the proof of claim form, and how the information would be included in the court's database as part of the creditor matrix. An issue was raised regarding debtors' access to the court's database for noticing purposes to avoid sending paper notices to parties who have consented to electronic notices and service. The group discussed whether the proposed change lessens the burdens of noticing. One member noted that any email address submitted in connection with a proof of claim should supplement rather than replace any contact information submitted under Bankruptcy Code section 342 (and maintained by the Bankruptcy Noticing Center). In response, one member referenced the 2001 Committee Note to Rule 2002(g), which indicates that information on a later-filed proof of claim

replaces an earlier designation of a mailing address in a particular case. Further discussion was had regarding the implications of section 342 and the requirements for notice and those receiving notice. Members stated that the amendment to the proof of claim form is intended as an "opt-in" and not a requirement, and that language could be added to the Committee Note to address any issues with section 342. Judge Ikuta suggested follow up with the Bankruptcy Noticing Center regarding some of these issues, including whether debtors could get access to email addresses of creditors who opt in to electronic noticing and service for noticing purposes. Another member suggested that a solution may be to review the make-up of the creditor matrix if this proposed amendment were to go forward to attempt to eliminate duplicative noticing addresses.

Professor Harner suggested that the Committee Note could be amended to address the issues raised at the meeting. Judge Ikuta added that the Committee could complete additional research on the practical application of the proposed amendment, but that the proposed amendment could go forward. Professors Gibson and Coquillette noted their concern with publishing something that may not receive final approval in the published form. Professor Harner added that publication may signal that the Committee is behind a broader use of electronic notice and service, and that one method of obtaining feedback regarding that approach is to publish proposed amendments. The proposed amendment was approved for publication by motion and vote.

(B) Report on Suggestion 16-BK-C regarding Rule 6007 and notice of abandonment of estate property

Professor Harner explained that the suggestion is to amend Rule 6007 to eliminate the ambiguity between sections (a) and (b) of the rule regarding service of notice. The subcommittee considered the various approaches used by courts to implement Rule 6007(b). The proposed amendment to Rule 6007(b) clarifies the parties to be served with the motion and notice of the motion, eliminates the distinction between notice and service in the rule, and provides that if the court grants the motion, no further notice is required unless otherwise ordered.

A member asked whether the proposed amendment would mean that nothing additional would be required to effectuate abandonment. The group discussed possible language. Additional language was added to the proposed amendment to clarify that "the order effects the abandonment" without further notice or action by the court. Another question was raised regarding notice versus service, and a member explained that the point was to recognize that there are a variety of court practices with regard to motions to compel abandonment and to

eliminate the distinction between the terms "notice" and "service." The group agreed to new language including the term "required notice." The revised proposed amendment was approved for publication by motion and vote.

Following approval, Judge Campbell raised the issue of whether the term "required" should be explained more fully in the Committee Note. The group agreed to revise the language of the rule to remove the term "required," changing it to "the motion and any notice of the motion" to permit for the possibility that notice may not be required in some jurisdictions. The group voted to approve the new language for the proposed amendment for publication.

(C) Report and Recommendation Concerning Proposed Amendments to Official Forms 309F, 425A, 425B, 425C, and 426

Professor Harner advised that the revised forms (Official Forms 425A, B, and C, and 426) all relate to business cases and were carved out the Forms Modernization Project for consideration by the subcommittee. The revisions adopted the format of the newly styled forms of the Forms Modernization Project and made the forms easier to understand. The forms were published for comment, and several comments were submitted on Forms 425A and B. One comment questioned the removal of the notice of hearing and certain deadlines from the disclosure statement form. The subcommittee discussed this issue, but determined to not make the change to avoid any conflicts between the form and official court orders. Another comment supported the forms, and suggested that the disclosure statement and plan be combined into one form.

Professor Harner referred to her memo in the agenda materials for detailed analysis of all of the comments, explaining that five changes were recommended by the subcommittee in response to the comments. She reminded the group that these forms are suggested forms and are not required. The five changes are as follows: (1) removal of the insider column from the claims chart in the disclosure statement; (2) a better explanation of the exceptions to voting rules in the disclosure statement; (3) a change to Article VII of the plan regarding any claims reserve; (4) a placeholder for the court's retention of jurisdiction following confirmation in the plan; and (5) a change to the signature block to match the caption for the form to permit multiple debtors. The forms were approved by motion and vote.

Professor Gibson presented the amendment to Official Form 309F explaining that the proposed amendment was to the language regarding an exception to discharge instructions on the form. There was some ambiguity regarding the availability of an exception to discharge in

certain circumstances, and the Committee wanted to avoid taking a position on whether an exception to discharge was required. Two comments were received, and one pointed out that a similar amendment may be required to Part 11 of the form. The subcommittee recommended a similar amendment to Part 11 of the form to conform with the proposed changes to Part 8. The revised form was included in the agenda materials. The form was approved by motion and vote.

6. Report by the Subcommittee on Privacy, Public Access, and Appeals

(A) Review comments in Rules 8002, 8006, 8011, 8013, 8015, 8016, 8017, 8022, 8023 and new Rule 8018.1

Professor Gibson explained that there a number of Part VIII rule amendments were published in August 2016, the majority of which were to conform to amendments to the Federal Rules of Appellate Procedure. New Rule 8018.1 and amended Rules 8011 and 8023 were also published in August. Several comments were filed, and were generally supportive, although two comments were filed in opposition to the amendments to Rule 8017. The proposed amendment to Rule 8017 conforms to a proposed amendment to corresponding Appellate Rule 29, and would permit district courts and bankruptcy appellate panels to strike or prohibit the filing of an amicus brief that the parties had consented to if it would result in a judge's disqualification. Professor Gibson stated that it may make sense to wait to see any action taken by the Appellate Rules Committee with regard to its proposed amendment to Appellate Rule 29 as the proposed amendment to Rule 8017 was merely to confirm to the Appellate Rule 29 amendment. The Appellate Rules Committee is meeting in early May, and it received similar comments regarding its proposed amendments to Appellate Rule 29. The subcommittee recommended approving the amended Part VIII rules, with the exception of the proposed amendments to Rule 8017, which will be subject to the actions of the Appellate Rules Committee regarding Appellate Rule 29, and Rule 8011, which was considered separately at the meeting.

An issue was raised regarding proposed Rule 8023 that adds a cross reference to Rule 9019, and a suggestion that language be added to the Committee Note to clarify the impact of adding the reference to Rule 9019. The group discussed the issue and whether or not it adds ambiguity into the rule. One member suggested removing the reference to Rule 9019 from Rule 8023. Professor Gibson explained that the amendment was made to alert parties to the potential need for approval of a dismissal resulting from a settlement and has no impact on the law, but it may impact procedure. Judge Campbell asked whether there have been problems with Rule 8023 since its enactment several years ago. Professor Gibson stated that the language was added to avoid the erroneous interpretation that Rule 8023 overrides the requirements of Rule 9019.

Possible language could be added to filings to clarify that Rule 9019 does not apply. Others stated that it may put a burden on clerks to seek a judicial determination for each of these filings. A suggestion was made to add language to the Committee Note. Given the varying views expressed in the discussion, Judge Ikuta recommended that the proposed amendment to Rule 8023 be reconsidered by the subcommittee, and the Committee agreed.

The Committee voted on a motion for final approval of the Part VIII Rules, with the exception of Rules 8011 and 8023, and in consideration of any further action by the Appellate Rules Committee with regard to Rule 8017, and the motion was approved.

(B) Consider possible amendments to rules 7062, 8007, 8010, 8021, and 9025 to address published amendments to Civil Rule 62 and 65.1, and FRAP 8(a)(1)(B), (b); 11(g); and 39(e) regarding the term "supersedeas bonds" and the period during which a judgment is automatically stayed after entry

Professor Gibson detailed the proposed amendments which are all conforming amendments to other proposed rule amendments regarding the use of the term "supersedeas" in the federal rules. Generally, the term was replaced with "bond or other security" throughout the federal rules. The one exception to conforming is Rule 7062, which incorporates Civil Rule 62. The subcommittee recommended retaining the current 14-day time period for the automatic stay of a judgment in Rule 7062, rather than adopting the amended time period in the Civil Rules.

Since the subcommittee meeting, the Civil Rules Committee advised that it will consider a change to the "other undertaking" language in Civil Rule 62, as well as other similar language changes. If this occurs, the proposed amendment to Bankruptcy Rule 9025 would be changed to match the Civil Rules Committee's amended language, if the proposed language is approved by the Civil Rules Committee. In addition, Professor Gibson advised that it is possible that the Appellate Rules Committee will make changes to its proposed rule amendments to conform to the Civil Rules changes, and that committee meets in early May. If the Appellate Rules Committee makes changes to the language in its proposed rules, the proposed language in the Bankruptcy Rules will need to be changed.

The subcommittee recommended that the amendments be adopted without publication as they are merely conforming changes. Any approval by the Committee would be subject to potential changes to the proposed language based on the actions by the Civil and Appellate Rules Committees. One member asked about the provision of security by stipulation, and the Committee agreed that it is appropriate for the language to be removed from Rule 9025. A

motion to approve the proposed amendments without publication was approved, subject to any language changes from the other rules committees.

(C) Recommendation to revise Rule 8011 to incorporate pending changes regarding electronic filing and notice across the rules committees

Professor Gibson explained that there are two sets of amendments to Rule 8011. The first relate to filings by inmates, and the second relate to electronic filing. The rules committees are working together to develop similar language regarding electronic filing. Professor Gibson explained that this Committee has the earliest meeting, so it does not have the benefit of feedback from the other rules committees. The subcommittee recommended approval of the proposed electronic-filing amendments to Rule 8011 without publication, given that they are merely conforming amendments. Professor Gibson advised that there was a suggestion to add language to the Committee Note indicating that the clerk is not responsible for monitoring if electronic service was received. The subcommittee generally approved adding language to this effect to the Committee Note, adding language that if a sender receives notice that the paper did not reach the person to be served, that person is then responsible for making effective service. This language is consistent with the rule itself. Members raised concerns with the use of the term "receives notice" and also whether there needs to be a distinction made between service by commercial carrier and service electronically. After discussion, the Committee determined to retain the term "receives notice" and include further explanation in the Committee Note.

The Committee discussed the proposed rule and Committee Note and raised some practical concerns with regard to the impact of the changes. Specifically, the group discussed the term "user name and password" and revised language was proposed. Professor Gibson advised that since the rules committees are attempting to maintain similar wording, the other committees will be notified of the proposed language changes.

A motion to approve the amendments to Rule 8011, with revised language regarding user name and passwords and an additional paragraph to the Committee Note regarding effective service, was passed unanimously.

(C) Oral Report on feedback to the Appellate Rules Committee in response to a request for comment on a proposed amendment to Appellate Rule 26.1 (*Corporate Disclosure Statement*) that address recusal matters in bankruptcy appeals

Professor Gibson explained that the subcommittee participated in a conference call with the chair and reporter for the Appellate Rules Committee. The Appellate Rules Committee is considering an amendment to Appellate Rule 26.1 based, in part, on an advisory ethics opinion issued several years ago regarding additional required disclosures in contested matters and adversary proceedings in connection with bankruptcy appeals. The subcommittee provided feedback regarding the proposed changes to Appellate Rule 26.1, and the Appellate Rules Committee reporter revised the proposed amended rule in response to the subcommittee's suggestions. Professor Gibson suggested that the Committee retain the suggestions for amendments related to the advisory ethics opinion for future consideration. Judge Ikuta asked whether others have encountered issues with regard to disclosure and bankruptcy appeals. Several members reported on local rules in place in their districts regarding disclosure, but no specific problems were noted. The subcommittee recommended waiting to make any proposed amendments to the bankruptcy rules pending a decision from the Appellate Rules Committee regarding Appellate Rule 26.1.

Information Items

Tom Mayer updated the Committee on the suggestion for a proposed rule for the filing of proceedings pursuant to Chapter VI of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA). He advised that the rule at issue is not for national use, but instead is a local rule applicable only in the District of Puerto Rico. It provides a procedural method for starting a Title VI proceeding. Mr. Mayer hopes the rule will be in place on or before May 1, 2017. Judge Ikuta thanked those involved for their efforts in working with the court to provide it with a potential local rule.

Judge Ikuta advised that the Judicial Conference's five-year review was discussed at the Standing Committee meeting, and that the Committee's suggestions were well accepted. She noted the rules committees' work on the electronic filing rules is an example of a successful coordination effort.

Scott Myers updated the group about the coordination effort among the rules committees, advising that a full report was provided at the Standing Committee meeting. He stated that there

is a lot of support for the effort from the other rules committees and members of the Standing Committee.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Committee's meeting**.** There were no objections, and all recommendations were approved by motion at the meeting.

1. Subcommittee on Consumer Issues.

   Revisions to Spring 2016 Recommendation for amendment to Rule 9037(h) (*Privacy Protection for Filings Made with the Court*), in response to Suggestion 14-BK-B.

2. Subcommittee on Business Issues.

   Recommendation of no action on possible amendments to bankruptcy corporate ownership rules to parallel pending amendments to Criminal Rule 12.4.

3. Subcommittee on Privacy, Public Access, and Appeals.

   Recommendation of no action regarding possible rule amendments to address situation of remand of a bankruptcy appeal from a court of appeals to the district court, and time frame for district court to determine whether the district or bankruptcy court is responsible for the case.

Judge Ikuta advised that the fall 2017 meeting will be in Washington D.C., on September 26-27. The meeting was adjourned at 3:20 p.m.

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TAB 3

TAB 3A

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 12-13, 2017 | Washington, D.C.

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ATTENDANCE

The Judicial Conference Committee on Rules of Practice and Procedure ("Standing Committee") held its fall meeting at the Thurgood Marshall Federal Judiciary Building in Washington, D.C., on June 12-13, 2017. The following members participated:

Judge David G. Campbell, Chair
Judge Jesse M. Furman
Gregory G. Garre, Esq.
Daniel C. Girard, Esq.
Judge Susan P. Graber
Judge Frank Mays Hull
Peter D. Keisler, Esq.
Professor William K. Kelley
Judge Amy St. Eve
Professor Larry D. Thompson
Judge Richard C. Wesley
Judge Jack Zouhary

The advisory committees were represented by their chairs and reporters:

Advisory Committee on Appellate Rules –
Judge Michael A. Chagares, Chair
Professor Gregory E. Maggs, Reporter

Advisory Committee on Bankruptcy Rules –
Judge Sandra Segal Ikuta, Chair
Professor S. Elizabeth Gibson, Reporter

Advisory Committee on Civil Rules –
Judge John D. Bates, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Associate Reporter

Advisory Committee on Criminal Rules –
Judge Donald W. Molloy, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

Advisory Committee on Evidence Rules –
Judge William K. Sessions III, Chair
Professor Daniel J. Capra, Reporter

Deputy Attorney General Rod J. Rosenstein represented the Department of Justice along with Elizabeth J. Shapiro, Deputy Director of the DOJ's Civil Division.

Present to provide support to the Committee:

Professor Daniel R. Coquillette	Reporter, Standing Committee
Professor Bryan A. Garner	Style Consultant, Standing Committee
Professor R. Joseph Kimble	Style Consultant, Standing Committee
Rebecca A. Womeldorf	Secretary, Standing Committee
Bridget Healy	Attorney Advisor, RCS
Scott Myers	Attorney Advisor, RCS
Julie Wilson	Attorney Advisor, RCS
Dr. Emery G. Lee III	Senior Research Associate, FJC
Dr. Tim Reagan	Senior Research Associate, FJC
Lauren Gailey	Law Clerk, Standing Committee

OPENING BUSINESS

Judge Campbell called the meeting to order and welcomed the participants. He announced this as the final meeting for Judge Wesley, Professor Thompson, and Greg Garre, who have been "invaluable contributors" to the rules committees. Judge Wesley called his appointment to the Committee an "incredible assignment" and thanked Judge Campbell and his predecessor, Judge Jeffrey S. Sutton, for their leadership. Mr. Garre expressed thanks for the "great privilege" of serving on the Committee. Professor Thompson thanked his fellow Standing Committee members, especially the judges, for their service, and was "happy to be just a small part" of the Committee's work.

Judge Campbell acknowledged a number of other recent and impending departures. He thanked Judge Sessions, whose term as Chair of the Evidence Rules Advisory Committee is coming to an end, for his "quiet but very effective leadership." Judge Campbell explained that former Standing Committee member Justice Robert P. Young recently stepped down from the bench to accept a position in private practice, and Bankruptcy Judge Michelle Harner left her position as Associate Reporter to the Bankruptcy Rules Advisory Committee upon her appointment to the bench. Another notable departure is that of Associate Justice Neil M. Gorsuch of the United States Supreme Court, who left his position as Chair of the Appellate Rules Advisory Committee upon his confirmation in April 2017.

Judge Campbell introduced Deputy Attorney General Rod Rosenstein, who was also confirmed in April 2017. DAG Rosenstein expressed his "deep appreciation" for the judiciary and thanked his colleague Betsy Shapiro, a career DOJ attorney whose duties for a number of years have included attending and participating in rules committee meetings, for her contributions.

Rebecca Womeldorf reported on the Judicial Conference session held on March 14, 2017, in Washington, D.C. Typically, the Standing Committee submits proposed rules amendments to the Judicial Conference for final approval at its September session. Approved rules are then submitted to the Supreme Court for consideration. Rules that the Court adopts are transmitted to

Congress by May 1 of the following year. Absent any action by Congress, the amendments go into effect on December 1 of that year.

This year, a "special circumstance"—the Bankruptcy Rules Advisory Committee's rules package implementing the new national Chapter 13 plan form—necessitated a different timetable. The Standing Committee decided to expedite the approval of the Chapter 13 rules package so it could go into effect at the same time as the proposed changes approved at the Judicial Conference's September 2016 session, which affect Bankruptcy Rules 1001, 1006(b), and 1015(b) and Evidence Rules 803(16) (the "ancient document" rule) and 902 (concerning self-authenticating evidence) (see Agenda Book Tab 1B).

At its January 2017 meeting, the Standing Committee approved the Chapter 13 package, consisting of proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009; new Rule 3015.1; and new Official Form 113. The Judicial Conference approved those amendments at its March 2017 session, along with technical amendments to Appellate Rule 4(a)(4)(B) and Civil Rule 4(m). The proposed amendments were submitted to the Supreme Court, which approved them on an expedited basis and transmitted them to Congress on April 27, 2017. If Congress does not take action, these amendments will take effect on December 1, 2017.

APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee approved the minutes of the January 3, 2017 meeting (see Agenda Book Tab 1A).**

INTER-COMMITTEE COORDINATION

Many provisions of the four procedural rule sets use near-identical language to address similar issues. For that reason when an advisory committee proposes an amendment to a rule with analogous provisions in other rule sets, and the other advisory committees determine that it is practical and worthwhile to make a parallel amendment, the advisory committees attempt to use identical or similar language unless issues specific to a rule set would justify diverging. The Standing Committee considered a number of these coordination items at the June 2017 meeting (see Agenda Book Tab 7B), including: electronic service and filing, stays of execution, disclosure rules, and redaction of personal identifiers.

Electronic Service and Filing: Civil Rule 5, Appellate Rule 25, Bankruptcy Rules 5005 & 8011, and Criminal Rules 45 & 49

The Appellate, Bankruptcy, Civil, and Criminal Rules contain a number of similar provisions addressing service and filing, many of which needed to be updated to account for the use of electronic technology. Professor Cooper added that the number of interrelated provisions involved made for "a lot of moving parts," but the advisory committees worked together to achieve "maximum desirable uniformity" in their amendments. Any remaining differences in "structure and expression" can be attributed to "the context of the individual rule set."

Civil Rule 5. Professor Cooper presented the proposed changes to Civil Rule 5, which governs service and filing in civil cases (see Agenda Book Tab 4A, pp. 416-30).

Current Civil Rule 5(b)(2)(E) requires the written consent of the person to be served if a paper is to be served electronically. The proposed amended version would permit a paper to be served by filing it with the court's electronic filing system ("CM/ECF"), which automatically sends an electronic copy to the registered users associated with that particular case, without consent. Consent in writing would still be required for methods of electronic service other than CM/ECF. This amended rule would abrogate Civil Rule 5(b)(3), which permits use of the court's facilities to file and serve via CM/ECF if applicable local rules allow. These proposed amendments generated "very little comment." In response to a concern raised by a clerk of court, a sentence was added to the committee note to clarify that the court is not required to notify the filer in the event that an attempted CM/ECF transmission fails.

Although the current version of Civil Rule 5(d)(1) requires a certificate of service, the proposed amendments would lift this requirement in part. The published version provided that, for documents filed through CM/ECF, the automatically-generated notice of electronic filing would constitute a certificate of service. Professor Cooper explained that after publication, the Civil Rules Advisory Committee followed the Appellate Rules Advisory Committee's lead in revising Rule 5(d)(1)(B) to provide "simply that no certificate of service is required" for papers served through CM/ECF. For other papers, amended Rule 5(d)(1)(B) also addresses whether a certificate of service must be filed. "[T]he committees . . . are in accord" that if a paper is filed nonelectronically, "a certificate of service must be filed with it or within a reasonable time after service." In civil practice, however, many papers, including "a very large share of discovery papers," are exchanged among the parties but not filed. "Unique to Civil Rule 5," therefore, is the "separate provision" stating that if a paper is not filed, a certificate of service generally need not be filed.

The proposed amendment to Civil Rule 5(d)(3) would make electronic filing mandatory for parties represented by counsel, except when nonelectronic filing is allowed or required by local rule or permitted by order for good cause. The proposed amendment would continue to give courts discretion to permit electronic filing by pro se parties, as long as the order or local rule allows for reasonable exceptions. The Civil Rules Advisory Committee elected not to require pro se parties to file electronically; while many pro se parties are willing and able to use CM/ECF, the Advisory Committee had "some anxiety" about the possibility of effectively denying access to those who are not. The Advisory Committee declined, in response to a public comment, to grant pro se litigants a right to file electronically.

A proposed new subparagraph, Civil Rule 5(d)(3)(C), establishes a uniform national signature provision. As published, the rule provided that "[t]he user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's signature." During the public comment period, concerns were raised that the first clause, read literally, required attorneys to place their usernames and passwords in the signature block. The advisory committees worked together to clarify the language, replacing that clause with, "An authorized filing made through a person's electronic filing account."

Initially, the Bankruptcy Rules Advisory Committee omitted the word "authorized" from its version, citing an ambiguity as to whether the court was to authorize the filing, or "the attorney was authorizing someone else to do the filing" (the intended reading). The Appellate Rules Advisory Committee was inclined to omit the term as well. Because their concerns were not unique to a particular rule set, and "merely a question of wording," Judge Campbell encouraged the advisory committees to adopt a uniform, mutually-agreeable solution at the Standing Committee meeting. The Standing Committee, advisory committee chairs and reporters, and style consultants worked together to refine the language, settling on, "A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature." The Standing Committee agreed to use this language in the parallel provisions of all four rule sets.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Civil Rule 5, with the revisions made during the meeting.**

Appellate Rules 25 and 26. Judge Chagares and Professor Maggs presented the proposed changes to appellate e-filing and service under Appellate Rule 25 (see Agenda Book Tab 2A, pp. 89-95; Agenda Book Supplemental Materials, pp. 2-3, 5-17).

Proposed amended Appellate Rule 25(a)(2)(B)(i) requires represented persons to file papers electronically but allows exceptions for good cause and by local rule. Appellate Rule 25(a)(2)(B)(iii), addressing electronic signatures, incorporates the uniform national signature provision developed in consultation with the other advisory committees (see discussion of Civil Rule 5(d)(3)(C), *supra*). Like the analogous Civil Rules provisions concerning electronic service, Appellate Rule 25(c)(2) has been amended to permit electronic service through the court's CM/ECF system, or by other electronic means that the person to be served consented to in writing. The proposed amendment to Appellate Rule 25(d)(1) also omits the requirement of a certificate of service for papers filed via CM/ECF (see discussion of Civil Rule 5(d)(1)(B), *supra*).

The Advisory Committee made a number of revisions in response to public comments. Some criticized the proposed electronic signature provision, which subsequently incorporated the language drafted during the Standing Committee meeting (see discussion of Civil Rule 5(d)(3)(C), *supra*). To clarify that there are two available methods of electronic service under proposed Appellate Rule 25(c)(2), the Advisory Committee placed them in separate clauses: a paper can be served electronically by "(A) by sending it to a registered user by filing it with the court's electronic-filing system or (B) by sending it by other electronic means that the person to be served consented to in writing." Like the other advisory committees, the Appellate Rules Advisory Committee discussed but declined to make changes in response to a comment suggesting that pro se parties should have a right to file electronically.

The proposed amendment to Appellate Rule 25(a)(2)(C), which addresses inmate filings, was revised to incorporate amendments that took effect in December 2016. Professor Maggs added that that the amended rules' subheadings have also been altered to match the Civil Rules' subheadings.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Rule 25, with the revisions made during the meeting.**

After the Standing Committee meeting, the Advisory Committee recognized the need for technical and conforming changes to Appellate Rule 26(a)(4)(C), which contains references to Rules 25(a)(2)(B) and 25(a)(2)(C), and Appellate Form 7, which contains a note referring to Rule 25(a)(2)(C). The proposed amendments discussed above renumbered subparagraphs (B) and (C) as Rule 25(a)(2)(A)(ii) and 25(a)(2)(A)(iii), respectively, and the Advisory Committee recommended updating the references in Rule 26 and Form 7 accordingly. The Standing Committee approved the proposed amendments.

Bankruptcy Rules 5005 and 8011. Judge Ikuta presented the proposed amendments to Bankruptcy Rules 5005(a)(2) and 8011, governing electronic filing and signing in bankruptcy cases (see Agenda Book Tab 3A, pp. 192-94, 204).

The proposed amendments to Bankruptcy Rule 5005 generally track the proposed amendments to Civil Rule 5 (see discussion *supra*). When proposed amended Rule 5005 was published, most of the comments concerned the wording of new subparagraph (a)(2)(C), the electronic signature provision. Despite the Bankruptcy Rules Advisory Committee's initial concern about the term "authorized filing," it adopted the revised text drafted by the Standing Committee, which clarified that the attorney, not the court, is to authorize the filing (see discussion of Civil Rule 5(d)(3)(C), *supra*). Another comment opposed the presumption against electronic filing by pro se litigants, but, like the other advisory committees, the Bankruptcy Rules Advisory Committee declined to give pro se parties the right to e-file.

When the Advisory Committee recommended publication of proposed amendments to Bankruptcy Rule 5005, it overlooked the need for similar amendments to Rule 8011, its bankruptcy appellate counterpart. Accordingly, the Advisory Committee subsequently recommended amendments conforming Bankruptcy Rule 8011 to Civil Rule 5 and Appellate Rule 25 without publication, so all of the e-filing amendments can take effect at the same time. For consistency with the other rules, minor changes will be made to Rule 8011's captions as originally drafted. Revisions will also be made to the committee notes.

The proposed amendments to the Bankruptcy Rules regarding electronic filing and service are not identical to the other rule sets' parallel provisions. Beyond bankruptcy-specific language derived from the Bankruptcy Code—e.g., use of the term "individual" rather than "person," and "entity" to describe a litigant represented by counsel—the amendments phrase their incomplete-service provisions differently. Instead of deeming electronic service complete unless the sender or filer "learns" or "is notified" that the paper was not received, the Bankruptcy Rules use the phrase "receives notice" to prevent litigants from "purposely ignor[ing] notice" to avoid "learning . . . that the document was not received." Because these linguistic disparities have existed since the various rule sets were adopted, the reporters agreed the provisions did not need to be reconciled.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Bankruptcy Rules 5005 and 8011, with the revisions made during the meeting.**

Criminal Rules 45 and 49. Professor Beale explained that the inter-committee effort to develop rules for electronic filing, service, and notice necessitated more substantial changes to Criminal Rule 49 (see Agenda Book Tab 5A, pp. 652-53, Tab 5B, pp. 665-80). The proposed amendments to Civil Rule 5 mandating electronic filing directly affect Criminal Rule 49(b) and (d) (service and filing must be done in the manner "provided for a civil action") and Criminal Rule 49(e) (locals rule may require electronic filing only if reasonable exceptions are allowed). Although, as Professor King said, the Advisory Committee "worked diligently" to track the changes to the Civil Rules where possible, it concluded that the proposed default rule requiring represented parties to file and serve electronically could be problematic in criminal cases, where prisoners and unrepresented defendants often lack access to CM/ECF. In light of these differences, the Advisory Committee decided to draft and publish a stand-alone Criminal Rule to address electronic filing and service. Professor Beale explained that because the Advisory Committee would essentially be starting from scratch, it decided to take the opportunity "to more fully specify how [electronic filing and service were] going to work."

There are a number of substantive differences between proposed Criminal Rule 49 and proposed Civil Rule 5. Instead of allowing courts to require by order or local rule (with reasonable exceptions) unrepresented parties to e-file, proposed Criminal Rule 49(b)(3)(B) requires them to file *non*electronically, unless permitted to e-file. Proposed subsection (c) also makes nonelectronic filing the default rule for all nonparties, whether they are represented or not. Proposed Criminal Rule 49(b)(4) borrows language from the signature provision of Civil Rule 11(a), and the text of Civil Rule 77(d)(1) regarding the clerk's duty to serve notice of orders replaces current Criminal Rule 49(c)'s direction that the clerk serve notice "in a manner provided for in a civil action." A conforming amendment to Criminal Rule 45 would update its cross-references accordingly (see Agenda Book Tab 5B, pp. 681-82).

The changes were not controversial. The Criminal Rules Advisory Committee considered a comment regarding extending electronic filing privileges to pro se parties (other than inmates, as well as inmates and nonparties) but, like the other advisory committees, declined to do so.

Following the public comment period, the Advisory Committee replaced the phrase "within a reasonable time after service" in Criminal Rule 49(b)(1) with "*no later than* a reasonable time after service," to make clear that certain papers may be filed before they are served. Similarly, text addressing papers served by means other than CM/ECF now requires a certificate of service to "be filed with [the paper] or within a reasonable time after service or filing." Paragraph (b)(1) was also revised to state explicitly that no certificate of service is required for papers served via CM/ECF. Like the Civil Rules Advisory Committee, the Criminal Rules Advisory Committee added a sentence to the committee note to Rule 49(a)(3) and (4) to make clear that the court is not responsible for notifying the filer that an attempted CM/ECF transmission failed (see discussion of Civil Rule 5(b), *supra*). The Advisory Committee adopted

the revisions made at the Standing Committee meeting to its electronic signature provision in proposed Criminal Rule 49(b)(2), with conforming changes to the committee note (see discussion of Civil Rule 5(d)(3)(C), *supra*).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Criminal Rule 49 and conforming amendment to Criminal Rule 45, with the revisions made during the meeting.**

Stays of Execution:
Civil Rules 62 & 65.1; Appellate Rules 8, 11, & 39; and
Bankruptcy Rules 7062, 8007, 8010, 8021, & 9025

Civil Rules 62 and 65.1. The proposed amendments to Civil Rule 62, which governs stays of proceedings to enforce judgments, are the product of a joint subcommittee of the Civil Rules and Appellate Rules Advisory Committees known as the "Civil/Appellate Subcommittee."

The proposed amendments make three changes (see Agenda Book Tab 4A, pp. 524-27). First, the automatic stay period is extended to eliminate a gap in the current rule between the length of the current automatic-stay period under Rule 62(a) and the length of a stay pending disposition of a post-judgment motion under Rule 62(b). This discrepancy arose when the Time Computation Project set the expiration of an automatic stay under Civil Rule 62(a) at 14 days after entry of judgment, and the time for filing a post-judgment motion under Rules 50, 52, or 59 at 28 days after entry of judgment. The unintended result was a "gap": the automatic stay expires halfway through the time allowed to make a post-judgment motion. The proposed amendment to Civil Rule 62(a) addresses this gap by extending the automatic stay period to 30 days and providing that the automatic stay takes effect "unless the court orders otherwise." In response to a judge member's question, Judge Bates confirmed that the court has discretion to extend the stay beyond 30 days.

Second, the proposed amendments make clear that a judgment debtor can secure a stay that lasts from termination of the automatic stay through final disposition on appeal by posting a continuing security, whether as a bond or another form (see discussion of Appellate Rules 8(a), 11(g), and 39(e), *infra*). The amendments allow the security to be provided before the appeal is taken, and permit any party, not just the appellant, to obtain the stay. Third, subdivisions (a) through (d) have been rearranged, carrying forward with only a minor change the current provisions for staying a judgment in an action for an injunction or a receivership, or directing an accounting in a patent infringement action.

The proposed amendment to Civil Rule 65.1 reflects the expansion of Civil Rule 62 to include forms of security other than a bond (see Agenda Book Tab 4A, pp. 524, 528-29). Following the comment period, the Advisory Committee made additional changes to Civil Rule 65.1 for consistency with the proposed amendments to parallel Appellate Rule 8(b), substituting the terms "security" and "security provider" for "bond," "undertaking," and "surety" (see discussion *infra*). The Advisory Committee decided shortly before the Standing Committee

meeting to change the word "mail" in the last sentence to "send," and will adopt the parallel Appellate Rule's committee note language.

Judge Campbell noted that the proposed amendments to Civil Rules 62 and 65.1 represent "a real improvement" by eliminating the gap, replacing "arcane language," and clarifying the structure. He thanked the Civil/Appellate Subcommittee, chaired by Judge Scott M. Matheson, Jr. of the Civil Rules Advisory Committee, for its efforts.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Civil Rules 62 and 65.1.**

Appellate Rules 8, 11, and 39. Judge Chagares and Professor Maggs presented the Appellate Rules Advisory Committee's proposed amendments to Appellate Rules 8 (stays or injunctions pending appeal), 11 (forwarding the record), and 39 (costs) (see Agenda Book Tab 2A, pp. 83-86). Also developed by the Civil/Appellate Subcommittee, they would conform Appellate Rules 8(a), 11(g), and 39(e) to proposed amended Civil Rule 62 by eliminating the "antiquated" term "supersedeas bond," instead allowing an appellant to provide "a bond or other security." The Advisory Committee also replaced "surety" with "security provider" and "a bond, a stipulation, or other undertaking" with the generic term "security"—the same changes made to proposed amended Civil Rule 65.1 (see discussion *supra*). The Advisory Committee also changed the word "mail" to "send" to conform Rule 8(b) to the proposed amendments to Appellate Rule 25. The committee note has been modified accordingly.

A judge member noted that the amended rule is consistent with current practice, as "other forms of security," such as letters of credit, have long been used to secure stays or injunctions pending appeal. Another judge member pointed out that the proposed amendments use the phrase "gives security," while "*provides* security" is used in practice and elsewhere in the rules. Professor Maggs explained that the Advisory Committee deliberately decided not to use "provides security" to avoid implying that a security provider—as opposed to a party—must provide the security.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Rules 8, 11, and 39.**

Bankruptcy Rules 7062, 8007, 8010, 8021, and 9025. Judge Ikuta presented the Bankruptcy Rules Advisory Committee's proposed conforming amendments to Rules 7062 (stays of proceedings to enforce judgments), 8007 (stays pending appeal), 8010 (transmitting the record), 8021 (costs), and 9025 (proceedings against sureties). Consistent with proposed amendments to Civil Rules 62 and 65.1 and Appellate Rules 8, 11, and 39, the proposed conforming amendments to the Bankruptcy Rules would broaden and modernize the terms "supersedeas bond" and "surety" by replacing them with "bond or other security" (see Agenda Book Tab 3A, pp. 204-06).

Because Bankruptcy Rule 7062 currently incorporates all of Civil Rule 62 by reference, this new terminology will automatically apply in bankruptcy adversary proceedings when Rule 62 goes into effect. However, the Bankruptcy Rules Advisory Committee did not adopt the amendment to Civil Rule 62(a) that lengthens the automatic stay period from 14 to 30 days (see discussion of Civil Rule 62, *supra*). As a judge member pointed out, the deadline for filing post-judgment motions in bankruptcy is 14 days, not 28—there is "no gap." Accordingly, amended Rule 7062 would continue to incorporate Civil Rule 62, "except that proceedings to enforce a judgment are stayed for 14 days after its entry."

Publication was deemed unnecessary because, as Professor Gibson explained, the proposed amendments simply adopt other rule sets' terminology changes and "maintain[] the status quo" with respect to automatic stays in the bankruptcy courts.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for final approval without publication the proposed conforming amendments to Bankruptcy Rules 7062, 8007, 8010, 8021, and 9025.**

Disclosure Rules:

Criminal Rule 12.4 and Appellate Rules 26.1, 28, & 32

Criminal Rule 12.4. Criminal Rule 12.4 governs disclosure statements. Judge Molloy explained that when the rule was adopted in 2002, the committee note stated that it was intended "to assist judges in determining whether they must recuse themselves because of a 'financial interest in the subject matter in controversy.'" The note quoted a provision of the 1972 judicial ethics code that treated all victims entitled to restitution as "parties" for the purpose of recusal. This is no longer the case. As amended in 2009, the Code of Conduct for United States Judges now requires disclosure only when a judge has an "interest that could be affected substantially by the outcome of the proceeding."

In response to a suggestion from the DOJ, the proposed amendment to Criminal Rule 12.4(a) would align the scope of the required disclosures with the 2009 amendments to the Code by relieving the government of its obligation to make the required disclosures upon a showing of "good cause" (see Agenda Book Tab 5A, pp. 653-54, Tab 5B, pp. 683-86). In essence, the revised rule allows the court to use "common sense" to decline to require burdensome disclosures when numerous organizational victims exist, but the impact of the crime on each is relatively small. Criminal Rule 12.4(b) would also be amended, to specify in paragraph (b)(1) that the disclosures must be made within 28 days after the defendant's initial appearance, and to replace paragraph (b)(2)'s references to "supplemental" filings with "later" filings. The final version of Rule 12.4(b)(2), which is modeled after language used in Civil Rule 7.1(b)(2), requires certain parties to "promptly file a later statement if any required information changes."

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Criminal Rule 12.4.**

Appellate Rules 26.1, 28, and 32. Under Appellate Rule 26.1, corporate parties and amici curiae must file disclosure statements to assist judges in determining whether they have an interest in a related corporate entity that would disqualify them from hearing an appeal. Because some local rules require more information to be disclosed than Appellate Rule 26.1 does, the Advisory Committee considered whether the federal rule should be similarly amended and sought approval to publish proposed amendments for public comment.

The Advisory Committee proposed adding a new subdivision (b) to require disclosure of organizational victims in criminal cases (see Agenda Book Tab 2A, pp. 102-06), generally conforming Appellate Rule 26.1 to the amended version of Criminal Rule 12.4(a)(2). New subdivision (c) would require disclosure of the name(s) of the debtor(s) in a bankruptcy appeal if not included in the caption (as in some appeals from adversary proceedings, such as disputes among the debtor's creditors). New subdivision (d) would require a "person who wants to intervene" to make the same disclosures as parties. At the Standing Committee meeting, the committee note was also revised to require "persons who want to intervene," rather than "intervenors," to "make the same disclosures as parties."

The Advisory Committee moved current subdivisions (b) and (c), which address supplemental filings and the number of copies, to the end and re-designated them (e) and (f) to clarify that they apply to all of the preceding disclosure requirements. Because proposed new subdivision (d) makes the rule applicable to those seeking to intervene as well as parties, the Standing Committee rephrased subdivisions (e) and (f) in the passive voice to account for the possibility that non-parties may also be required to file disclosure statements. In addition to these revisions to subdivisions (d), (e), and (f), the Standing Committee made minor wording changes to proposed subdivision (c).

Current Appellate Rule 26.1(b) (redesignated (e)), like Criminal Rule 12.4(b), uses the term "supplemental filings." The Appellate Rules Advisory Committee, aware that the Criminal Rules Advisory Committee was revising Rule 12.4(b) (see *supra*), considered amending Rule 26.1 to conform to a preliminary draft. The Criminal Rules Advisory Committee, however, informed the Appellate Rules Advisory Committee of its intention to scale back its draft amendments to Rule 12.4(b) and recommended no conforming changes to Appellate Rule 26.1(b).

The proposed change of Appellate Rule 26.1's heading from "Corporate Disclosure Statement" to "Disclosure Statement" will require additional minor conforming amendments to Appellate Rules 28(a)(1) (cross-appeals) and 32(f) (formal requirements for briefs and other papers) and accompanying notes.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Appellate Rules 26.1, 28(a)(1), and 32(f), subject to the revisions made during the meeting.**

Bankruptcy Rule 8012. Scott Myers (RCS) reported that the Bankruptcy Rules Advisory Committee will examine Bankruptcy Appellate Rule 8012, which governs disclosures in bankruptcy appeals, to

determine whether conforming changes are necessary in light of the proposed amendments to Appellate Rule 26.1.

Redacting Personal Identifiers:
Bankruptcy Rule 9037

The Bankruptcy Rules Advisory Committee sought approval to publish for comment proposed new Bankruptcy Rule 9037(h), which would provide a procedure for redacting personal identifiers in documents that were not properly redacted prior to filing (see Agenda Book Tab 3A, pp. 213-15). In response to a suggestion from the CACM Committee, new subdivision (h) lays out the steps a moving party must take to identify a document that needs to be redacted under Rule 9037(a) and for providing a redacted version (see Agenda Book Tab 3B, App'x B, pp. 385-88). When such a motion is filed, the court would immediately restrict access to the original document pending determination of the motion. If the motion is granted, the court would permanently restrict public access to the original filed document and provide access to the redacted version in its place.

The other advisory committees considered but declined to adopt similar privacy rules. A reporter explained that CACM's suggestion was specifically directed toward bankruptcy filings, which pose "a problem of a different order of magnitude." For example, when improperly-redacted documents are filed in a civil case, the filer and the clerk's office typically work together to address the problem "quickly" and "effectively." In bankruptcy cases, however, creditors often "make multiple filings, sometimes in different courts." Professor Gibson added that, although the other advisory committees were willing to add privacy rules for the sake of uniformity, they ultimately decided that bankruptcy's special circumstances warranted different treatment.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendment to Bankruptcy Rule 9037.**

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Molloy and Professors Beale and King provided the report of the Advisory Committee on Criminal Rules, which met on April 28, 2017, in Washington, D.C. In addition to final approval of inter-committee amendments to three rules, the Advisory Committee sought permission to publish a new rule and proposed amendments to two others. It also presented two information items.

Action Items

Inter-Committee Amendments. The Standing Committee approved for submission to the Judicial Conference amendments to three Criminal Rules with inter-committee implications: Criminal Rules 12.4, 45, and 49 (see "Inter-Committee Coordination," *supra*).

New Criminal Rule 16.1 – Disclosures and Discovery. Proposed new Criminal Rule 16.1 would set forth a procedure for disclosures and discovery in criminal cases. It originated from a suggestion submitted by two criminal defense bar organizations to amend Criminal Rule 16, which currently governs the parties' respective duties to disclose, to address cases involving voluminous information and electronically stored information ("ESI"). The Rule 16.1 Subcommittee was formed to consider this suggestion, but determined that the "lengthy" and "complicated" original proposal, which focused on district judges' procedures, was unworkable.

The Subcommittee concluded, however, that a need might exist for a narrower, more targeted amendment. "[A]fter a great deal of discussion" at the fall 2016 meeting, the Advisory Committee decided at Judge Campbell's suggestion to hold a mini-conference to obtain the views of various stakeholders on the problems and "complexities" posed by large volumes of digital information. The mini-conference was held in Washington, D.C. on February 7, 2017. Participants included criminal defense attorneys from large and small firms, public defenders, prosecutors, DOJ attorneys, discovery experts, and judges.

All participants agreed that (1) ESI discovery problems can arise in both small and large cases, (2) these issues are handled very differently between districts, and (3) most criminal cases now include ESI. In 2012, the DOJ, AO, and the Joint Working Group on Electronic Technology in the Criminal Justice System developed a set of "Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases," known as the "ESI Protocol." The defense attorneys and prosecutors at the mini-conference reached a consensus that there is a general lack of awareness of the ESI Protocol, and more training on it would be useful.

The major initial point of disagreement at the mini-conference was whether a rule amendment was necessary and desirable. The prosecutors were not convinced of the need for a rule change. The defense attorneys strongly favored one, but acknowledged problematic threshold questions: Would the rule only apply in "complex" cases? And if so, what *is* a complex case? For example, even "the simplest" criminal case can become "complicated" when it involves electronic evidence such as cell-phone tower location information. None of the attendees supported a rule that would require defining or specifying a "type" of case. A consensus emerged that any rule the Subcommittee might draft should (1) be simple and place the principal responsibility for implementation on the lawyers rather than the court, and (2) encourage use of the ESI Protocol. The prosecutors and DOJ felt strongly that the rule must be flexible in order to address variation between cases.

Guided by the "really helpful information and perspective" shared at the mini-conference, as well as existing local rules and orders addressing ESI discovery, the Subcommittee drafted and the Advisory Committee unanimously approved proposed new Criminal Rule 16.1 (Pretrial Discovery Conference and Modification) (see Agenda Book Tab 5A, pp. 654-56, Tab 5C, pp. 689-90). Subdivision (a) requires that, in every case, counsel must confer no more than 14 days after the arraignment and "try to agree" on the timing and procedures for disclosure. Subdivision (b) emphasizes that the parties may seek a modification from the court to facilitate preparation. Because technology changes rapidly, proposed Rule 16.1 does not attempt to specify standards for the manner or timing of disclosure. Rather, it provides a process that

encourages the parties to confer early in the case to determine whether the standard discovery procedures should be modified and neither "alter[s] local rules nor take[s] discretion away from the court." So far, the proposal has been "satisfactory" to all, including the groups who made the initial suggestion.

Judge members asked why the new language has been added as a proposed stand-alone rule rather than an addition to Rule 16. Professors Beale and King responded that, while Rule 16 specifies *what* must be disclosed, Rule 16.1 concerns the timing of and procedures for disclosure. Whereas Rule 16 is a discovery rule, the new rule addresses activity that occurs prior to discovery. Judge Molloy added that, unlike Rule 16(d), the new rule governs the behavior of lawyers, not judges.

Several members wondered whether the rule's directive that the parties confer "in person or by telephone" excluded other "equally effective" modes of communication, such as live videoconferencing, that are either currently in use or will come into use as technology progresses. Judge Molloy responded that the rules define "telephone" broadly enough to encompass other means of live electronic communication, and Professors Beale and King explained that the Subcommittee consciously chose that language in order to promote live interaction. A reporter noted that removing the language would more closely track parallel Civil Rule 26(f), and Judge Campbell added that the term "confer" already implies real-time communication. A judge member moved to delete the phrase "in person or by telephone" from the proposed rule, the motion was seconded, and the Standing Committee unanimously voted in favor of the motion. The Advisory Committee and Standing Committee will pay attention to this issue during the public comment period.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 proposed new Criminal Rule 16.1, as modified by the Standing Committee.**

Rules 5 of the Section 2254 and Section 2255 Rules – Right To File a Reply. In response to a conflict in the case law identified by Judge Wesley, the Advisory Committee proposed an amendment to Rule 5(d) of the Rules Governing Section 2255 Proceedings for the United States District Courts to make clear that a petitioner has the right to file a reply. The Advisory Committee also proposed amending the parallel provision in Rule 5(e) of the Rules Governing Section 2254 Cases in the United States District Courts (see Agenda Book Tab 5A, pp. 657-58, Tab 5C, pp. 691, 693).

The current text of those rules provides that the petitioner or moving party "may submit a reply . . . within a time period fixed by the judge." Although this language was intended to create a right to file a reply, a significant number of district courts have read "fixed by the judge" to allow a reply only if the judge determines that a reply is warranted and sets a time for filing. Reasoning that this particular reading was unlikely to be corrected by appellate review, the Subcommittee formed to study the issue proposed an amendment that would confirm that the moving party has a right to file a reply by placing the provision concerning the time for filing in a separate sentence: "The moving party may file a reply to the respondent's answer or other pleading. The judge must set the time to file, unless the time is already set by local rule." The

proposal does not set a presumptive time for filing, recognizing that practice varies by court, and the time for filing is sometimes set by local rule.

The word "may" was retained because it used in many other rules, and the Advisory Committee did not want to cast doubt on its meaning. However, to prevent the word "may" from being misread, the following sentence was added to the committee note: "We retain the word 'may,' which is used throughout the federal rules to mean 'is permitted to' or 'has a right to.'"

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Rule 5(e) of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 5(d) of the Rules Governing Section 2255 Proceedings for the United States District Courts.**

Information Items

Manual on Complex Criminal Litigation. The FJC has confirmed that it has received approval to publish a manual for trial judges on complex criminal litigation (see Agenda Book Tab 5A, p. 662). The Advisory Committee has formed a subcommittee to determine which subjects to include.

Cooperators. In response to an FJC study concluding that hundreds of criminal defendants had been harmed after court documents revealed that they had cooperated with the government, the Judicial Conference Committee on Court Administration and Case Management ("CACM") in 2016 released "interim guidance" to the district courts on managing cooperation information. The CACM guidance requires, for example, every plea agreement to include a sealed addendum for cooperation information and a bench conference to be held to discuss cooperation during every plea hearing, whether or not the defendant is actually cooperating.

Judge Jeffrey S. Sutton, then Chair of the Standing Committee, directed the Criminal Rules Advisory Committee to consider rules changes that would implement the recommendations in the CACM guidance, before making a normative recommendation as to whether some, all, or none, of those changes should be adopted. Recognizing the breadth of the cooperator-harm issue, Judge Sutton encouraged that other stakeholders, such as the DOJ and Bureau of Prisons, be included in the discussion. In response, Director James C. Duff of the Administrative Office of the U.S. Courts ("AO") created a Task Force on Protecting Cooperators, consisting of CACM and Criminal Rules Advisory Committee members, as well as a variety of experts and advisors.

The Advisory Committee has since formed a Cooperator Subcommittee, which continues to explore possible rules amendments to mitigate the risks that access to information in case files poses to cooperating witnesses. In addition to rules that would implement the CACM guidance, the Subcommittee is also considering alternative approaches. The Subcommittee intends to present its work to the full Advisory Committee at the fall 2017 meeting. The Advisory Committee will then make its recommendation to the Task Force, which plans to issue its report and recommendations—including any amendments to the Criminal Rules—in 2018 (see Agenda

Book Tab 5A, pp. 658-62).

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Chagares and Professor Maggs provided the report of the Advisory Committee on Appellate Rules, which met on May 2, 2017, in Washington, D.C. Judge Chagares succeeded Justice Gorsuch as chair in April 2017. The Advisory Committee sought approval of several action items and presented a list of information items.

Action Items

Inter-Committee Amendments. The Standing Committee approved for submission to the Judicial Conference proposed amendments to Appellate Rules 25 (electronic filing and signing), 8, 11, and 39 (stays and injunctions pending appeal), and approved proposed amendments to Appellate Rules 26.1, 28, and 32 (disclosures) for publication in August 2017 (see "Inter-Committee Coordination," *supra*).

Appellate Rules 28.1 and 31 – Time To File a Reply Brief. Rules 28.1(f)(4) and 31(a)(1) currently set the time to file a reply brief at 14 days after service of the response brief. Until the 2016 amendments eliminated the "three day rule" for papers served electronically, however, parties effectively had 17 days because Appellate Rule 26(c) allowed three additional days when a deadline ran from service that was not accomplished same-day as well as service completed electronically. The Advisory Committee concluded that "shortening" this period from 17 days to 14 could hinder the preparation of useful reply briefs. Accordingly, the Advisory Committee proposed extending the time to file a reply to 21 days, the next seven-day increment (see Agenda Book Tab 2A, pp. 81-82). The Advisory Committee received two comments in support of the published amendments and recommended approval without further changes.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Rules 28.1 and 31.**

Appellate Form 4. Question 12 of Appellate Form 4 currently asks litigants seeking permission to proceed in forma pauperis to provide the last four digits of their social security numbers. Due to privacy and security concerns, the Advisory Committee asked its clerk representative to investigate whether this information was necessary for administrative purposes. When the clerks who were surveyed reported that it was not, the Advisory Committee recommended deleting the question (see Agenda Book Tab 2A, pp. 82-83). The proposed amendment received two positive comments when it was published, and the Advisory Committee recommended no further changes.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Form 4.**

Appellate Rule 29 – Limitations on Amicus Briefs Filed by Party Consent. Appellate Rule 29(a) currently permits an amicus curiae to file a brief either with leave of the court or with the parties' consent. Several courts of appeals, however, have adopted local rules forbidding the filing of an amicus brief that could result in the recusal of a judge. Of particular concern is the use of "gamesmanship" to try to affect the court's decision by forcing particular judges to recuse themselves. Given the arguable merit of these local rules, the Advisory Committee proposed adding an exception to Appellate Rule 29(a) providing "that a court of appeals may strike or prohibit the filing of an amicus brief that would result in a judge's disqualification" (see Agenda Book Tab 2A, pp. 87-89).

The Advisory Committee received six comments opposing the proposed amendment. The commenters argued that the proposed amendment is unnecessary because amicus briefs that force the recusal of a judge are rare. In any event, the amicus curiae could not be expected to predict who the panel judges would be at the time the brief is filed and would have no recourse if the court strikes the brief—wasting time and money through no fault of the amicus curiae or its counsel. The Advisory Committee considered these comments, but determined that the interests in preventing gamesmanship and resolving the conflict among local rules outweighed the concerns.

The Advisory Committee made two revisions at its May 2017 meeting. First, to match the 2016 amendments renumbering Rule 29's subparts and adding new rules governing amicus briefs at the rehearing stage, the Advisory Committee moved the exception from the former subdivision (a) to new paragraph (a)(2) and added the exception to the new paragraph (b)(2) regarding rehearing. Second, the Advisory Committee rephrased the exception from "strike or prohibit the filing of" to "prohibit the filing of or . . . strike" to make it more chronological without changing its meaning or function.

Discussion during the Standing Committee meeting was robust. An attorney member recommended deleting from paragraph (b)(2) the proposed language regarding prohibiting or striking briefs at the rehearing stage, reasoning that the court already had discretion to do so, existing local rules would continue to stand under either version of the proposal, and republication would not be required. A judge member disagreed, arguing that the language in (b)(2) would at least give an amicus curiae an indication as to why its brief had been barred. The Standing Committee reached a compromise: the language would be deleted from (b)(2), but the committee note would explain that the court already has discretion to strike an amicus brief at the rehearing stage if it could cause recusal, and confirm that local rules and orders allowing such briefs to be barred are permissible. The language "such as those previously adopted in some circuits" would be deleted from the note.

The Standing Committee accepted a style consultant's recommendation to replace "except that" with "but" in paragraph (a)(2). A member repeated a commenter's suggestion to change the phrase "amicus brief" to "amicus-curiae brief" for accuracy, but the Advisory Committee and style consultants preferred to continue to use "amicus" as an adjective and "amicus curiae" as a noun for consistency with the other rules.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Rule 29, subject to the revisions made during the meeting.**

Appellate Rule 41 – Stays of the Mandate. The Advisory Committee proposed amendments to Appellate Rule 41, which governs the contents, issuance, effective date, and stays of the mandate. Among other changes, the Advisory Committee initially added a sentence to Rule 41(b) permitting the court to extend the time to issue the mandate "only in extraordinary circumstances" (see Agenda Book Tab 2A, pp. 95-99).

The proposed amendments were published in August 2016, and the Advisory Committee made several revisions to account for the five comments received. In response to observations that a court might wish to extend the time for good cause in circumstances that are not "extraordinary," the Advisory Committee deleted the proposed sentence from Rule 41(b). The Advisory Committee also added subheadings, renumbered subparagraph (d)(2)(B) as (d)(2), and, in response to a comment warning of a potential gap in the rule, added a clause that would extend a stay automatically if a Supreme Court Justice extends the time for filing a petition for certiorari. The Advisory Committee made further revisions after its May 2017 meeting (see Agenda Book Supplemental Materials, pp. 3-4, 18-24).

As shown here, at the Standing Committee meeting the style consultants and an attorney member suggested additional changes to Appellate Rule 41(d)(2)(B) ((d)(2) as amended), which prohibits a stay from exceeding 90 days unless "the party who obtained the stay ~~files a petition for the writ and so~~ notifies the circuit clerk in writing within the period of the stay: (i) that the time for filing a petition ~~for a writ of certiorari in the Supreme Court~~ has been extended, in which case the stay continues for the extended period; or (ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition."

Three appellate judge members pointed out that unlike most courts of appeals, which circulate opinions to the full court prior to publication, their courts instead have the option to place a "hold" on the mandate while the full court reviews a panel's decision and considers whether to rehear the case en banc. They disagreed among themselves as to whether Rule 41(b)'s new provision allowing the court to extend the time to file the mandate "by order" was an appropriate solution, as it was unclear whether a standing order or clerk's order (as opposed to an order issued by an individual judge) would suffice. Satisfied that it would, and that the rule did not impose a time limit for issuing the order, the Standing Committee approved the rule as modified. Accordingly, the first sentence of the committee note would be revised as follows: "Subdivision (b) is revised to clarify that an order is required for a stay of the mandate ~~and to specify the standard for such stays~~."

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously decided to recommend to the Judicial Conference for approval the proposed amendments to Appellate Rule 41, subject to the revisions made during the meeting.**

Technical Amendments to Rules 3(d) and 13 – References to "Mail." In light of the proposed changes to Appellate Rule 25 to account for electronic filing and service (see "Inter-

Committee Coordination," *supra*), the Advisory Committee recommended eliminating the term "mail" from other provisions (see Agenda Book Tab 2A, pp. 100-02).

Appellate Rule 3(d) concerns the clerk's service of the notice of appeal. The Advisory Committee changed "mailing" and "mails" to "sending" and "sends" in paragraphs (d)(1) and (3), and eliminated the mailing requirement from the portion of paragraph (d)(1) that directs the clerk to serve a criminal defendant "either by personal service or by mail addressed to the defendant." Instead, the clerk will determine whether to serve a notice of appeal electronically or nonelectronically based on the principles of revised Rule 25. The Standing Committee modified the committee note as follows: "Amendments to Subdivision (d) change the words 'mailing' and 'mails' to 'sending' and 'sends,' and delete language requiring certain forms of service, to ~~make~~ allow electronic service ~~possible~~."

Amended Rule 13, which governs appeals from the Tax Court, currently uses the word "mail" in its first and second sentences. The Advisory Committee recommended changing the reference in the first sentence to allow an appellant to send a notice of appeal to the Tax Court clerk by means other than mail, but not the second sentence, which expresses a rule that applies to notices sent by mail.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Appellate Rules 3(d) and 13, subject to the revisions to the committee note made during the meeting.**

Information Items

At its spring 2017 meeting, the Advisory Committee declined to move forward with several unrelated suggestions: (1) amending Appellate Rules 32.1 and 35 to require courts to designate orders granting or denying rehearing as "published" decisions, (2) adding a provision similar to Appellate Rule 28(j) to the Civil Rules, (3) addressing certain types of subpoenas in Appellate Rules 4 and 27, and (4) prescribing in Appellate Rule 28 the manner of stating questions presented in appellate briefs.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Ikuta and Professor Gibson presented the report of the Advisory Committee on Bankruptcy Rules, which met on April 6-7, 2017, in Nashville, Tennessee. The Advisory Committee sought approval of thirteen action items and shared two information items.

Action Items

Inter-Committee Amendments. The Standing Committee approved for submission to the Judicial Conference proposed amendments to Bankruptcy Rules 5005 and 8011 (electronic filing and signing) and 7062, 8007, 8010, 8021, and 9025 (stays and injunctions pending appeal), and approved for publication in August 2017 a proposed new subdivision to Rule 9037 (redaction of

personal identifiers) (see "Inter-Committee Coordination," *supra*).

Bankruptcy Rule 3002.1 – Home Mortgage Claims in Chapter 13 Cases. In chapter 13 cases in which a creditor has a security interest in a debtor's home, Bankruptcy Rule 3002.1(b) and (e) imposes noticing requirements on the creditor that enable the debtor or trustee to make mortgage payments in the correct amount while the bankruptcy case is pending (see Agenda Book Tab 3A, pp. 191-92). The proposed amendments to subdivisions (b) and (e) create flexibility regarding a notice of payment change for home equity lines of credit; create a procedure for objecting to a notice of payment change; and expand the category of parties who can seek a determination of fees, expenses, and charges owed at the end of the case.

The proposed amendments were published in August 2016. A comment noted that, although the amendments purported to prevent a proposed payment change from taking effect in the event of a timely objection, under the time-counting rules the deadline for filing the objection would actually be later than the payment change's scheduled effective date. The Advisory Committee revised the proposed amendment to eliminate this possibility and clarify that "if a party wants to stop a payment change from going into effect, it must file an objection *before* the change goes into effect" (see Agenda Book Tab 3B, App'x A, pp. 223-24).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval the proposed amendments to Bankruptcy Rule 3002.1.**

Conforming Amendments to the Bankruptcy Part VIII Appellate Rules and Related Forms. The proposed amendments to Bankruptcy Part VIII Appellate Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022; Official Forms 417A and 417C; and the new Part VIII Appendix conform the Bankruptcy Rules to the December 1, 2016 Appellate Rules amendments (see Agenda Book Tab 3A, pp. 194-97). Because the Bankruptcy Appellate Rules generally follow the Appellate Rules, the Advisory Committee tracked the Appellate Rules absent a bankruptcy-specific reason not to.

Bankruptcy Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), list the post-judgment motions that toll the time for filing an appeal. The 2016 amendment to Appellate Rule 4(a)(4) added an express requirement that, in order to toll this deadline, the motion must be filed within the time period the rule the motion is made under specifies. The Bankruptcy Rules Advisory Committee published a similar amendment to Rule 8002(b) in August 2016 and received no comments.

Bankruptcy Rules 8002(c) (time to file a notice of appeal) and 8011(a)(2)(C) (filing, signing, and service) contain inmate-filing provisions virtually identical to the parallel provisions of Appellate Rule 4(c) and rule currently numbered Appellate Rule 25(a)(2)(C). The proposed amendments would conform to those rules by treating inmates' notices of appeal and other papers as timely filed if they are deposited in the institution's internal mail system on or before the last day for filing. The new inmate-declaration form designed to effectuate this rule is replicated by a director's form for bankruptcy appeals, and an amendment to Official Form 417A would direct inmate filers to the director's form.

The 2016 Appellate Rules amendments also affected the length limits in Bankruptcy Rules 8013, 8015, 8016, and 8022 and Official Form 417C, and necessitated the new Part VIII Appendix. Amended Appellate Rules 5, 21, 27, 35, and 40 converted page limits to word-count limits for documents prepared using a computer and reduced the existing word limits for briefs under Appellate Rules 28.1 (cross-appeals) and 32 (principal, response, and reply briefs). Appellate Form 6, the model certificate of compliance, was amended accordingly. Amended Appellate Rule 32(e) authorizes the court to vary the federal rules' length limits by order or local rule, Rule 32(f) lists the items that may be excluded from the length computation, and a new appendix collecting all of the length limits in one chart was added. The Bankruptcy Rules Advisory Committee proposed parallel amendments to Rules 8013(f) (motions), 8015(a)(7) and (f) (briefs), 8016(d) (cross-appeals), and 8022(b) (rehearing), along with Official Form 417C (model certificate of compliance). It also proposed an appendix to Part VIII similar to the Appellate Rules appendix.

Bankruptcy Rule 8017, addressing amicus filings, is the bankruptcy counterpart to Appellate Rule 29, which was amended in 2016 to address for the first time amicus briefs filed in connection with petitions for rehearing. The 2016 amendment does not require courts to accept amicus briefs at the rehearing stage, but provides guidelines for briefs that *are* permitted. In August 2016, the Appellate Rules Advisory Committee published an additional amendment to Appellate Rule 29(a) that would authorize a court of appeals to prohibit the filing of or strike an amicus brief that could cause the recusal of a judge (see discussion *supra*). To maintain consistency, the Bankruptcy Rules Advisory Committee proposed and published a parallel amendment to Rule 8017.

A commenter pointed out that, because amicus briefs are usually filed before a panel is assigned, an amicus curiae could not possibly predict whether its brief could lead to a recusal. The Advisory Committee rejected this comment because the proposed amendment does not *require*, but merely permits, the brief to be struck. Another comment suggested a more extensive and detailed rewrite that was beyond the scope of the proposed amendment. The Bankruptcy Rules amendments and committee note will be conformed to the revisions made to Appellate Rule 29 at the Standing Committee meeting (see discussion *supra*).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval the proposed amendments to Bankruptcy Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022; Official Forms 417A and 417C; and the new Part VIII Appendix; subject to the conforming revisions to Bankruptcy Rule 8017 made during the meeting.**

Additional Bankruptcy Appellate Rules Amendments: Rules 8002, 8006, and proposed new Rule 8018.1. In addition to the conforming amendments to the Part VIII rules, amendments to Bankruptcy Appellate Rules 8002, 8006, and 8023 and new Bankruptcy Appellate Rule 8018.1 were published in August 2016 and received no comments. Following discussion of these amendments at the spring 2017 meeting, the Advisory Committee recommended final approval of Rules 8002, 8006, and 8018.1 as published (see Agenda Book Tab 3A, pp. 197-200), but sent Rule 8023 back to a subcommittee for further consideration (see Information Items,

infra).

Bankruptcy Rule 8002(a) generally requires a notice of appeal to be filed within 14 days of the entry of judgment. The proposed amendment would add a new paragraph (a)(5), which defines "entry of judgment" for this purpose. It would also clarify that, in contested matters and adversary proceedings where Civil Rule 58 does not require the entry of judgment to be filed as a separate document, the time for filing the notice of appeal begins to run when the judgment, order, or decree is entered on the docket (see Agenda Book Tab 3B, App'x A, pp. 237-43). In adversary proceedings where Civil Rule 58(a) *does* require a separate document, the time for filing a notice of appeal generally runs from when the judgment, order, or decree is docketed as a separate document or, if no separate document is prepared, 150 days from docket entry.

Bankruptcy Rule 8006 implements 28 U.S.C. § 158(d)(2)(A), which permits all parties to jointly certify a proceeding for direct appeal to the court of appeals. Because, as Professor Gibson explained, this "somewhat odd procedure" gives the parties the option to certify an appeal, new paragraph 8006(c)(2) authorizes the bankruptcy court, district court, or Bankruptcy Appellate Panel to, Judge Ikuta reported, "provide its views about the merits of such a certification to the court of appeals" (see Agenda Book Tab 3B, App'x A, pp. 245-46). Professor Gibson added that the proposed amendment was intended as "the counterpart" to existing rules that allow the parties to file a statement when the judge certifies an appeal: "If the parties get to comment on the judge's certification, the judge ought to be able to comment on the parties' [certification]." The judge would not be required to do so, and the court of appeals still has discretion to decide whether to accept the appeal.

Proposed new Rule 8018.1 addresses district court review of a judgment that the bankruptcy court lacked constitutional authority to enter under *Stern v. Marshall*, 564 U.S. 462 (2011), which held that certain claims, now dubbed "*Stern* claims," must be decided by an Article III court rather than a bankruptcy court. In *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), the U.S. Supreme Court held that bankruptcy judges may hear *Stern* claims and submit proposed findings of fact and conclusions of law, but they lack the authority to enter judgment on them; the district court is empowered to enter judgment after a de novo review. Under the existing rules, when a district court that determines that the bankruptcy court has entered final judgment in a *Stern* claim despite its lack of constitutional authority to do so, the case must be remanded to the bankruptcy court so the judgment can be recharacterized as proposed findings of fact and conclusions of law. New Bankruptcy Rule 8018.1 would bypass this process by authorizing the district court to simply treat the bankruptcy court's judgment as proposed findings and conclusions that it can review de novo (see Agenda Book Tab 3B, App'x A, pp. 289-90).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval the proposed amendments to Bankruptcy Rules 8002 and 8006 and new Bankruptcy Rule 8018.1.**

Official Form 309F – Notice of Chapter 11 Bankruptcy Case (Corporations and Partnerships). The instructions at line 8 of Form 309F currently require a creditor seeking to

have its claim excepted from the discharge under § 1141(d)(6)(A) of the Bankruptcy Code to file a complaint by the stated deadline. But because the applicability of the deadline is unclear in some circumstances, the proposed revision to the instructions would allow the creditor to decide whether the deadline applies to its claims. When the proposed amendment was published in August 2016, a commenter pointed out that it necessitated a similar change to line 11 of the form (see Agenda Book Tab 3A, pp. 200-02). Accordingly, the Advisory Committee amended the last sentence of line 11 in a manner similar to the amendment to line 8 and recommended both changes for final approval.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval the proposed amendments to Official Form 309F.**

Official Forms 25A, 25B, 25C, and 26 – Chapter 11 Small Business Debtor Forms and Periodic Report. Most bankruptcy forms have been modernized over the past several years through the Forms Modernization Project, but the Advisory Committee deferred consideration of Official Forms 25A, 25B, 25C, and 26, which relate to chapter 11 cases. The Advisory Committee has now reviewed these forms extensively, revised and renumbered them, and published them for comment in August 2016 (see Agenda Book Tab 3A, pp. 202-04).

The small business debtor forms, Forms 25A, 25B, and 25C, are renumbered as Official Forms 425A, 425B, and 425C (see Agenda Book Tab 3B, App'x A, pp. 315-59). Official Forms 425A and 425B contain an illustrative form plan of reorganization and a disclosure statement, respectively, for chapter 11 small business debtors. Official Form 425C is the monthly operating report that small business debtors must file with the court and serve on the U.S. Trustee. Official Form 26, renumbered as Official Form 426 and rewritten and formatted in the modernized form style, requires periodic disclosures by chapter 11 debtors concerning the value, operations, and profitability of entities in which they hold a substantial or controlling interest (see Agenda Book Tab 3B, App'x A, pp. 361-73).

The Advisory Committee made "minor, non-substantive" changes in response to the three comments received, the "most substantial" of which was to add a section to Form 425A where the parties can address whether the bankruptcy will retain jurisdiction of certain matters after the plan goes into effect (see Agenda Book Tab 3B, App'x A, p. 318).

Upon motion, seconded by a member, and by voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval the proposed amendments to Official Forms 25A, 25B, 25C, and 26 (renumbered respectively as 425A, 425B, 425C and 426).**

Conforming Amendments to Official Forms 309G, 309H, and 309I – Notices to Creditors in Chapter 12 and 13 Cases. Bankruptcy Rule 3015 governs the filing, confirmation, and modification of chapter 12 and chapter 13 plans. Absent contrary congressional action, as of December 1, 2017, an amendment to Rule 3015 adopted as part of the chapter 13 plan form package will no longer authorize a debtor to serve a plan summary, rather than a copy of the plan itself, on the trustee and creditors. This change will affect Official Forms 309G, 309H, and 309I,

the form notices sent to creditors to inform them of the hearing date for confirmation of the chapter 12 or 13 plan and the associated objection deadlines. The current versions of the forms also indicate whether a plan summary or the full plan is included with the notice. In accordance with the pending changes to Bankruptcy Rule 3015, the proposed amendments to Official Forms 309G, 309H, and 309I remove references to a "plan summary," which will no longer be an available option (see Agenda Book Tab 3A, p. 206, Tab 3B, App'x A, pp. 301-08). The Advisory Committee recommended approval of these conforming changes without publication so that they can take effect at the same time as the pending change to Rule 3015.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for submission to the Judicial Conference for approval without publication the proposed conforming amendments to Official Forms 309G, 309H, and 309I.**

Bankruptcy Rule 4001 – Obtaining Credit. Bankruptcy Rule 4001(c) governs the process by which a debtor in possession or a trustee can obtain credit outside the ordinary course of business while a bankruptcy case is pending. Among other things, the rule outlines eleven different elements of post-petition financing that a motion for approval of a post-petition credit agreement must address. These detailed disclosure requirements, which are intended supply the kind of specific information necessary for credit approval in chapter 11 business cases, are unhelpful and unduly burdensome in chapter 13 consumer bankruptcy cases, where typical post-petition credit agreements involve loans for items such as personal automobiles or household appliances. Accordingly, the Advisory Committee sought approval to publish for public comment a new paragraph to Rule 4001(c) that would make the disclosure provision inapplicable in chapter 13 cases (see Agenda Book Tab 3A, pp. 207-08, Tab 3B, App'x B, p. 379). Judge Ikuta reported that "many bankruptcy courts have already adopted [similar] local rules that impose less of a burden on chapter 13 debtors."

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Bankruptcy Rule 4001.**

Bankruptcy Rules 2002 & 9036 and Official Form 410 – Electronic Noticing. The proposed amendments to Bankruptcy Rules 2002(g) (Addressing Notices) and 9036 (Notice by Electronic Transmission) and Official Form 410 (Proof of Claim) are part of the Advisory Committee's effort to reduce the cost and burden of notice. Section 342 of the Bankruptcy Code gives creditors in chapter 7 and chapter 13 cases the right to designate an address to receive service. As part of the rules committees' efforts to ensure that the rules are consistent with modern technology, the Advisory Committee originally considered an opt-out provision under which electronic notice would be the default, but rejected it due to concerns that it might run afoul of § 342 or be incompatible with creditors' existing systems for processing notice by mail.

Instead, the proposed amendments make three changes that would allow creditors to opt in to electronic notice. First, a box has been added to Official Form 410, the proof-of-claim form, that creditors who are not CM/ECF users can check to receive notices electronically (see Agenda Book Tab 3B, App'x B, p. 389). Second, the proposed change to Rule 2002(g) would expand the rule's references to "mail" to include other means of delivery and delete "mailing"

before "address" so creditors can receive notices by email (see Agenda Book Tab 3B, App'x B, pp. 377-78). Third, amended Rule 9036 would allow registered users to be served via the court's CM/ECF system, and non-CM/ECF users by email if they consent in writing (see Agenda Book Tab 3B, App'x B, pp. 383-84).

A judge member wondered whether it was appropriate for the rules to refer to documents sent electronically as "papers." The Standing Committee determined to continue to use the term "papers," which is generic and is already used throughout the rules with respect to both electronic and hard-copy documents.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Bankruptcy Rules 2002 and 9036 and Official Form 410.**

Bankruptcy Rule 6007 – Motions To Abandon Property. Under § 554(a) and (b) of the Bankruptcy Code, only the trustee or debtor in possession has authority to abandon property of the estate. A hearing is not mandatory if the abandonment notice or motion provides sufficient information concerning the proposed abandonment; is properly served; and neither the trustee, debtor, nor any other party in interest objects. Bankruptcy Rule 6007, which concerns the service of abandonment papers under § 554, treats notices to abandon property filed by the trustee under subdivision (a) and motions filed by the parties in interest to compel the trustee to abandon property under subdivision (b) inconsistently (see Agenda Book Tab 3A, pp. 211-13). Specifically, Rule 6007(a) identifies the parties the trustee is required to serve with its notice to abandon, but Rule 6007(b) is silent regarding the service of a motion to compel abandonment.

"So that the procedures are essentially the same in both cases," the proposed amendment to Rule 6007(b) would specify the parties to be served with the motion to abandon and any notice of the motion, and establish an objection deadline. The proposed amendment would also make clear that, if the motion to abandon is granted, the abandonment is effected without further notice, unless the court directs otherwise (see Agenda Book Tab 3B, App'x B, pp. 381-82).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Bankruptcy Rule 6007.**

Information Items

Bankruptcy Rule 2002 – Noticing in Chapter 13 Cases. The current version of Bankruptcy Rule 2002(f)(7) requires the clerk to give notice to the debtor and all creditors of the "entry of an order confirming a chapter 9, 11, or 12 plan," but not a chapter 13 plan. The committee note identifies no reason for treating chapter 13 plans differently, and the Advisory Committee's meeting minutes are silent as to why it rejected a 1988 effort to make Rule 2002(f) applicable to a plan under any chapter. Seeing no reason to continue to exclude chapter 13 plans, the Advisory Committee intends to propose an amendment to Bankruptcy Rule 2002(f) (see Agenda Book Tab 3A, pp. 215-16).

Similarly, the Advisory Committee will propose an amendment expanding to chapter 13 cases the exception to Rule 2002(a)'s general noticing requirements. Current Rule 2002(h) allows a court to limit notice in a chapter 7 case to, among others, creditors holding claims for which proofs of claim have been filed. The Advisory Committee has concluded that the cost and time savings generated by limiting notices under Rule 2002(h) in chapter 13 cases support an amendment (see Agenda Book Tab 3A, p. 216).

Because the time provisions of Rule 2002(f)(7) will also need to be amended when a pending 2017 amendment to Rule 3002 changes the deadline for filing a proof of claim, the Advisory Committee decided to wait to publish the amendments to the noticing provisions in subdivisions (f) and (h) so that they can be proposed as a package along with the timing changes in 2018.

Bankruptcy Rule 8023 – Voluntary Dismissal. In response to a comment submitted after the publication of the Part VIII amendments (see *supra*), the Advisory Committee proposed an amendment to Bankruptcy Appellate Rule 8023 that would add a cross-reference to Bankruptcy Rule 9019, which provides a procedure for obtaining court approval of settlements. The amendment was intended as a reminder that, when dismissal of an appeal is sought as the result of a settlement, Rule 9019 might require the settlement to be approved by the bankruptcy court (see Agenda Book Tab 3A, pp. 216-17).

No comments were submitted when the proposed amendment to Rule 8023 was published in August 2016. At the spring 2017 meeting, the Advisory Committee's new DOJ representative raised a concern that, although Rule 9019 is generally interpreted to require court approval of a settlement only when a trustee or debtor in possession is a party to it, amended Rule 8023 can be read to suggest that no voluntary dismissal of a bankruptcy appeal in the district court or BAP may be taken without the bankruptcy court's approval. Other Advisory Committee members wondered whether amended Rule 8023's reference to Rule 9019 could be read to require district and BAP clerks to make a legal determination as to whether Rule 9019 applies to a particular voluntary dismissal and, if so, whether the bankruptcy court has jurisdiction to consider the settlement while the appeal is pending. A question was also raised about whether the current version of Rule 8023, which does not state that it is subject to Rule 9019, has caused any problems. After discussing these issues, the Advisory Committee decided to send the Rule 8023 amendment "back to the drawing board" for further consideration by a subcommittee. The Advisory Committee expects to "suggest[] a different change" and will discuss the matter further at its fall 2017 meeting.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Bates and Professors Cooper and Marcus provided the report of the Advisory Committee on Civil Rules, which met on Tuesday, August 25, in Austin, Texas. In addition to two sets of inter-committee amendments, the Advisory Committee sought approval of one action item—proposed amendments to Civil Rule 23—and presented two information items.

Action Items

Inter-Committee Amendments. The Advisory Committee submitted proposed amendments to Civil Rules 5 (electronic filing and signing) and 62 and 65.1 (stays and injunctions pending appeal) for final approval. The Standing Committee approved the amendments for transmission to the Judicial Conference, subject to the revisions made during the meeting (see "Inter-Committee Coordination," *supra*).

Civil Rule 23 – Class Actions. The proposed amendments to Civil Rule 23 (see Agenda Book Tab 4A, pp. 431-51) are the product of more than five years of study and consideration by the Civil Rules Advisory Committee and its Rule 23 Subcommittee. The effort was motivated by a number of factors: (1) the passage of time since Rule 23 was last amended in 2009; (2) the development of a body of case law on class action practice; and (3) recurring interest in Congress, including the 2005 adoption of the Class Action Fairness Act. In developing the proposed amendments, members of the Subcommittee attended nearly two dozen meetings and bar conferences and held a mini-conference in September 2015 to gather additional feedback from a variety of stakeholders.

After extensive consideration and study, the Subcommittee narrowed the list of issues to be addressed and published these proposed amendments (see Agenda Book Tab 4A, pp. 431-41):

- Rule 23(c)(2) has been updated to recognize contemporary means of providing notice to individual class members in Rule 23(b)(3) class actions.
- The amendments to Rule 23(e)(1) clarify that the parties must supply information to the court to enable it to decide whether to notify the class of a proposed settlement, that the court must direct notice if it is likely to be able to approve the proposal and certify the class, and that class notice triggers the opt-out period in Rule 23(b)(3) class actions.
- Amended Rule 23(e)(2) identifies substantive and procedural "core concerns"—as opposed to a "long list of factors" like those some courts use—for the parties to address and the court to consider in deciding whether to approve a settlement proposal.
- Rule 23(e)(5) has been amended to address "bad faith" class-action objectors. Specifically, the proposed amendments require that specific grounds for the objection be provided to the court, the person on whose behalf the objection is being made be identified, and the court approve payment or other consideration received in exchange for withdrawing an objection.
- Amended Rule 23(f) makes clear that there is no interlocutory appeal of a decision to send class notice under Rule 23(e)(1).
- At the suggestion of the DOJ, the amendments to Rule 23(f) extend to 45 days the time to seek permission for an interlocutory appeal when the United States is a party.

The Advisory Committee considered but declined to address other topics, such as issue classes and ascertainability.

Almost all of the comments received during the August 2016 public comment period concerned the Rule 23 proposals. Most addressed the modernization of notice methods under Rule 23(c)(2) and the handling of objections to proposed settlements. Some comments proposed additional topics, while others urged reconsideration of topics the Subcommittee had decided not to pursue. After carefully considering the comments, the Advisory Committee and Subcommittee made minor changes to the proposed rule text and clarified and shortened the committee note. The Advisory Committee has concluded that "the community is very satisfied" with the proposed amendments, which are "important improvements" but "not dramatic changes."

A judge member asked whether a litigant could argue that the court had not adequately reviewed the settlement proposal if it did not consider one of the "core concerns" under Rule 23(e)(2). Professor Marcus explained that the Subcommittee initially considered requiring the court to find that each factor was satisfied, but ultimately decided "to introduce the considerations" but not *require* the court to find each one in order to approve the settlement. The rule does not require the trial judge to "make findings" or address each factor on the record—the judge need only "consider" the information the parties supply under Rule 23(e)(1)(A) and any objections under Rule 23(e)(5). A judge member added that district courts should be given broad discretion to review these factors.

Another judge member raised the possibility of adding a "catchall" category to those listed in Rule 23(e)(2) and (e)(2)(C). Professor Marcus clarified that the list is not intended to require a judge to ignore important factors that should obviously be considered in a given situation, and the judge member agreed that the current language allows sufficient flexibility. A different judge member added that the four general categories set out in the amended rule are a "good compromise" between the need to add structure and guidance to the settlement-approval process on one hand, and the "long lists of factors" identified by the courts of appeals on the other.

Judge Campbell commended the Rule 23 Subcommittee, chaired by Judge Robert M. Dow, Jr., for its work.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously voted to recommend the proposed amendments to Civil Rule 23 to the Judicial Conference for approval**.

Information Items

Social Security Disability Review Cases. The Administrative Conference of the United States ("ACUS") recently submitted a suggestion to the Judicial Conference that a uniform set of procedural rules be developed for district court review of final administrative decisions in Social Security cases under 42 U.S.C. § 405(g), which provides that an individual may obtain review of a final decision of the Commissioner of Social Security "by a civil action." The suggestion was referred to the Civil Rules Advisory Committee, which is responsible for studying and recommending rules governing civil actions in the district courts (see Agenda Book Tab 4A, pp. 532-50).

More than 17,000 Social Security review cases are brought in the district courts every year, accounting for "a fairly large numerical proportion"—about seven percent—of civil filings. The national average remand rate is approximately forty-five percent, ranging from twenty percent in some districts to seventy percent in others—sometimes even within a single circuit. Different districts use a use a variety of procedures and standards in reviewing these actions.

The Advisory Committee first discussed the ACUS suggestion at the spring 2017 meeting. Although judges might be apprehensive about the possibility of a "special set of rules" for Social Security cases, the Advisory Committee will explore "whether, and if so, how" rule changes could address the problems that have been identified: the high remand rate, delays in the process, and a lack of uniformity among the district courts. The Advisory Committee plans to gather more information and form a subcommittee to fully consider various options, including a new Civil Rule addressing these types of cases or even a separate set of rules.

Professor Cooper welcomed input from the members of the Standing Committee. Judge members suggested examining circuit law and local rules addressing Social Security issues. Another judge proposed asking the DOJ to formulate a position as to whether district court review procedures should be modified. Although some members felt that more uniformity in the rules might help to reduce variance among the remand rates, a professor member cautioned that the variance might be attributable to the substantive law (such as the treating physician rule, a judge noted), rather than differences in the rules. A reporter added that a change in district court review procedures would be unlikely to affect how administrative law judges review Social Security cases. There was a general consensus that the rules committees should not attempt to "fix the [Social Security] system generally." The Civil Rules Advisory Committee will continue to study and discuss these issues.

Civil Rule 30(b)(6) – Organizational Depositions. In April 2016, the Advisory Committee formed a Rule 30(b)(6) Subcommittee chaired by Judge Joan N. Ericksen to consider whether reported problems with Rule 30(b)(6) depositions can be addressed by rule amendment (see Agenda Book Tab 4A, pp. 555-86). The Subcommittee initially focused on drafting provisions that might address the problems attorneys claim to encounter. Guided by feedback from the Advisory Committee and Standing Committee, and equipped with additional legal research, the Subcommittee continues to narrow the issues that could feasibly be remedied by rule amendment.

Specifically, the Subcommittee has solicited comment about six potential amendment ideas through a posting on the federal judiciary's rulemaking website (see Agenda Book Tab 4A, pp. 557-59): (1) including Rule 30(b)(6) depositions among the topics for discussion at the Rule 26(f) conference and in the Rule 16 report, (2) confirming that a 30(b)(6) deponent's statements do not function as "judicial admissions" (an issue which, a judge member added, is a source of much of the "angst" surrounding these depositions), (3) requiring and permitting supplementation of Rule 30(b)(6) testimony, (4) forbidding contention questions, (5) adding a provision for objections, and (6) addressing the applicability to Rule 30(b)(6) of limits on the duration and number of depositions. Members of the Subcommittee continue to gather feedback by participating in bar conferences around the country.

When a district judge observed that litigants do not frequently approach him with Rule 30(b)(6) disputes, another judge added that active case management cures many of the problems that do arise. An attorney member who finds the current version of the rule useful cautioned the Advisory Committee not to change Rule 30(b)(6) so much that the problem it was designed to resolve—"hiding the ball"—has room to recur. Professor Marcus, reporter to the Rule 30(b)(6) Subcommittee, explained that the old problem of "bandying" has been replaced by a new one: 30(b)(6) notices listing numerous deposition topics are sent at the last minute, just before the close of discovery, to "imped[e] preparation for trial." The potential for abuse of the Rule 30(b)(6) process can therefore cut in both directions, and although case management may be the only workable solution, the subcommittee will continue to explore possible rule changes.

Pilot Projects Update. Judge Bates updated the Standing Committee on the Civil Rules Advisory Committee's two ongoing pilot projects, Mandatory Initial Discovery Pilot ("MIDP") and Expedited Procedures Pilot ("EPP") (see Agenda Book Tab 4A, pp. 587-89). The MIDP, which is designed to explore whether mandating the production of robust discovery prior to traditional discovery will reduce costs, burdens, and delays in civil litigation, is "well underway" in two districts and expects to add another one to two courts. Judge Campbell reported that the MIDP began in the District of Arizona on May 1, 2017, and Dr. Emery Lee and the FJC were already monitoring 170 cases filed on or after that date. The district's judges have all agreed to participate and will become personally involved at the case management conference stage. The MIDP began in the Northern District of Illinois one month later, on June 1.

The EPP, which is intended to confirm the benefits of active judicial management of civil cases, "has hit a few roadblocks." At this time, only the U.S. District Court for the Eastern District of Kentucky has agreed to participate; vacancies, workloads, and other factors have hindered efforts to recruit participating courts. If more courts do not join despite renewed recruitment efforts, the Eastern District of Kentucky will be moved to the MIDP, and the EPP will be delayed.

Judge Campbell thanked Judge Paul W. Grimm, Chair of the Pilot Projects Working Group and a former member of the Civil Rules Advisory Committee, for his "tremendous effort," and the FJC and Rules Committee Support Office for their contributions.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Sessions and Professor Capra delivered the report of the Advisory Committee on Evidence Rules, which met on April 21, 2017, in Washington, D.C. The Advisory Committee presented one action item and two information items.

Action Item

Evidence Rule 807 – Residual Exception. The Advisory Committee has considered possible changes to Evidence Rule 807, the residual exception to the hearsay rule, for two years. One approach would involve broadening the residual exception, which is invoked "narrowly and

infrequently." After extensive deliberation the Advisory Committee decided to pursue a more "conservative," less "dramatic" approach that does not expand the hearsay exception.

Instead, the proposed amendment is intended to "improve[]" current Rule 807 in a number of ways (see Agenda Book Tab 6A, pp. 736-41, Tab 6B, pp. 749-54). First, it no longer defines "trustworthiness" in terms of the "equivalent circumstantial guarantees" of the Rule 803 and 804 exceptions; because those rules contain no such "circumstantial guarantees," there is "no unitary standard" of trustworthiness. Under amended Rule 807, the court would simply determine whether the residual hearsay is supported by sufficient guarantees of trustworthiness. Second, the proposed amendment resolves a conflict among the courts by making clear that corroborating evidence may be considered in determining trustworthiness. Third, current Rule 807(a)'s requirements that the residual hearsay relate to a "material fact" and "serve the purposes of the[] rules and the interests of justice" have proved "meaningless" and will be deleted. "[I]nterests of justice" has been particularly troublesome, as some courts have relied on it to expand their discretion to admit hearsay evidence under Rule 807. Removing the phrase reinforces that the Advisory Committee does not "advocat[e for] the use of 807 more broadly."

"Most important" was the Advisory Committee's decision to continue to require under Rule 807(a)(3) that the residual hearsay be "more probative . . . than any other evidence" the proponent can reasonably obtain. The "more probative" requirement ensures that the rule will be used only when necessary, reinforcing the Advisory Committee's intent to refine but not broaden the residual exception. The Advisory Committee has made clear in amended subdivision (a)(1) that the proponent cannot invoke the residual exception unless the proffered hearsay is not otherwise admissible under any of the Rule 803 or 804 exceptions.

The Advisory Committee has also proposed "significant" amendments to Rule 807's notice requirement. Currently, Rule 807(b) does not include a good-cause exception for untimely notice, creating a conflict as to whether courts may excuse notice when a proponent has acted in good faith. Adding a good-cause provision would authorize district judges to admit evidence under these circumstances during trial, as well as conform Rule 807 to the Evidence Rules' other notice provisions. Other changes include replacing the confusing word "particulars" with "substance," requiring notice to be given in writing, and deleting the requirement that the proponent provide the declarant's address.

A judge member warned that the language of proposed amended Rule 807(a)(1) describing the hearsay statement as "not specifically covered by a hearsay exception in Rule 803 or 804" could be interpreted as requiring the judge to make a finding of inadmissibility under Rules 803 and 804. Professor Capra argued that the language is not new, but has merely "dropp[ed] down" from its existing position in the current version of the rule. In any event, some courts have interpreted the *current* text to require such a finding. Professor Capra explained that the amended language was simply intended "to get the parties to explain to the court why they're not using 803 and 804." Another judge member wondered whether removing the provision now would inadvertently "signal" to district judges that the analysis under Rules 803 and 804 is unimportant when, in fact, "the whole point of this provision is to get them to look [to Rules 803 and 804] first." The Advisory Committee will pay attention to this issue during the public comment period and will consider addressing it in the committee note.

A judge member asked whether the language, "after considering . . . any evidence corroborating the statement," in revised paragraph (a)(2) was intended to require courts to "heavily weigh" corroborating evidence, thus "effectively narrow[ing]" the rule. She proposed instead, "evidence, if any, corroborating the statement"—language the DOJ and U.S. Attorneys had supported during the drafting process. Professor Capra reported that the Advisory Committee had considered "the existence or absence of any" corroborating evidence, but were satisfied with that the word "any" in the current draft, coupled with the committee note, made sufficiently clear that "you don't have to have [corroborating evidence], but it's good to have." Judge Sessions and Professor Capra agreed to add "if any" to the published version of the proposed amendments. Another judge member asked whether the amended rule implied that the corroborating evidence must be admitted at trial; Professor Capra clarified that it did not, and will consider making that clear in the note. The Advisory Committee will continue to discuss the topic of corroborating evidence in the future.

A reporter wondered what "negative implications" removing the term "material," or equating materiality with relevance, could have for other rules. Professor Capra explained that Rule 807's use of "material," which does not appear anywhere else in the Evidence Rules, is a historical anomaly: Congress added paragraph (a)(2) when the Evidence Rules were first enacted, despite the Advisory Committee's deliberate decision not to use the word "material." Courts struggled to define the term, finally equating materiality with relevance for the purposes of Rule 807. In Professor Capra's opinion, these complications were "all the better reason to take it out."

On the subject of the notice provision, a judge member emphasized that lawyers and judges would "*vastly* prefer" the residual hearsay to be proffered before—rather than during—trial to give the court adequate time to rule on its admissibility. She suggested that the Advisory Committee make clear in the committee note that use of "the good-cause exception will be unusual or rare." Although, as Judge Sessions added, the timing of the proffer is a factor "inherent within good cause," the Advisory Committee will consider emphasizing the importance of timely notice in reducing surprise and promoting early resolution of the issue.

Two members raised issues related to deleting the requirement of the declarant's address from the notice provision. Citing privacy concerns, an academic member proposed removing the requirement of the declarant's name as well. Judge Sessions and Professor Capra felt that this would not give sufficient notice; whereas a known declarant's address is easily obtainable from other sources, the declarant would be virtually impossible to identify without a name. And in any event, a protective order can be sought in the event of security concerns. An attorney member wondered whether removing the address requirement, which forces the proponent to exercise care in confirming the declarant's identity, might create practical problems. He suggested soliciting input from attorneys as to potential unintended consequences. Professor Capra said that the Advisory Committee had already done so in the New York area and had not received any negative feedback, but will monitor the issue during the comment period. He added that the committee note makes clear that an attorney in need of an address can seek it through the court.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication in August 2017 the proposed amendments to Evidence Rule 807, subject to the modification made during the meeting.**

Information Items

Evidence Rule 801(d)(1)(A) – Audio-Visual Recordings of Prior Inconsistent Statements. Evidence Rule 801(d)(1) exempts certain out-of-court statements from the rule against hearsay—making them admissible as substantive evidence rather than for impeachment only—when the witness is present and subject to cross-examination. Prior inconsistent statements, which raise reliability concerns, are deemed "not hearsay" under Rule 801(d)(1)(A) if they were made "under penalty of perjury at a trial, hearing, or other proceeding or in a deposition."

The Advisory Committee is considering whether to expand Rule 801(d)(1)(A)'s exemption for prior inconsistent statements beyond those made under oath during a legal proceeding (see Agenda Book Tab 6A, pp. 741-42). The Advisory Committee has already rejected one approach used in some states—admitting *all* prior inconsistent statements—due to concerns that, absent more, there is no way to ensure their reliability. Instead, it is considering a more "modest," "conservative" approach: broadening Rule 801(d)(1)(A) to include prior inconsistent statements recorded audio-visually. The advantages of this approach are that the audio-visual record confirms that the statement was, in fact, made, and the possibility of using statements as substantive evidence should encourage law enforcement to record interactions with suspects. The DOJ has also proposed making prior inconsistent statements admissible substantively when the witness acknowledges having made the statement. The Advisory Committee is in the process of seeking comments from stakeholders on the practical effect of more liberal admission of prior inconsistent statements and will continue to discuss the issue.

Evidence Rule 606(b) – Juror Testimony after Peña-Rodriguez. Evidence Rule 606(b) generally prohibits jurors from testifying about "any statement made or incident that occurred during the jury's deliberations," subject to limited exceptions. On March 6, 2017, the U.S. Supreme Court held in *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017), that an analogous state rule had to yield so the trial court could consider the Sixth Amendment implications of a juror's "clear statement" that he "relied on racial stereotypes or animus to convict [the] criminal defendant." The Advisory Committee is considering whether and how to amend Evidence Rule 606(b) in light of *Peña-Rodriguez* (see Agenda Book Tab 6A, pp. 742-43).

Evidence Rule 404(b) – "Bad Acts" Evidence. The current version of Rule 404(b)(2) requires the prosecution to give reasonable notice of evidence of crimes, wrongs, or other "bad acts" that will be introduced at trial—but only if the defendant so requests. Because this requirement disproportionately affects inmates with less competent counsel, "all sides agree" that it should be revisited (see Agenda Book Tab 6A, pp. 743-44). "More controversial," especially for the DOJ, is a proposal that would require the proponent of propensity evidence to set forth in a notice the chain of inferences showing that the evidence is admissible for a permissible purpose under Rule 404(b)(2). This issue will be considered at future meetings.

Upcoming Symposium – Rule 702 and Expert Evidence. In conjunction with its fall 2017 meeting, the Advisory Committee will host a symposium on scientific and technological developments regarding expert testimony, including challenges raised in the last few years to forensic expert evidence, which might justify amending Evidence Rule 702 (see Agenda Book Tab 6A, pp. 744-45). The symposium will take place on Friday, October 27, 2017, at Boston College Law School.

Judge Sessions reminded the Standing Committee that this meeting would be his last as chair and that he would be succeeded by Judge Debra A. Livingston, a current member of the Advisory Committee. Professor Capra and the members of the Standing Committee commended Judge Sessions for his work.

LEGISLATIVE REPORT

Julie Wilson delivered the Legislative Report, which summarized RCS's efforts to track legislation implicating the federal rules. The 115th Congress has introduced a number of bills that would either directly or effectively amend the Civil Rules, Criminal Rules, and Section 2254 Rules (see Agenda Book Supplemental Materials, pp. 30-35). The Standing Committee discussed two bills that have already passed the House of Representatives, the *Lawsuit Abuse Reduction Act of 2017 ("LARA")* and the *Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017*.

CONCLUDING REMARKS

Judge Campbell thanked the Standing Committee members and other attendees for their preparation and their contributions to the discussion before adjourning the meeting. The Standing Committee will next meet on January 4-5, 2018, in Phoenix, Arizona.

Respectfully submitted,

Rebecca A. Womeldorf
Secretary, Standing Committee

TAB 4

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TAB 4A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: RULE 2002(h) (NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED)

DATE: SEPTEMBER 1, 2017

At the spring 2017 meeting, the Committee voted to propose an amendment to Rule 2002(h) that would include chapter 13 cases within its coverage. As currently written, subdivision (h) authorizes courts in chapter 7 cases to direct that notices under Rule 2002(a) (Twenty-One-Day Notices to Parties in Interest) only be given to creditors that have filed timely proofs of claim in the case or whose time to file proofs of claim has not expired. The 1983 Committee Note explains that "[a]fter the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of § 726 of the Code or Rule 3002(c)(6)." Accordingly, in order to reduce time and costs, the rule authorizes the elimination of certain notices to those creditors that do not have a stake in the case. Acting on a suggestion from Judge Scott W. Dales (Suggestion 12-BK-M), the Committee agreed that the provision should also be made applicable to chapter 13 cases, finding no reason to differentiate for these purposes between chapter 7 and chapter 13.[1]

As proposed for amendment, Rule 2002(h) would read as follows:

[1] The Committee decided that publication of the proposed amendment should be delayed until a pending amendment to Rule 3002(c), which changes the timing for filing proofs of claim, takes effect on December 1, 2017. The proposed amendment to Rule 2002(h) approved by the Committee includes the necessary timing changes.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a voluntary chapter 7 case or chapter 13 case, after ~~90~~ 70 days following the ~~first date set for the meeting of creditors under § 341 of the Code~~ order for relief under that chapter or the date of the order of conversion to a case under chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

During discussion of the proposed amendment, a question was raised as to why chapter 12 cases should not also be included within Rule 2002(h). Because no one was able to identify a reason for excluding those cases, the Subcommittee was asked to consider whether a further amendment adding chapter 12 cases to the provision should be proposed. A Committee member also suggested that if the Rule 2002(h) amendments are approved, courts should provide updated creditor mailing matrixes with non-filing creditors' names removed.

Inclusion of Chapter 12

The requirements for filing a proof of claim in a chapter 12 case are the same as the requirements in a chapter 13 case. The pending amendments to Rule 3002 (Filing Proof of Claim or Interest), like the current version of the rule, treat chapter 12 and chapter 13 cases the same. Under the amended rule, secured and unsecured creditors will have to file a proof of claim in order to have an allowed claim. And, with certain exceptions, the deadline for filing a proof of claim in both chapter 12 and chapter 13 cases will be 70 days after the order for relief. To

receive payment under the plan under either type of case, a creditor must have an allowed claim. *See* Rule 3021 (Distribution Under the Plan).

The Subcommittee concluded that because a chapter 12 creditor that fails to file a timely proof claim—just like such a creditor in a chapter 13 case—will not have a stake in the case, the rationale for eliminating the need to provide them with certain notices appears equally applicable. Furthermore, members noted, just as in a chapter 13 case, a non-filing creditor in a chapter 12 case will still receive key notices: the notice of the section 341 meeting under Rule 2002(a), the notice of the confirmation hearing under Rule 2002(b), and the notice of the confirmation order under Rule 2002(f)(7).

Concluding that there is no reason for Rule 2002(h) to treat chapter 12 and chapter 13 cases differently, **the Subcommittee recommends that in the amendment proposed for publication, ", chapter 12 case," be inserted before "or chapter 13" on line 2 of the proposed amendment and that "chapter 12 or" be inserted on line 4 before "chapter 13."** The first sentence of the amended subdivision would then read:

> (h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2).

The Committee Note—which addresses an amendment to subdivision (f) as well as the amendment to (h)—would be revised accordingly to read as follows:

Committee Note

> Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to clause (7). Subdivision (h) is amended to add cases under chapters 12 and 13 of the Bankruptcy Code and to conform the time periods in the

subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

Updating the Creditor Matrix

The Subcommittee decided that the suggestion for the creation of a truncated creditor mailing matrix after the deadline for filing proofs of claim has passed is not a matter appropriate for national rule making. The suggestion concerns the practical issue of how to implement Rule 2002(h), and the Subcommittee concluded that implementation should be left up to individual courts. Thus it recommends no additional amendment regarding that matter. It did ask, however, the clerk representative to the Committee, Mr. Gardner, to consult with the Administrative Office of the Courts about whether a truncated matrix could be produced and made available by the courts' electronic filing system.

Attachment

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: CHAPTER 13 NOTICING ISSUES

DATE: MARCH 9, 2017

The Advisory Committee received two different suggestions relating to noticing matters particular to chapter 13 cases. These suggestions are: (i) Suggestion 12-BK-B, filed by Matthew T. Loughney (Chair, Bankruptcy Noticing Working Group), concerning Bankruptcy Rule 2002(f)(7) (Other Notices) and the absence of an order confirming a chapter 13 plan from this rule; and (ii) Suggestion 12-BK-M, filed by the Honorable Scott W. Dales, concerning Bankruptcy Rule 2002(h) (Notices to Creditors Whose Claims Are Filed) and the absence of creditors in chapter 13 cases from this rule.[2] In each instance, the applicable rule includes other, arguably similar situations under other chapters of the Bankruptcy Code, but not those arising under chapter 13. For example, Rule 2002(f)(7) specifies the process for serving notices of orders confirming plans under chapters 9, 11, and 12, but not under chapter 13. Likewise, Rule 2002(h) permits the court to limit notices under Rule 2002(a) to, among others, creditors holding allowed claims in chapter 7 cases, but it does not give the court this kind of discretion in chapter 13 cases.

[2] These two suggestions initially were assigned to the Subcommittee on Business Issues in connection with the Noticing Project. After deliberations during its fall meeting, the Subcommittee on Business Issues referred the suggestions to this Subcommittee.

The Subcommittee on Consumer Issues considered these suggestions during its conference call on February 27, 2017. This Memorandum analyzes each of these suggestions in turn, providing relevant background on the pertinent issues and analyzing the reasons for and against excluding chapter 13 cases from these rules. It then summarizes the Subcommittee's deliberations on the suggestions and its recommendation to amend Rule 2002(f)(7) and Rule 2002(h) to add chapter 13 cases.

* * * * *

Suggestion Relating to Rule 2002(h)

A. *Overview of Issue*

Bankruptcy Rule 2002(h) provides an exception to the general noticing requirements set forth in Rule 2002(a). Rule 2002(a) generally requires the clerk (or some other party as directed by the court) to give "the debtor, the trustee, all creditors and indenture trustees" at least 21 days' notice by mail of certain matters in bankruptcy cases.[3] Rule 2002(h), in turn, provides:

> (h) Notices to Creditors Whose Claims are Filed. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under §341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.[4]

[3] FED. R. BANKR. P. 2002(a).
[4] FED. R. BANKR. P. 2002(h).

Suggestion 12-BK-M recommends adding chapter 13 cases to Rule 2002(h) in order to allow courts to limit notice in such cases when appropriate under the circumstances. The suggestion notes the time and cost associated with providing extensive notice in chapter 13 cases, and lawyers' desire to mitigate these expenses to the extent possible. Judge Dales explains, "For practical reasons I have been receptive to [the lawyers'] arguments, but have felt constrained by the Bankruptcy Rules as presently drafted to require notice that in many instances increases expense without increasing participation or improving decisions on the merit."[5]

B. *Analysis of Rule 2002(h) and Chapter 13 Cases*

The Committee Note to Rule 2002(h) explains, "After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of §726 of the Code or Rule 3002(c)(6)."[6] As the suggestion notes, this language of the Committee Note is "equally applicable across all chapters."[7] The Committee Note does not indicate why the rule is limited to chapter 7 cases.

In a chapter 13 case, as in a chapter 7 case, a creditor must file a proof of claim in order to have an allowed claim against the bankruptcy estate.[8] Moreover, Rule 3002(c), which applies to chapter 7, 12, and 13 cases, requires a creditor to file a proof of claim, "not later than 90 days after the first date set for the meeting of creditors."[9] Rule 3002(c) does include several exceptions to the filing deadline, but the current language of Rule 2002(h) accounts for at least two of these exceptions. Specifically, Rule 2002(h) provides, in relevant part, "the court may

[5] *See* Suggestion 12-BK-M.
[6] FED. R. BANKR. P. 2002(h), Committee Note.
[7] *See* Suggestion 12-BK-M.
[8] FED. R. BANKR. P. 3002(a).
[9] FED. R. BANKR. P. 3002(c).

direct that all notices required by subdivision (a) of this rule be mailed only to … creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2)."[10] Moreover, any limitation under Rule 2002(h) is discretionary with the court, which allows the court to consider the circumstances of any given case.

C. *Potential Responses to the Suggestion*

The suggestion to limit notices in chapter 13 cases under Rule 2002(h) is consistent with several other suggestions submitted to the Advisory Committee that focus on the purpose of notices in bankruptcy cases, the interests of parties required to be served with notices, and the costs associated with that service.[11] As referenced above, permitting the clerk and other parties to serve papers, including notices, in bankruptcy cases electronically would likely mitigate significantly the costs imposed by bankruptcy noticing. This would include the notices required by Rule 2002(a). Accordingly, the Advisory Committee could defer action, or take no action, on Rule 2002(h) on the grounds that potential action by the Advisory Committee to endorse broader use of electronic notices will ease costs and burdens associated with noticing multiple parties in chapter 13 cases.

Alternatively, the Advisory Committee may still find value in allowing courts to limit notice in chapter 13 cases under Rule 2002(h), particularly if the Advisory Committee recommends adding chapter 13 confirmation orders to Rule 2002(f)(7). If chapter 13 is added to Rule 2002(f)(7), all creditors would receive not only the notice of the confirmation hearing under Rule 2002(b), but also notice of the confirmation order under Rule 2002(f)(7). These notices, in addition to the notice of the section 341 meeting under Rule 2002(a), arguably provide creditors

[10] FED. R. BANKR. P. 2002(h).
[11] *See generally* Noticing Memorandum.

who do not file proofs of claim adequate notice of the bankruptcy case and an opportunity to be heard in the case.[12] The amendment of Rule 2002(f)(7) and Rule 2002(h) to add chapter 13 cases may work together to enhance efficiency in chapter 13 noticing.

The Subcommittee's Deliberations

The Subcommittee reviewed the language of Rule 2002(f)(7) and the Advisory Committee's previous consideration of this particular issue. Members tried to identify potential justifications for excluding chapter 13 cases from the provision identifying the parties to receive notice of a confirmation order. They were not able to articulate any meaningful grounds for continuing the exclusion and agreed that chapter 13 cases should be included in the language of Rule 2002(f)(7).

The Subcommittee then considered the potential application of Rule 2002(h) to chapter 13 cases. Members walked through the various scenarios that might occur in a chapter 13 case after the claims bar date or confirmation order that would warrant notice to all creditors, even those not holding allowed claims. Members generally agreed that most instances would be covered by the notices under Rules 2002(b), (e), and (f), which are served on all creditors and not limited by Rule 2002(h). They also recognized that Rule 2002(h) provides for exceptions relating to the filing of the claim itself. On balance, the Subcommittee determined that the cost and time savings generated by limiting notices under Rule 2002(h) in both chapter 7 and chapter 13 cases supported an amendment.

In discussing this potential amendment to Rule 2002(h), the Subcommittee highlighted the need to amend that section once the pending amendments to Rule 3002 (Filing of Proof of

[12] The limitation imposed by Rule 2002(h) applies only to notices under Rule 2002(a) and only to notices under that rule transmitted after the section 341 meeting and the deadline for filing proofs of claim.

Claim or Interest) become effective. The Subcommittee agreed that the amendments discussed in this Memorandum to Rule 2002 should be proposed with an amendment addressing the changes necessitated by amended Rule 3002. Accordingly, the Subcommittee recommends that the Advisory Committee approve the following amendments to Rule 2002, but hold these amendments until amended Rule 3002 becomes effective:[13]

> **Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief Is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee**
>
> ***
>
> **(f) Other notices**
>
> Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:
>
> ***
>
> **(7)** entry of an order confirming a chapter 9, 11, 12, or 13 plan;
>
> ***
>
> **(h) Notices to creditors whose claims are filed**
>
> In a voluntary chapter 7 case or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order of conversion to a case under chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that

[13] A marked version of Rule 2002, with the proposed amendments, is attached at Appendix A.

are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

Committee Note

Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to clause (7).

Subdivision (h) is amended to add cases under chapter 13 of the Bankruptcy Code and to conform the time periods in the subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

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TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: INSTRUCTIONS AUTHORIZING ALTERATIONS TO FORMS

DATE: SEPTEMBER 1, 2017

Amendments to Rule 9009 that will go into effect on December 1, 2017, restrict authority to make alterations to Official Forms. The amended rule provides as a general matter that "[t]he Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration." This amendment is being made in order to ensure that forms such as the Chapter 13 Plan Form (Official Form 113) and the Mortgage Proof of Claim Attachment (Official Form 410A), which are intended to provide information in a particular order and format, are not altered.

Rule 9009, as amended, does provide certain exceptions to the general rule. First, minor alterations that do not affect wording or the order of presenting information are permitted, and the rule provides specific examples of that type of change. Second, alterations to a particular form may be authorized by "these rules, . . . a particular Official Form, or . . . the national instructions for a particular Official Form." These exceptions were included in the rule in response to comments from clerks, judges, and lawyers that Official Forms are sometimes tailored to implement local rules and practices and to reduce the burden of providing multiple notices.

With the approach of the effective date of amended Rule 9009, several court officials have contacted the Administrative Office of the Courts to inquire about whether they will be able to add information to or otherwise alter certain Official Forms. In response Scott Myers has

drafted instructions for the following forms that specify the types of alternations that may be made and by whom:

- Official Form 103A (Application for Individuals to Pay the Filing Fee in Installments),
- Official Form 103B (Application to Have the Chapter 7 Filing Fee Waived),
- Official Forms 309(A-I) (Case Noticing Forms),
- Official Form 312 (Order and Notice for Hearing on Disclosure Statement),
- Official Form 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof),
- Official Form 314 (Ballot for Accepting or Rejecting Plan),
- Official Form 315 (Order Confirming Plan),
- Official Form 318 (Discharge of Debtor – Chapter 7), and
- Official Form 420A (Notice of Motion or Objection).

These national instructions follow in the agenda book. During the conference call on August 22, **the Subcommittee voted to recommend that the Advisory Committee approve them.**

Mr. Myers has also drafted a Table of Authorities Permitting Alterations to Official Bankruptcy Forms (labeled "Form 1"), which is also included in the agenda materials that follow. After providing information about Rule 9009 and the circumstances in which it permits alterations to Official Forms, the document includes a table that describes alterations that are permitted by national instructions, a table that describes alterations that are permitted by a Bankruptcy Rule, and two tables that list the Official Bankruptcy Forms and the Director's Forms. The Subcommittee thought that this would be helpful information for form users.

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Form 1 (12/17)
Table of Authorities Permitting Alterations to Official Bankruptcy Forms

GENERAL INFORMATION

Bankruptcy Rule 9009 governs the use of forms in bankruptcy cases and proceedings. The rule provides for two types of forms: Official Bankruptcy Forms (which are designated by 3 digits) and Director's Bankruptcy Forms (which are designated by 4 digits).

The use of Official Bankruptcy Forms is required with certain exceptions, and the ability to modify Official Forms is limited. As stated in the rule:

> The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form.

This document lists permitted alterations.

> Table 1 describes alterations that are permitted to certain Official Forms by the National Instructions for the form.
>
> Table 2 describes alterations that are permitted to certain Official Forms by a Bankruptcy Rule.

In addition, some Official Forms indicate on their face that specified types of alterations may be made to them.

In contrast to Official Bankruptcy Forms, the use of Director's Bankruptcy Forms is permissive. Director's Forms have been created by the Administrative Office of the United States Courts for the benefit of bankruptcy case participants and may be modified to fit the needs of the user. Local Courts sometimes *require* the use of a particular Director's Forms, however, and limit modifications to such forms, or base their local forms on Director's Forms. So users should check the rules and forms section of the website where the case is filed to ensure that use of particular Director's Forms is permitted in that court.

> Table 3A lists Official Bankruptcy Forms, and Table 3B lists Director's Bankruptcy Forms.

Current copies of all bankruptcy forms are available on the courts' public website here. (The list of forms can also be found by going to www.uscourts.gov and navigating through the appropriate links, or by searching for "bankruptcy forms" in the search box).

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TABLE 1 – Alterations Permitted by National Instructions

Official Form	**Alteration Permitted by National Instructions**
103A (Application for Individuals to Pay the Filing Fee in Installments)	"This form includes a proposed order for use by the court in considering the application. The court may modify the form of the order or use its own version of the order." *Instructions – Bankruptcy Forms for Individuals, page 37.*
103B (Application to Have the Chapter 7 Filing Fee Waived)	"This form includes a proposed order for use by the court in considering the application. The court may modify the form of the order or use its own version of the order." *Instructions – Bankruptcy Forms for Individuals, page 37.*
309A-I (Case Noticing Forms)	"Courts, or, in the event that the noticing function has been delegated, the individual or entity providing notice, may modify this form by adding additional information."
312 (Order and Notice for Hearing on Disclosure Statement)	"Alterations may be made to this form."
313 (Order Approving Disclosure Statement)	"Alterations may be made to this form."
314 (Ballot for Accepting or Rejecting Plan)	"Alterations may be made to this form."
315 (Order Confirming Plan)	"Alterations may be made to this form."
318 (Discharge of Debtor – Chapter 7)	"Alterations may be made to this form."
420A (Notice of Motion or Objection)	"Alterations may be made to this form in accordance with local court rules."

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TABLE 2 – Alterations Permitted by Bankruptcy Rules

Official Form	**Alteration Permitted by Rule**
410 (Proof of Claim)	Bankruptcy Rule 3001(a): "A proof of claim shall conform substantially to the appropriate Official Form."
416D (Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor)	Bankruptcy Rule 7010: "Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form."
417A (Notice of Appeal and Statement of Election)	Bankruptcy Rule 8003(a)(3): "The notice of appeal must:(A) conform substantially to the appropriate Official Form. . . . ." Bankruptcy Rule 8005(a)(1): "FILING OF A STATEMENT OF ELECTION. To elect to have an appeal heard by the district court, a party must: (1) file a statement of election that conforms substantially to the appropriate Official Form; … ."
417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements)	Bankruptcy Rule 8015(a)(7)(C)(ii): "The certification requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form."
420B (Notice of Objection to Claim)	Rule 3007. Objections to Claims (a)(1): "An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing."
425A (Plan of Reorganization for Small Business under Chapter 11)	Bankruptcy Rule 3016(d): "Standard Form Small Business Disclosure Statement and Plan. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court . . . ."
425B (Disclosure Statement for Small Business under Chapter 11)	Bankruptcy Rule 3016(d): "Standard Form Small Business Disclosure Statement and Plan. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court . . . ."

TABLE 3A – OFFICIAL BANKRUPTCY FORMS

FORM NO.	FORM NAME
101	Voluntary Petition for Individuals Filing for Bankruptcy
101A	Initial Statement About an Eviction Judgment Against You (individuals)
101B	Statement About Payment of an Eviction Judgment Against You (individuals)
103A	Application for Individuals to Pay the Filing Fee in Installments
103B	Application to Have the Chapter 7 Filing Fee Waived
104	For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders
105	Involuntary Petition Against an Individual
106 Declaration	Declaration About an Individual Debtor's Schedules
106 Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information (individuals)
106A/B	Schedule A/B: Property (individuals)
106C	Schedule C: The Property You Claim as Exempt (individuals)
106D	Schedule D: Creditors Who Hold Claims Secured By Property (individuals)
106E/F	Schedule E/F: Creditors Who Have Unsecured Claims (individuals)
106G	Schedule G: Executory Contracts and Unexpired Leases (individuals)
106H	Schedule H: Your Codebtors (individuals)

106I	Schedule I: Your Income (individuals)
106J	Schedule J: Your Expenses (individuals)
106J-2	Schedule J-2: Expenses for Separate Household of Debtor 2 (individuals)
107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy (individuals)
108	Statement of Intention for Individuals Filing Under Chapter 7
119	Bankruptcy Petition Preparer's Notice, Declaration and Signature
121	Your Statement About Your Social Security Numbers
122A-1	Chapter 7 Statement of Your Current Monthly Income
122A-1Supp	Statement of Exemption from Presumption of Abuse Under §707(b)(2)
122A-2	Chapter 7 Means Test Calculation
122B	Chapter 11 Statement of Your Current Monthly Income
122C-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period
122C-2	Chapter 13 Calculation of Your Disposable Income
201	Voluntary Petition for Non-Individuals Filing for Bankruptcy
201A	Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11
202	Declaration Under Penalty of Perjury for Non-Individual Debtors

204	For Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders (non-individuals)
205	Involuntary Petition Against a Non-Individual
206 Summary	A Summary of Your Assets and Liabilities (non-individuals)
206A/B	Schedule A/B: Property (non-individuals)
206D	Schedule D: Creditors Who Hold Claims Secured By Property (non-individuals)
206E/F	Schedule E/F: Creditors Who Have Unsecured Claims (non-individuals)
206G	Schedule G: Executory Contracts and Unexpired Leases (non-individuals)
206H	Schedule H: Your Codebtors (non-individuals)
207	Statement of Your Financial Affairs (non-individuals)
309A	Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline (For Individuals or Joint Debtors)
309B	Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set (For Individuals or Joint Debtors)
309C	Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline Set (For Corporations or Partnerships)
309D	Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set (For Corporations or Partnerships)
309E	Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)
309F	Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships)

309G	Notice of Chapter 12 Bankruptcy Case (For Individuals or Joint Debtors)
309H	Notice of Chapter 12 Bankruptcy Case (For Corporations or Partnerships)
309I	Notice of Chapter 13 Bankruptcy Case
312	Order and Notice for Hearing on Disclosure Statement
313	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof
314	Ballot for Accepting or Rejecting Plan
315	Order Confirming Plan
318	Discharge of Debtor in a Chapter 7 Case
401	Petition for Recognition of Foreign Proceeding
410	Proof Of Claim
410A	Proof Of Claim, Attachment A
410S-1	Proof Of Claim, Supplement 1
410S-2	Proof Of Claim, Supplement 2
416A	Caption
416B	Caption (Short Title)
416D	Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor
417A	Notice Of Appeal And Statement Of Election

417B	Optional Appellee Statement Of Election To Proceed In District Court
417C	Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)
420A	Notice of Motion or Objection
420B	Notice of Objection to Claim
423	Certification About a Financial Management Course
424	Certification to Court of Appeals
425A	Plan of Reorganization for Small Business under Chapter 11
425B	Disclosure Statement for Small Business under Chapter 11
425C	Monthly Operating Report for Small Business under Chapter 11
426	Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest
427	Cover Sheet for Reaffirmation Agreement

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Form 1 (12/17)

TABLE 3B – DIRECTOR'S BANKRUPTCY FORMS

FORM NO.	FORM NAME
1040	Adversary Proceeding Cover Sheet
1310	Exemplification Certificate
1320	Application For Search of Bankruptcy Records
1330	Claims Register
2000	Required Lists, Schedules, Statements, and Fees
2010	Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy
2020	Statement of Military Service
2030	Disclosure of Compensation of Attorney For Debtor
2040	Notice of Need to File Proof of Claim Due to Recovery of Assets
2050	Notice to Creditors and Other Parties in Interest
2060	Certificate of Commencement of Case
2070	Certificate of Retention of Debtor in Possesion
2100A	Transfer of Claim Other Than For Security
2100B	Notice of Transfer of Claim Other Than for Security
2300A	Order Confirming Chapter 12 Plan

2300B	Order Confirming Chapter 13 Plan
2310A	Order Fixing Time to Object to Proposed Modfication of Confirmed Chapter 12 Plan
2310B	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan
2400A	Reaffirmation Documents
2400A/B ALT	Reaffirmation Agreement
2400B	Motion For Approval of Reaffirmation Agreement
2400C	Order on Reaffirmation Agreement
2400C ALT	Order on Reaffirmation Agreement (Alt.)
2500A	Summons in an Adversary Proceeding
2500B	Summons and Notice of Pretrial Conference in an Adversary Proceeding
2500C	Summons and Notice of Trial in an Adversary Proceeding
2500D	Third-Party Summons
2500E	Summons to Debtor in Involuntary Case
2500F	Summons in a Chapter 15 Case Seeking Recognition of a Foreign Nonmain Proceeding
2530	Order For Relief in an Involuntary Case
2540	Subpoena For Rule 2004 Examination

2550	Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case (or Adversary Proceeding)
2560	Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding)
2570	Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises ina Bankruptcy Case (or Adversary Proceeding)
2600	Entry of Default
2610A	Judgment by Default - Clerk
2610B	Judgment by Default - Judge
2610C	Judgment in an Adversary Proceeding
2620	Notice of Entry of Judgment
2630	Bill of Costs
2640	Writ of Execution to the United State Marshal
2650	Certification of Judgment for Registration in Another District
2700	Notice of Filing of Final Report of Trustee
2710	Final Decree
2800	Disclosure of Compensation of Bankruptcy Petition Preparer
2810	Appearance of Child Support Creditor or Representative
2830	Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)

3130S	Order Conditionally Approving Disclosure Statement
3150S	Order Approving Disclosure Statement and Confirming Plan
3180F	Chapter 12 Discharge
3180FH	Chapter 12 Hardship Discharge
3180RI	Individual Chapter 11 Discharge
3180W	Chapter 13 Discharge
3180WH	Chapter 13 Hardship Discharge
4011A	General Power of Attorney
4011B	Special Power of Attorney
4100N	Notice of Final Cure Payment
4100R	Response to Notice of Final Cure Payment

Instructions

Bankruptcy Forms for Individuals

U.S. Bankruptcy Court | December 2015 (Rev. December 2017)

About this Booklet of Instructions

This booklet provides instructions for completing selected forms that individuals filing for bankruptcy must submit to the U.S. Bankruptcy Court. You can download all of the required forms without charge from: http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx.

The instructions are designed to accompany the forms and are intended to help you understand what information is required to properly file. You are responsible for properly completing the forms. These instructions are not intended to provide, and should not be understood to provide, legal advice. They are not designed to fully explain, or to be relied upon in interpreting, the law.

Completing the forms is only a part of the bankruptcy process. You are strongly encouraged to hire a qualified attorney not only to help you complete the forms but also to give you general advice about bankruptcy and to represent you in your bankruptcy case. If you cannot afford to pay an attorney, you might qualify for free legal services if they are provided in your area. Contact your state or local bar association for help in obtaining free legal services or in hiring an attorney.

Note: It is extremely difficult to succeed in a chapter 11, 12, or 13 case without an attorney.

If an attorney represents you, you must provide information so the attorney can prepare your forms. Once the attorney prepares the forms, you must make sure that the forms are accurate and complete. These instructions may help you perform those tasks. If you are filing for bankruptcy without the help of an attorney, this booklet tells you which forms must be filed and provides information about them.

You should carefully read this booklet and keep it with your records. Review the individual forms as you read the instructions for each.

Although bankruptcy petition preparers can help you type the bankruptcy forms, they cannot tell you how to complete the forms, they cannot file the documents for you, and they cannot give you legal advice. Court employees cannot give you legal advice, either.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

About the bankruptcy forms and filing bankruptcy

Use the forms that are numbered in the 100 series to file bankruptcy for individuals or married couples. Use the forms that are numbered in the 200 series if you are preparing a bankruptcy on behalf of a nonindividual, such as a corporation, partnership, or limited liability company (LLC). Sole proprietors must use the forms that are numbered in the 100 series.

When a bankruptcy is filed, the U.S. Bankruptcy Court opens a case. It is important that the answers to the questions on the forms be complete and accurate so that the case proceeds smoothly. A person filing bankruptcy who gives false information could be charged with a federal crime or could lose all the benefits of filing for bankruptcy.

You should understand that filing a bankruptcy case is not private. Anyone has a right to see your bankruptcy forms after you file them, unless the court orders otherwise under 11 U.S.C. § 107. Certain information in court filings, however, must be protected from public disclosure under Bankruptcy Rule 9037.

Understand the terms used in the forms

The forms for individuals use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors.

For example, if a form asks, "Do you own a car?" the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the forms use *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

To understand other terms used in the forms and the instructions, see the *Glossary* at the end of this booklet.

Things to remember when filling out these forms

- Do not file these instructions with the bankruptcy forms that you file with the court.
- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to the form. On the top of any additional pages, write your name and case number (if known). Also identify the form and line number to which the additional information applies.
- If two married people are filing together, both are equally responsible for supplying correct information.
- Do not list a minor child's full name. Instead, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Bankruptcy Rule 1007(m) and 9037.
- For your records, be sure to keep a copy of your bankruptcy documents and all attachments that you file.

On what date was a debt incurred?

When a debt was incurred on a single date, fill in the actual date that the debt was incurred.

When a debt was incurred on multiple dates, fill in the range of dates. For example, if the debt is from a credit card, fill in the month and year of the first and last transaction.

About the Process for Filing a Bankruptcy Case for Individuals

Before you file your bankruptcy case

Before you file for bankruptcy, you must do several things:

- **Receive a briefing about credit counseling from an approved agency** within 180 days before you file. (If you and your spouse are filing together, each of you must receive a briefing before you file. Failure to do so may result in the dismissal of your case.) You may have a briefing about credit counseling one-on-one or in a group, by telephone, or by internet.

  For a list of approved providers, go to: http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm

  In Alabama and North Carolina, go to: http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx.

  After you finish the briefing, you will receive a certificate that you will need to file in your bankruptcy case.

- **Find out in which bankruptcy court you must file your bankruptcy case**. It is important that you file in the correct district within your state. To find out which district you are in, go to: http://www.uscourts.gov/courtlinks

- **Check the local court's website** for any specific local requirements that you might have to meet. Go to: http://www.uscourts.gov/courtlinks

- **Find out which chapters of the Bankruptcy Code you are eligible for**. For descriptions of each chapter, review the information contained in the notice, *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010), which is included in this booklet.

When you file your bankruptcy case

There are several forms and documents that you must give the court at the time you file. Additional forms and documents must be filed no later than 14 days after you file your bankruptcy case, although they may be filed at the same time you file your case.

You must file the forms listed below on the date you open your bankruptcy case. For copies of the forms listed here, go to http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx. (The list continues on the next page.):

- *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). This form opens the case. Directions for filling it out are included in the form itself.
- *Statement About Your Social Security Numbers* (Official Form 121). This form gives the court your full Social Security number or federal Individual Taxpayer Identification number. To protect your privacy, the court will make only the last four digits of your number known to the general public. However, the court will make your full number available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case. This form has no separate instructions.
- Your filing fee. If you cannot pay the entire filing fee, you must also include:
  - *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A), or
  - *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B). Use this form only if you are filing under chapter 7 and you meet the criteria to have the chapter 7 filing fee waived.
- A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file. (Your court may call this a *creditor matrix* or *mailing matrix*.)
- Your credit counseling certificate from an approved credit counseling agency. (See *Before you file your bankruptcy case*, above). If you have received the briefing about credit counseling but have not yet received the certificate, file it no later than 14 days after you file for bankruptcy. If you have not already received the briefing and believe you are entitled to a temporary waiver from receiving it or that you are not required to receive the briefing, see line 15 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).
- *For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* (Official Form 104). Fill out this form only if you file under chapter 11.
- *Initial Statement About an Eviction Judgment Against You* (Official Form 101A) and *Statement About Payment of an Eviction Judgment Against You* (Official Form 101B). Use Form 101A if your landlord has an eviction judgment against you. If you complete Form 101A and you want to stay in your residence for the first 30 days after you file, you must indicate that on the form. Use Form 101B if you have completed Form 101A and you want to stay in your rented residence form more than 30 days after you file for bankruptcy.
- *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119) and *Disclosure of Compensation of Bankruptcy Petition Preparer* (Form 2800). Use these forms

if a bankruptcy petition preparer typed your forms.

When you file your bankruptcy case or within 14 days after you file

You must file the forms listed below either when you file your bankruptcy case or within 14 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). If you do not do so, your case may be dismissed. Although it is possible to open your case by submitting only the documents that are listed under *When you file your bankruptcy case*, you should file the entire set of forms at one time to help your case proceed smoothly.

Although some forms may ask you similar questions, you must fill out all of the forms completely to protect your legal rights.

The list below shows the forms that all individuals must file as well as the forms that are specific to each chapter. For copies of the official forms listed here, go to http://www.uscourts.gov.

All individuals who file for bankruptcy must file these forms and the forms for the specific chapter:

- ❑ *Schedules of Assets and Liabilities* (Official Form 106) which includes these forms:
  - ❑ *Schedule A/B: Property* (Official Form 106A/B)
  - ❑ *Schedule C: The Property You Claim as Exempt* (Official Form 106C)
  - ❑ *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D)
  - ❑ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)
  - ❑ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G)
  - ❑ *Schedule H: Your Codebtors* (Official Form 106H)
  - ❑ *Schedule I: Your Income* (Official Form 106I)
  - ❑ *Schedule J: Your Expenses* (Official Form 106J)

- ❑ *Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106Sum). This form gives an overview of the totals on the schedules

- ❑ *Declaration About an Individual Debtor's Schedules* (Official Form 106Dec)

- ❑ *Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)

- ❑ *Disclosure of Compensation to Debtor's Attorney* — Unless local rules provide otherwise, Director's Form 2030 may be used.

- ❑ Credit counseling certificate that you received from an approved credit counseling agency

- ❑ Copies of all payment advices (*pay stubs*) or other evidence of payment that you received within 60 days before you filed your bankruptcy case. Some local courts may require that you submit these documents to the trustee assigned to your case rather than filing them with the court. Check the local court's website to find out if local requirements apply. Go to http://www.uscourts.gov/courtlinks.

If you file under chapter 7, you must also file:

- ❑ *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 108)
- ❑ *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1)
- ❑ If necessary, *Chapter 7 Means Test Calculation* (Official Form 122A-2)
- ❑ If necessary, *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp)

If you file under chapter 11, you must also file:

- ❑ *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122-B)

If you file under chapter 11 and are a small business debtor (that is, if you are self-employed and your debts are less than $2,566,050*), within 7 days after you file your bankruptcy forms to open your case, you must also file your most recent:

- ❑ Balance sheet
- ❑ Statement of operations
- ❑ Cash-flow statement
- ❑ Federal income tax return

If you do not have these documents, you must file a statement made under penalty of perjury that you have not prepared either a balance sheet, statement of operations, or cash-flow statement or you have not filed a federal tax return.

If you file under chapter 11, you must file additional documents beyond the scope of these instructions. You should consult your attorney.

* Subject to adjustment on 4/01/19, and every 3 years after that for cases begun on or after the date of adjustment.

If you file under chapter 12, you must also file:

- ❑ Chapter 12 Plan (within 90 days after you file your bankruptcy forms to open your case)

If you file under chapter 13, you must also file:

- ❑ *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1)
- ❑ If necessary, *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C-2)
- ❑ *Chapter 13 Plan* (Official Form 113, if in effect). If Official Form 113 is not effective when you file, many bankruptcy courts require you to use a local form plan. Check the local court's website for any specific form that you might have to use. Go to http://www.uscourts.gov/courtlinks.)

Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

This notice is for you if:

You are an individual filing for bankruptcy, and

Your debts are primarily consumer debts. *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

The types of bankruptcy that are available to individuals

Individuals who meet the qualifications may file under one of four different chapters of the Bankruptcy Code:

- Chapter 7 — Liquidation
- Chapter 11— Reorganization
- Chapter 12— Voluntary repayment plan for family farmers or fishermen
- Chapter 13— Voluntary repayment plan for individuals with regular income

You should have an attorney review your decision to file for bankruptcy and the choice of chapter.

Chapter 7: Liquidation

	$245	filing fee
	$75	administrative fee
+	$15	trustee surcharge
	$335	total fee

Chapter 7 is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

However, if the court finds that you have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge.

You should know that even if you file chapter 7 and you receive a discharge, some debts are not discharged under the law. Therefore, you may still be responsible to pay:

- most taxes;
- most student loans;
- domestic support and property settlement obligations;

- most fines, penalties, forfeitures, and criminal restitution obligations; and
- certain debts that are not listed in your bankruptcy papers.

You may also be required to pay debts arising from:

- fraud or theft;
- fraud or defalcation while acting in breach of fiduciary capacity;
- intentional injuries that you inflicted; and
- death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A–1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to complete the other chapter 7 form, the *Chapter 7 Means Test Calculation* (Official Form 122A–2).

If your income is above the median for your state, you must file a second form —the *Chapter 7 Means Test Calculation* (Official Form 122A–2). The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called *exempt property*. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold.

Exemptions are not automatic. To exempt property, you must list it on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 11: Reorganization

	$1,167	filing fee
+	$550	administrative fee
	$1,717	total fee

Chapter 11 is often used for reorganizing a business, but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Chapter 12: Repayment plan for family farmers or fishermen

	$200	filing fee
+	$75	administrative fee
	$275	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

Chapter 13: Repayment plan for individuals with regular income

	$235	filing fee
+	$75	administrative fee
	$310	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors.

After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include:

- domestic support obligations,
- most student loans,
- certain taxes,
- debts for fraud or theft,
- debts for fraud or defalcation while acting in a fiduciary capacity,
- most criminal fines and restitution obligations,
- certain debts that are not listed in your bankruptcy papers,
- certain debts for acts that caused death or personal injury, and
- certain long-term secured debts.

Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to: http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Bankruptcy crimes have serious consequences

- If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.
- All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). If you are filing a joint case, both spouses must receive the briefing. With limited exceptions, you must receive it within the 180 days ***before*** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. If you are filing a joint case, both spouses must complete the course.

You can obtain the list of agencies approved to provide both the briefing and the instructional course from: http://justice.gov/ust/eo/hapcpa/ccde/cc_approved.html.

In Alabama and North Carolina, go to: http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx.

If you do not have access to a computer, the clerk of the bankruptcy court may be able to help you obtain the list.

Instructions for Selected Forms

Schedule A/B: Property (Official Form 106A/B)

Schedule A/B: Property (Official Form 106A/B) lists property interests that are involved in a bankruptcy case. All individuals filing for bankruptcy must list everything they own or have a legal or equitable interest in. *Legal or equitable interest* is a broad term and includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

The information in this form is grouped by category and includes several examples for many items. Note that those examples are meant to give you an idea of what to include in the categories. They are not intended to be complete lists of everything within that category. Make sure you list everything you own or have an interest in.

You must verify under penalty of perjury that the information you provide is complete and accurate. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Understand the terms used in this form

Community property — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Current value — In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and, for this form, is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth, which may be more or less than when you purchased the property. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Report the current value of the portion you own

For each question, report the current value of the portion of the property that you own. To do this, you would usually determine the current value of the entire property and the percentage of the property that you own. Multiply the current value of the property by the percentage that you own. Report the result where the form asks for *Current value of the portion you own*. For example:

- If you own a house by yourself, you own 100% of that house. Report the entire current value of the house.
- If you and a sister own the house equally, report 50% of the value of the house (or half of the value of the house).

In certain categories, current value may be difficult to figure out. When you cannot find the value from a reputable source (such as a pricing guide for your car), estimate the value and be prepared to explain how you determined it.

List items once on this form

List items only once on this form; do not list them in more than one category. List all real estate in Part 1 and other property in the other parts of the form.

Where you list similar items of minimal value (such as clothing), add the value of the items and report a total.

Be specific when you describe each item. If you have an item that you think could fit into more than one category, select the most suitable category and list the item there.

Separately describe and list individual items worth more than $500.

Match the values to the other schedules

Make sure that the values you report on this form match the values you report on *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D) and *Schedule C: The Property You Claim as Exempt* (Official Form 106C).

Schedule C: The Property You Claim as Exempt
(Official Form 106C)

How exemptions work

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt* property. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. For property to be considered exempt, you must list the property on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

You may unnecessarily lose property if you do not claim exemptions to which you are entitled. You are strongly encouraged to hire a qualified attorney to advise you.

Determine which set of exemptions you will use

Before you fill out this form, you must learn which set of exemptions you can use. In general, exemptions are determined on a state-by-state basis. Some states permit you to use the exemptions provided by the Bankruptcy Code. 11 U.S.C. § 522.

The Bankruptcy Code provides that you use the exemptions in the law of the state where you had your legal home for 730 days before you file for bankruptcy. Special rules may apply if you did not have the same home state for 730 days before you file.

You may lose property if you do not use the best set of exemptions for your situation.

If your spouse is filing with you and you are filing in a state in which you may choose between state and federal sets of bankruptcy exemptions, you both must use the same set of exemptions.

Claiming exemptions

Using the property and values that you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list on this form the property that you claim as exempt.

Listing the amount of each exemption

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances, the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

Listing which laws apply

In the last column of the form, you must identify the laws that allow you to claim the property as exempt. If you have questions about exemptions, consult a qualified attorney.

Schedule D: Creditors Who Have Claims Secured by Property (Official Form 106D)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Creditors may have different types of claims:

- **Secured claims**. Report these on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D).
- **Unsecured claims**. Report these on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

If your debts are not paid, a creditor with a secured claim may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many creditors' claims have a specific amount, which you do not dispute. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list the claims of all your creditors in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. For example, if you cosigned someone else's note, you may not have to pay unless that other person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been determined.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, if a bill collector demands payment for a bill you believe you already fully paid, you may describe the claim as disputed.

A single claim can have one, more than one, or none of these characteristics.

On *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D), list all creditors who have a claim that is secured by your property.

Do not leave out any secured creditors

In alphabetical order (as much as possible), list anyone who has judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests against your property. When listing creditors who have secured claims, be sure to include all of them. For example, include the following:

- Your relatives or friends who have a lien or security interest in your property;
- Car or truck lenders, stores, banks, credit unions, and others who made loans to enable you to finance the purchase of property and who have a lien against that property;
- Anyone who has a mortgage or deed of trust on real estate that you own;
- Contractors or mechanics who have liens on property you own because they did work on the property and were not paid;
- Someone who won a lawsuit against you and has a judgment lien;
- Another parent or a government agency that has a lien for unpaid child support;
- Doctors or attorneys who have liens on the outcome of a lawsuit;
- Federal, state, or local government agencies such as the IRS that have tax liens against property for unpaid taxes; and
- Anyone who is trying to collect a secured debt from you, such as collection agencies and attorneys.

List the debt in Part 1 only once and list any others that should be notified about that debt in Part 2. For example, if a collection agency or an attorney is trying to collect from you for a debt you owe to someone else, list the person to whom you owe the debt in Part 1, and list the collection agency in Part 2. If you are not sure who the creditor is, list the person you are paying in Part 1 and list anyone else who has contacted you about this debt in Part 2.

If a creditor's full claim is more than the value of your property securing that claim—for instance, a car loan in an amount greater than the value of the car—the creditor's claim may be partly secured and partly unsecured. In that situation, list the claim only once on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D). Do not repeat it on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F). List a creditor in *Schedule D* even if it appears that there is no value to support that creditor's secured claim.

Determine the unsecured portion of secured claims

To determine the amount of a secured claim, compare the amount of the claim to the value of your portion of the property that supports the claim. If that value is greater than the amount of the claim, then the entire amount of the claim is secured. But if that value is less than the amount of the claim, the difference is an *unsecured portion*. For example, if the outstanding balance of a car loan is $10,000 and the car is worth $8,000, the car loan has a $2,000 unsecured portion.

If there is more than one secured claim against the same property, the claim that is entitled to be paid first must be subtracted from the property value to determine how much value remains for the next claim.

For example, if a home worth $300,000 has a first mortgage of $200,000 and a second mortgage of $150,000, the first mortgage would be fully secured, and there would be $100,000 of property value for the second mortgage, which would have an unsecured portion of $50,000.

	$300,000	value of a home
-	$200,000	first mortgage
	$100,000	remaining property value
	$150,000	second mortgage
-	$100,000	remaining property value
	$ 50,000	unsecured portion of second mortgage

Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 106E/F)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Use *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F) to identify everyone who has an unsecured claim against you when you file your bankruptcy petition, unless you have already listed them on *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D).

Creditors may have different types of claims:

- **Secured claims**. Report these on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D).
- **Unsecured claims**. Report these on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many creditors' claims have a specific amount, which you do not dispute. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list the claims of all your creditors in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. For example, if you cosigned someone else's note, you may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, if a bill collector demands payment for a bill you believe you already fully paid, you may describe the claim as disputed.

A single claim can have one, more than one, or none of these characteristics.

Creditors with unsecured claims do not have liens on or other security interests in your property. Secured creditors have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

Do not leave out any unsecured creditors

List all unsecured creditors in each part of the form in alphabetical order as much as possible. Even if you plan to pay a creditor, you must list that creditor. When listing creditors who have unsecured claims, be sure to include all of them. For instance, include the following:

- Your relatives or friends to whom you owe money;
- Your ex-spouse, if you are still obligated under a divorce decree or settlement agreement to pay joint debts;
- A credit card company, even if you intend to fully pay your credit card bill;
- A lender, even if the loan is cosigned;
- Anyone who has a loan or promissory note that you cosigned for someone else;
- Anyone who has sued or may sue you because of an accident, dispute, or similar event that has occurred; or
- Anyone who is trying to collect a debt from you such as a bill collector or attorney.

Unsecured claims could be priority or nonpriority claims

What are priority unsecured claims?

In bankruptcy cases, *priority unsecured claims* are those debts that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common priority unsecured claims are certain income tax debts and past due alimony or child support. Priority unsecured claims include those you owe for:

- **Domestic support obligations**—If you owe domestic support to a spouse or former spouse; a child or the parent, legal guardian, or responsible relative of a child; or a governmental unit to whom such a domestic support claim has been assigned.
  11 U.S.C. § 507(a)(1).
- **Taxes and certain other debts you owe the government**—If you owe certain federal, state, or local government taxes, customs duties, or penalties.
  11 U.S.C. § 507(a)(8).
- **Claims for death or personal injury that you caused while you were intoxicated—**If you have a claim against you for death or personal injury that resulted from your unlawfully operating a motor vehicle or vessel while you were unlawfully intoxicated from alcohol, drugs, or another substance. This priority does not apply to claims for property damage.
  11 U.S.C. § 507(a)(10).

- **Other:**

  - **Deposits by individuals**—If you received money from someone for the purchase, lease, or rental of your property or the use of your services but you never delivered or performed. For the debt to have priority, the property or services must have been intended for personal, family, or household use (only the first $2,850* per person is a priority debt). 11 U.S.C. § 507(a)(7).

  - **Wages, salaries, and commissions**—If you owe wages, salaries, and commissions, including vacation, severance, and sick leave pay and those amounts were earned within 180 days before you filed your bankruptcy petition or ceased business. In either instance, only the first $12,850* per claim is a priority debt. 11 U.S.C. § 507(a)(4).

  - **Contributions to employee benefit plans**—If you owe contributions to an employee benefit plan for services an employee rendered within 180 days before you file your bankruptcy petition, or within 180 days before your business ends. Count only the first $12,850* per employee, less any amounts owed for wages, salaries, and commissions. 11 U.S.C. § 507(a)(5).

* Subject to adjustment on 4/01/19, and every 3 years after that for cases begun on or after the date of adjustment.

What are nonpriority unsecured claims?

Nonpriority unsecured claims are those debts that generally will be paid after priority unsecured claims are paid. The most common examples of nonpriority unsecured claims are credit card bills, medical bills, and educational loans.

What if a claim has both priority and nonpriority amounts?

If a claim has both priority and nonpriority amounts, list that claim in Part 2 and show both priority and nonpriority amounts. Do not list it again in Part 3.

In Part 3, list all of the creditors you have not listed before. You must list every creditor that you owe, regardless of the amount you owe and even if you plan to pay a particular debt. If you do not list a debt, it may not be discharged.

What is needed for statistical purposes?

For statistical reasons, the court must collect information about some specific categories of unsecured claims.

The categories for priority unsecured claims are:

- **Domestic support obligations**
- **Taxes and certain other debts you owe the government**
- **Claims for death or personal injury that you caused while you were intoxicated**

The categories for nonpriority unsecured claims are:

- **Student loans—**If you owe money for any loans that you used to pay for your education;
- **Obligations arising out of a separation agreement or divorce that you did not report as priority claims—**If you owe debts for separation or divorce agreements or for domestic support and you did not report those debts in Part 2; and
- **Debts to pension or profit-sharing plans and other similar debts**—If you owe money to a pension or profit-sharing plan.

Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G)

Use *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G) to identify your ongoing leases and certain contracts. List all of your executory contracts and unexpired leases.

Executory contracts are contracts between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended.

You must list all agreements that may be executory contracts or unexpired leases, even if they are listed on *Schedule A/B: Property* (Official Form 106A/B), including the following:

- Residential leases (for example, a rental agreement for a place where you live or vacation, even if it is only a verbal or month-to-month arrangement);
- Service provider agreements (for example, contracts for cell phones and personal electronic devices);
- Internet and cable contracts;
- Vehicle leases;
- Supplier or service contracts (for example, contracts for lawn care or home alarm or security systems);
- Timeshare contracts or leases;
- Rent-to-own contracts;
- Employment contracts;
- Real estate listing agreements;
- Contracts to sell a residence, building, land, or other real property;
- Equipment leases;
- Leases for business or investment property;
- Supplier and service contracts for your business;
- Copyright and patent license agreements; and
- Development contracts.

Schedule H: Your Codebtors (Official Form 106H)

If you have any debts that someone else may also be responsible for paying, these people or entities are called *codebtors*. Use *Schedule H: Your Codebtors* (Official Form 106H) to list any codebtors who are responsible for any debts you have listed on the other schedules.

To help fill out this form, use both *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D) and *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

List all of your codebtors and the creditors to whom you owe the debt. For example, if someone cosigned for the car loan that you owe, you must list that person on this form.

If you are filing a joint case, do not list either spouse as a codebtor.

Other codebtors could include the following:

- Cosigner;
- Guarantor;
- Former spouse;
- Unmarried partner;
- Joint contractor; or
- Nonfiling spouse—even if the spouse is not a cosigner—where the debt is for necessities (such as food or medical care) if state law makes the nonfiling spouse legally responsible for debts for necessities.

Schedule I: Your Income (Official Form 106I)

In *Schedule I: Your Income* (Official Form 106I), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

How to report employment and income

If you have nothing to report for a line, write $0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a non-filing spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

One easy way to calculate how much income per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid seasonally, you would simply divide the amount you expect to earn in a year by 12 to get the monthly amount

Below are other examples of how to calculate monthly amount.

Example for weekly payments:

If you are paid $1,000 every week, figure your monthly income in this way:

	$1,000	income every week
X	52	number of pay periods in the year
	$52,000	total income for the year

$52,000 (*income for year*) = $4,333 monthly income
12 (number of months in year)

Example for bi-weekly payments:

If you are paid $2,500 every other week, figure your monthly income in this way:

	$2,500	income every other week
X	26	number of pay periods in the year
	$65,000	total income for the year

$65,000 (income for year) = $5,417 monthly income
12 (number of months in year)

Example for daily payments:

If you are paid $75 a day and you work about 8 days a month, figure your monthly income in this way:

	$75	income a day
X	96	days a year
	$7,200	total income for the year

$7,200 (income for year) = $600 monthly income
12 (number of months in year)

or this way:

	$75	income a day
X	8	payments a month
	$600	income for the month

Example for quarterly payments:

If you are paid $15,000 every quarter, figure your monthly income in this way:

	$15,000	income every quarter
X	4	pay periods in the year
	$60,000	total income for the year

$60,000 (income for year) = $5,000 (number of months in year)
12 monthly income

Example for irregular payments:

If you are paid $4,000 8 times a year, figure your monthly income in this way:

	$4,000	income a payment
X	8	payments a year
	$32,000	income for the year

$32,000 (income for year) = $2,667 monthly income
12 (number of months in year)

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule J: Your Expenses*. For example, if you and a person to whom you are not married pay all household expenses together and you list all your joint household expenses on Schedule J, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on Schedule J. Do not list on line 11 contributions that you already disclosed elsewhere on the form.

Note that the income you report on *Schedule I* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1) all use a different definition of income and apply that definition to a different period of time. *Schedule I* asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

If, after filing Schedule I, you need to file an estimate of income in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental Schedule I. To do so you must check the "supplement" box at the top of the form and fill in the date.

Schedule J: Your Expenses (Official Form 106J and 106J-2)

Schedule J: Your Expenses (Official Form 106J) provides an estimate of the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule I: Your Income* (Official Form 106I).

If you are married and are filing individually, include your non-filing spouse's expenses unless you are separated.

If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, Debtor 2 must complete and include *Schedule J-2: Expenses for Separate Household of Debtor 2* (Official Form 106J-2).

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule I*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate's contribution to household expenses in line 11 of *Schedule I*, you would list only your share of these expenses on *Schedule J*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule I*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule I* (line 8a).

If you have nothing to report for a line, write $0.

If, after filing *Schedule J*, you need to file an estimate of expenses in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental *Schedule J*. To do so you must check the "supplement" box at the top of the form and fill in the date.

Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106Sum)

When you file for bankruptcy, you must summarize certain information from the following forms:

- *Schedule A/B: Property* (Official Form 106A/B)
- *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D)
- *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)
- *Schedule I: Your Income* (Official Form 106I)
- *Schedule J: Your Expenses* (Official Form 106J)
- *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B), or *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1)

After you fill out all of the forms, complete *Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106Sum) to report the totals of certain information that you listed in the forms.

If you are filing an amended version of any of these forms at some time after you file your original forms, you must fill out a new *Summary* to ensure that your information is up to date and you must check the box at the top.

Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107)

Your Statement of Financial Affairs for Individuals Filing for Bankruptcy, provides a summary of your financial history over certain periods of time before you file for bankruptcy. If you are an individual in a bankruptcy case, you must fill out this statement.
11 U.S.C. § 521(a) and Bankruptcy Rule 1007(b)(1).

If you are in business as a sole proprietor, partner, family farmer, or self-employed professional, you must provide the information about all of your business and personal financial activities.

Although this statement may ask you questions that are similar to some questions on the schedules, you must fill out all of the forms completely to protect your legal rights.

Understand the terms used in this form

Legal equivalent of a spouse — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation (Official Forms 122A–1, 122A-1Supp, and 122A–2)

If you are filing under chapter 11, 12, or 13, do not fill out this form.

Official Forms 122A–1 and 122A–2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors an amount that, under the Bankruptcy Code, would be a sufficient portion of their claims.

You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form122A–1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

Similarly, *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) determines whether you may be exempted from the presumption of abuse because you do not have primarily consumer debts or because you have provided certain military or homeland defense services. If one of these exemptions applies, you should file a supplement, Form 122A-1Supp, and verify the supplement by completing Part 3 of Form 122A-1. If you qualify for an exemption, you are not required to fill out any part of Form 122A-1 other than the verification. If the exemptions do not apply, you should complete all of the parts of Form 122A-1 and file it without the supplemental form.

If you and your spouse are filing together, you and your spouse may file a single Form 122A-1. However, if an exemption on Form122A-1Supp applies to only one of you, separate forms may be required. 11 U.S.C. § 707(b)(2)(C).

If your completed Form 122A-1 shows income above the median, you must file the second form, *Chapter 7 Means Test Calculation* (Official Form 122A –2). The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse the bankruptcy system. Rather, the presumption simply means that you are presumed to have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another

chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write $0.

Information for completing the forms

To fill out several lines of the forms, you must look up information provided on websites or from other sources. For information to complete line 13 of Form 122A-1 and lines 6-15, 30, and 36 of Form 122A-2, go to: www.justice.gov/ust/eo/bapcpa/meanstesting.htm

If your case is filed in Alabama or North Carolina, the administrative expense multiplier mentioned at line 36 can be found at: www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/AdministrativeExpensesMultiplier.aspx .

For the *Bankruptcy Basics* information referred to on line 36 of Form 122A-2, go to: www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx.

If you do not have a computer with internet access, you may be able to use a public computer at the bankruptcy clerk's office or at a public library.

Chapter 11 Statement of Your Current Monthly Income (Official Form 122B)

If you are filing under chapter 7, 12, or 13, do not fill out this form.

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B) if you are an individual filing for bankruptcy under chapter 11.

If you have nothing to report for a line, write $0.

Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income
(Official Forms 122C–1 and 122C–2)

If you are filing under chapter 7, 11, or 12, do not fill out this form.

Official Forms 122C─1 and 122C─2 determine the commitment period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C─1) if you are an individual and you are filing under chapter 13. This form will report your current monthly income and determine whether your income is at or below the median income for households of the same size in your state. If your income is equal to or less than the median, you will not have to fill out the second form. Form 122C-1 also will determine your applicable *commitment period*─the time period for making payments to your creditors, unless the court orders otherwise.

If your income is above the median, you must file the second form, *Chapter13 Calculation of Your Disposable Income* (Official Form 122C─2). The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

Generally, if you and your spouse are filing together, you should file one statement together.

Information for completing the forms

To fill out several lines of the forms, you must look up information provided on websites or from other sources. For information to complete line 16c of Form 122C-1 and lines 6-15, 30, and 36 of Form 122C-2, go to: www.justice.gov/ust/eo/bapcpa/meanstesting.htm.

If your case is filed in Alabama or North Carolina, the administrative expense multiplier mentioned at line 36 can be found at: www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/AdministrativeExpensesMultiplier.aspx .

If you do not have a computer with internet access, you may be able to use a public computer at the bankruptcy clerk's office or at a public library.

Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 108)

If you are filing under chapter 11, 12, or 13, do not fill out this form.

If you are an individual filing under chapter 7, you must fill out the *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 108) if:

- creditors have claims secured by your property, or
- you have leased personal property and the lease has not expired.

The Bankruptcy Code requires you to state your intentions about such claims and provides for early termination of the automatic stay as to personal property if the statement is not timely filed. The same early termination of the automatic stay applies to any unexpired lease of personal property unless you state that you intend to assume the unexpired lease if the trustee does not do so.

To help fill out this form, use the information you have already provided on the following forms:

- *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D),
- *Schedule C: The Property You Claim as Exempt* (Official Form 106C), and
- *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G).

Explain what you intend to do with your property that is collateral for a claim

If you have property that is collateral (or security) for a claim, you must state what you intend to do with that property.

You may choose either to surrender the property to the creditor, or retain the property. Below is more information about each of these options.

You may surrender the property to the creditor. If you surrender the property to the creditor, your bankruptcy discharge will protect you from any claim for the difference between what you owe the creditor and what the creditor receives from a sale of the property, unless the court determines that the debt is nondischargeable.

You may want to retain the property. If you want to retain your secured personal property, you may be able to reaffirm the debt, redeem the property, or take other action (for example, avoid a lien using 11 U.S.C. § 522(f)).

- **You may be able to reaffirm the debt.** You may decide to remain legally obligated to pay a debt so that you can keep the property securing the debt. This is called *reaffirming a debt*. You may reaffirm the debt in full on its original terms or you and the creditor may agree to change the terms. For example, if you want to keep your car, you may reaffirm a car loan, stating that you will continue to make monthly payments for it. **Only reaffirm those debts that you are confident you can repay.** You may seek to reaffirm the debt if you sign a *Reaffirmation Agreement*, which is a contract between you and a creditor, and

you follow the proper procedure for the *Reaffirmation Agreement.* 11 U.S.C. § 524. The procedure is explained in greater detail in the Disclosures that are part of the reaffirmation documents.

- **You may be able to redeem your property.** 11 U.S.C. § 722. You can redeem property only if all of the following apply:
  - ❑ The property secures a debt that is a *consumer debt* ─ you incurred the debt primarily for personal, family, or household use.
  - ❑ The property is *tangible personal property* ─ the property is physical, such as furniture, appliances, and cars.
  - ❑ You are either claiming the property as exempt or the trustee has abandoned it.

  To obtain court authorization to redeem your property, you must file a motion with the court. If the court grants your motion, you pay the creditor the value of the property or the amount of the claim, whichever is less. The payment will be a single lump-sum payment.

Explain what you intend to do with your leased personal property

If you lease personal property such as your car, you may be able to continue your lease if the trustee does not assume the lease. To continue your lease, you can write to the lessor that you want to assume your lease. The creditor may, at its option, notify you that it is willing to have you assume the lease and may condition the assumption on cure of any outstanding default. If the lessor notifies you that it is willing to have you assume the lease, you must write to the lessor within 30 days stating that you assume the lease. 11 U.S.C. § 365(p)(2).

File the *Statement of Intention* before the deadline

You must file this form either within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier. You must also deliver copies of this statement to the creditors and lessors you listed on the form. Bankruptcy Rule 1007(b)(2).

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Application for Individuals to Pay the Filing Fee in Installments (Official Form 103A)

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee. See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119); include a copy of it when you file this application.

This form includes a proposed order for use by the court in considering the application. The court may modify the form of the order or use its own version of the order.

Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B)

The fee for filing a bankruptcy case under chapter 7 is $335. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

For your fee to be waived, all of these statements must be true:

- You are filing for bankruptcy under chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to http://www.uscourts.gov.)
- You cannot afford to pay the fee in installments.

Your family includes you, your spouse, and any dependents listed on *Schedule I.* Your family may be different from your *household*, referenced on *Schedules I* and *J*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119); include a copy of it when you file this application.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A/B: Property* (Official Form 106A/B)
- *Schedule I: Your Income* (Official Form 106I)
- *Schedule J: Your Expenses* (Official Form 106J)

This form includes a proposed order for use by the court in considering the application. The court may modify the form of the order or use its own version of the order.

For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders (Official Form 104)

If you are filing under chapter 7, 12, or 13, do not fill out this form.

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. If you are an individual filing for bankruptcy under chapter 11, you must fill out *For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* (Official Form 104).

Creditors may have different types of claims:

- Secured claims, or
- Unsecured claims.

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. If a creditor has security interest in your property, but the value of the property available to pay the creditor is less than the amount you owe the creditor, the creditor has both a secured and an unsecured claim against you. The amount of the unsecured claim is the total claim minus the value of the property that is available to pay the creditor.

Generally, creditors with unsecured claims do not have rights against specific property, or the specific property in which the creditor has rights is not worth enough to pay the creditor in full. For example, if you owe a creditor $30,000 for your car and the creditor has a security interest in your car but the car is worth only $20,000, the creditor has a $20,000 secured claim and a $10,000 unsecured claim.

	$30,000	Total amount you owe creditor
–	$20,000	Amount your car is worth (amount of secured claim)
	$10,000	Amount of unsecured claim

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must include such claims when listing your 20 largest unsecured claims on this list.

Claims may be contingent, unliquidated, or disputed.

The form asks you to identify claims that are:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the amount has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you do not agree that you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

On this form, list the creditors with the 20 largest unsecured claims who are not insiders

You must file this form when you file your chapter 11 bankruptcy case with the court.

When you list the 20 largest unsecured creditors, include all unsecured creditors, except for the following two types of creditors, even if you plan to pay them. Do not include:

- Anyone who is an *insider*. *Insiders* include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101(31).
- Secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Make sure that all of the creditors listed on this form are also listed on either *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D) or *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

On the form, you will fill in what the claim is for. Examples include trade debts, bank loans, professional services, and government contracts.

Glossary

Definitions of Some Terms Used in the Forms for Individuals Filing for Bankruptcy

Here are definitions of some of the important terms used in the forms for individuals who are filing for bankruptcy. See *Bankruptcy Basics* (www.uscourts.gov/FederalCourts) for more information about filing for bankruptcy and other important terms you should know. These definitions are intended only to provide guidance. They are not a substitute for legal advice.

Annuity — A contract for the periodic payment of money to you, either for life or for a number of years.

Bankruptcy petition preparer — A person or business, other than a lawyer or someone who works for a lawyer, that charges a fee to prepare bankruptcy documents. Under your direction and control, the bankruptcy petition preparer generates bankruptcy forms for you to file by typing them. Because they are not attorneys, they cannot give legal advice or represent you in bankruptcy court. Also called *typing services*.

Business debt — A debt that you incurred to obtain money for a business or investment or incurred through the operation of the business or investment.

Claim — A creditor's right to payment, even if contingent, disputed, unliquidated, or unmatured.

Codebtor — A person or entity that may also be responsible for paying a claim against the debtor.

Collateral — Specific property subject to a lien from which a creditor may be paid ahead of other creditors without liens on that property. Includes a mortgage, security interest, judgment lien, statutory lien, or other lien.

Community property — A type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Consumer debt — A debt you incurred primarily for a personal, family, or household purpose.

Contingent claim — A debt you are not obligated to pay unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

Creditor matrix or mailing matrix — A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file.

Creditor — A person or organization to whom you owe money or who claims that you owe it money.

Current value, fair market value, or value — The amount property is worth, which may be more or less than when you purchased the property. Absent specific instruction, the value should be the price that could be realized from a cash sale or liquidation without duress within a reasonable time. See the instructions for specific forms regarding whether the value requested is as of the date of the filing of the petition, the date you complete the form, or some other date.

Debtor 1 — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse. The same person retains this designation in all of the forms.

Debtor 2 — A second person in a married couple who is filing a bankruptcy case with a spouse.

Dependent — A person who is economically dependent on you regardless of whether the person can be claimed as a dependent on your federal tax return. However, *Chapter 7 Means Test Calculation* (Official Form 122A-2) and *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C-2) use the term in a more limited way. See the instructions on those forms.

Discharge — A discharge in bankruptcy relieves you after your bankruptcy case is over from having to pay debts that you owed before you filed your bankruptcy case. Most debts are covered by the discharge, but not all. (The instruction booklet explains more about common debts that are not discharged in bankruptcy.) Only your personal liability is removed by the discharge.

Disputed claim — A debt you do not agree that you owe. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

Eviction judgment — A judgment for possession that your landlord has obtained in an eviction, unlawful detainer action, or similar proceeding.

Executory contract — A contract between you and someone else in which both of you still have obligations to perform under the contract at the time you file for bankruptcy.

Exempt property — Property, or the value of a portion of it, that the law allows you to keep for your use rather than surrender it for the payment of your debts, provided that you follow the correct procedure to claim the exemption.

Garnishment — A procedure by which a creditor can reach money of yours that is in the hands of a third party to satisfy a debt. Garnishments are sometimes used by creditors to obtain money from your wages or bank account.

Individual debtor — A human being who is filing for bankruptcy either alone or with a spouse, whether or not the individual owns a business.

Joint case — A single case filed by a married couple.

Judgment lien — A lien that arises as a result of a judgment against you.

Legal equivalent of a spouse — A person recognized by applicable nonfederal law as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Legal or equitable interest — A broad term that includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

Negotiable instrument — A financial instrument that you can transfer to someone by signing or delivering it, including personal checks, cashiers' checks, promissory notes, and money orders.

Non-individual debtor — A debtor that is not a human being – for example, an artificial entity such as a corporation, partnership, or limited liability company (LLC).

Non-negotiable instrument — A financial instrument that you cannot transfer to someone by signing or delivering it.

Nonpriority unsecured claim — A debt that generally will be paid after priority unsecured claims are paid. The most common examples are credit card bills, medical bills, and educational loans.

Payment advice — A statement such as a pay stub or earnings statement from your employer that shows all earnings and deductions from your pay.

Presumption of abuse — A rebuttable legal presumption that you have too much income after allowed expenses to be granted relief under chapter 7.

Priority unsecured claim — A debt that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common examples are certain income tax debts and past due alimony or child support.

Property you own — Includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Reaffirming a debt — Agreeing to repay a debt that would otherwise be discharged by entering into a new written agreement with the creditor. A reaffirmation agreement may allow you to keep property that a creditor has the right to take from you because it secures the debt being reaffirmed. For a reaffirmation agreement to be effective, there are many procedural and legal requirements that must be satisfied during the bankruptcy case.

Secured claim — A claim that may be satisfied in whole or in part either

- by a charge against or an interest in specific property of the debtor, or
- by a right of setoff.

Common examples of creditors who have secured claims are lenders from your car, your home, or your furniture.

Sole proprietorship — A business you own as an individual that is not a separate legal entity such as a corporation, partnership, or LLC. Sole proprietors must use the bankruptcy forms that are numbered in the 100 series.

Statutory lien — A lien that arises as a result of a statute.

Unexpired lease —A lease that is in effect at the time you filed for bankruptcy.

Unliquidated claim — A debt with an amount cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been determined.

Unsecured claim — A claim held by a creditor who does not have security interest in or other lien on your property or a right of setoff.

You — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

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Instructions, Form 309(A-I)
December 1, 2017

NOTICE OF BANKRUPTCY CASE

General Information

Official Form 309 is used to give notice to creditors, equity security holders, and other interested parties of the filing of the bankruptcy case, the time, date, and location of the meeting of creditors, the time for filing various documents in the case, instructions for filing proofs of claim, and other information concerning the case.

Official Form 309 consists of several variations, numbered 309A through 309I, created to meet the specialized notice requirements for cases filed under chapters 7, 11, 12, and 13 of the Bankruptcy Code. The form to be used is determined by the chapter under which the bankruptcy petition was filed, the type of debtor (Individual or Joint Debtor, or Corporation or Partnership Debtor) and whether a proof of claim deadline is included. The versions of Official Form 309 are listed below:

309A (For Individuals or Joint Debtors), Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline
309B (For Individuals or Joint Debtors), Notice of Chapter 7 Bankruptcy Case –Proof of Claim Deadline Set
309C (For Corporations of Partnerships), Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline
309D (For Corporations of Partnerships), Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set
309E (For Individuals or Joint Debtors), Notice of Chapter 11 Bankruptcy Case
309F (For Corporations of Partnerships), Notice of Chapter 11 Bankruptcy Case
309G (For Individuals or Joint Debtors), Notice of Chapter 12 Bankruptcy Case
309H (For Corporations of Partnerships), Notice of Chapter 12 Bankruptcy Case
309I Notice of Chapter 13 Bankruptcy Case

Generally, the clerk will complete this form and mail (or transmit electronically) a copy to the creditors and other entities whose names and addresses appear on the mailing list or matrix filed by the debtor. Sometimes, the court delegates the noticing function to a chapter 13 trustee or, in a large chapter 11 case, to the debtor or a private notice provider.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Courts, or, in the event that the noticing function has been delegated, the individual or entity providing notice, may modify this form by adding additional information.

Instructions, Form 312
December 1, 2017

ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT

General Information

Official Form 312 is used in chapter 9 municipality cases and chapter 11 reorganization cases to provide certain parties in interest with an order and notice of a hearing to consider the approval of the disclosure statement. The disclosure statement is a document that contains information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor holding a claim or interest to make an informed judgment about the plan of reorganization. 11 U.S.C. § 1125.

This form, while legally sufficient, is often simply the starting point for drafting a longer notice containing additional provisions applicable to a particular case. Although issued in the name of the court, the Order and Notice for Hearing on Disclosure Statement normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before to being sent to creditors and other parties in interest.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form.

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ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, COMBINED WITH NOTICE THEREOF

General Information

Official Form 313 is used in chapter 11 reorganization cases to provide certain parties in interest with notice of the court's approval of the disclosure statement, their opportunity to file acceptances or rejections of the plan, and an order and notice of a hearing to consider the approval of the plan of reorganization.

This form, while legally sufficient for its purpose, is often simply a starting point for the drafting of a longer notice containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof normally will be drafted by the attorney for the debtor or other plan proponent. It must be approved by the court before being sent to creditors and other parties in interest.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form.

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Instructions, Form 314
December 1, 2017

Ballot for Accepting or Rejecting Plan of Reorganization

General Information

Official Form 314 is used as a ballot for accepting or rejecting the plan(s) of reorganization. The ballot is to be used by general creditors (including secured, priority unsecured, and nonpriority unsecured creditors), bondholders, debenture holders, other debt security holders, and equity security holders who are entitled to vote on the plan(s).

Directions

Directions or blanks for the proponent (the person who filed the disclosure statement and plan of reorganization) to complete the text of the ballot are enclosed in brackets on the Official Form. Only the applicable language from the alternatives shown on the Official Form should be included in the ballot, but the ballot may be modified to the particular requirements of the case. The form is designed to be customized by the proponent so that each class of creditor, debt security holder, or equity security holder under the plan will receive a ballot that only applies to that class. Holders of claims or equity security interests in more than one class may receive, and are entitled to vote, more than one ballot.

If more than one plan of reorganization is to be voted upon, the form of the ballot should be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. *See* 11 U.S.C. § 1129(c).

The portion of the text labeled "Acceptance or Rejection of the Plan" includes three versions of a statement to be completed by persons entitled to vote on the plan. One version is for holders of secured, priority, or unsecured nonpriority claims. The second version is for holders of bonds, debentures, or other debt securities. The third version is for holders of equity interests. The proponent should include only the applicable language for the person receiving the ballot.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form.

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ORDER CONFIRMING PLAN

General Information

Official Form 315 is used in chapter 11 cases to confirm a plan of reorganization. This form, while legally sufficient for its purpose is often simply a starting point for the drafting of a longer order containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Confirming Plan normally will be drafted by the attorney for the debtor or other plan proponent. The additional provisions in a proposed confirmation order are subject to objection and may be the focus of extensive negotiation among the parties in interest. All provisions in the order also are further subject to approval by the judge.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form.

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DISCHARGE OF THE DEBTOR – CHAPTER 7

General Information

The discharge is a court order that grants a discharge of debts to the person named as the debtor. Official Form 318 covers only an individual or joint debtor(s) in a chapter 7 case. There are other procedural forms issued by the Director of the Administrative Office of the United States Courts for use in cases filed in chapter 12 and chapter 13 cases.

The effect of a discharge order is to free the debtor of any personal liability for most debts that arose before the bankruptcy case was filed. It is not a dismissal of the case, and it does not determine how much money, if any, the trustee will pay to creditors. The clerk will prepare the order of discharge in the case.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form.

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NOTICE OF MOTION OR OBJECTION

General Information

Official Form 420A, Notice of Motion or Objection, is intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in bankruptcy cases. Previously, some courts have given such explanations better than others. The form is intended to make bankruptcy proceedings more fair, equitable, and efficient by aiding parties, who sometimes do not have counsel, in understanding the applicable rules.

The form is not intended to dictate the specific procedures to be used by different bankruptcy courts. The form contains optional language that can be used or adapted, depending on local procedures.

Applicability of Rule 9009(a)

Rule 9009(a) provides that "[t]the Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided … in the national instructions for a particular Official Form."

Alterations may be made to this form in accordance with applicable local court rules.

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TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTION REGARDING RULE 2013

DATE: SEPTEMBER 1, 2017

The Advisory Committee has received a suggestion from Kevin P. Dempsey, Clerk of the Bankruptcy Court for the Southern District of Indiana. The Suggestion (17-BK-A) questions whether there is a need any longer for Rule 2013 (Public Record of Compensation Awarded to Trustees, Examiners, and Professionals). Mr. Dempsey proposes that the Committee consider substantially modifying the rule to eliminate its requirements that the clerk maintain a public record of awarded fees and make an annual summary available to the public and the United States trustee.

Part I of this memorandum discusses the Suggestion in greater detail, and Part II provides background information about the history and purpose of Rule 2013. Part III then discusses further research that the Subcommittee believes should be undertaken before deciding whether to propose an amendment to Rule 2013.

I. The Suggestion

Rule 2013(a) requires the clerk to maintain a public record of all fees awarded by the court to (1) trustees; (2) attorneys and other professionals employed by trustees; and (3) examiners.[1] The record must identify each case in which fees were awarded and indicate for each case who received the fees and in what amount. Subdivision (b) requires the clerk annually to prepare a summary of the record by individual or firm name, indicating the total fees each was

[1] Rule 2013(a) says that the requirements do not apply to debtors in possession, and the Committee Note says that the rule is inapplicable to standing trustees in chapter 13 cases.

awarded during the year. The summary must be made available without charge to the public, and a copy of it must be transmitted to the U.S. trustee.

Mr. Dempsey says, based on his experience and discussions with other clerks, that compliance with Rule 2013 "is spotty." He states that during his 17 years in the U.S. trustee's office, such a report was never submitted to the office, nor was it ever requested. And during his 10 years as clerk, he says, no one has ever requested to see the Rule 2013 record.

Mr. Dempsey suggests that CM/ECF has replaced the need for the type of record that the rule calls for. Information about fee awards is available electronically, and reports can be generated on demand. He says that his office would provide such a report without charge to anyone who asked. To ensure that all courts would follow a similar practice, he proposes that, rather than being abrogated, Rule 2013 be amended to require the clerk to make information about fees awarded to professionals available upon request, perhaps with a limit on the time period covered by the report. He suggests that the information might be expanded to include fees awarded all professionals, including those employed by chapter 11 debtors in possession.

II. The Background and Purpose of Rule 2013

The original Committee Note to Rule 2013 states that its purpose "is to prevent what Congress has defined as 'cronyism.'" The Committee Note goes on to explain as follows:

> Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. . . . This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute [the Bankruptcy Code] is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

FED. R. BANKR. P. 2013 advisory committee's note (1983); *see also In re* Smith, 524 B.R. 689, 699 (Bankr. S.D. Tex. 2015) (noting Rule 2013's purpose of preventing cronyism). The Collier treatise adds that the reports under the rule "are intended for use by the United States trustee in ensuring against disproportionate employment or compensation of some professionals." 9 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 2013.03 (16th ed. 2017).

While there is very little case law concerning Rule 2013, in one recent opinion Judge Christopher Klein, writing for all of the bankruptcy judges in the Eastern District of California, includes information about fees awarded to chapter 7 trustees in the district during the year 2013. He says that the data is drawn from public records maintained by the clerk under Rule 2013. *In re* Scoggins, 517 B.R. 206, 209 (Bankr. E.D. Cal. 2014) (en banc); *see also In re* Hutter, 221 B.R. 632, 638-39 (Bankr. D. Conn. 1998) (noting the clerk's responsibility under Rule 2013 to keep records of trustee compensation).

III. The Subcommittee's Discussion

Members of the Subcommittee noted Rule 2013's goal of providing transparency regarding compensation in the bankruptcy courts and expressed reluctance to amend or abrogate the rule without having a record to support such a decision. Before deciding whether the Suggestion should be pursued, the Subcommittee wants to gather more information about current compliance with Rule 2013. Mr. Dempsey asserts that it is spotty, but a more systematic survey of districts might reveal otherwise. The Subcommittee has therefore asked Dr. Molly Johnson of the Federal Judicial Center to survey bankruptcy clerks regarding their compliance and experience with Rule 2013. She will also seek information from a group of bankruptcy scholars to determine the extent to which information reported under Rule 2013 is useful for research purposes. The Subcommittee will look further to information provided by Ramona Elliott

regarding U.S. trustees' need for and use of the summary report mandated by Rule 2013(b).

The Subcommittee anticipates obtaining this information and being in a position to make a recommendation to the Committee at the spring 2018 meeting.

TAB 6B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTION TO ADD "PROPORTIONALITY" TO RULE 2004(c)

DATE: SEPTEMBER 5, 2017

Rule 2004 provides for the examination of debtors and other entities regarding a broad range of issues relevant to the bankruptcy case. Under subdivision (c) of the rule, the attendance of the witness and the production of documents may be compelled by means of a subpoena. The Business Law Section of the American Bar Association, on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process ("ABA Committee"), has submitted a suggestion (17-BK-B) that Rule 2004(c) be amended to specifically impose a proportionality limitation on the scope of the production of documents and electronically stored information ("ESI").

The Subcommittee discussed the Suggestion during its August 1 conference call. For the reasons discussed below, **it recommends that the Committee propose for publication an amendment to Rule 2004(c) that would include the proportionality factors listed in Civil Rule 26(b)(1) and one additional factor, as well as additional amendments to conform the rule to the current version of the subpoena rules—Civil Rule 45 and Bankruptcy Rule 9016.**

The Suggestion

The Suggestion arises out of a project undertaken by the ABA Committee on the discovery of ESI in bankruptcy cases. It suggests that a sentence be added to the end of Rule 2004(c) so that the subdivision would read as follows:

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending. Proportionality considerations apply to a request for the production of documents or electronically stored information in connection with a Rule 2004 examination.

The ABA Committee's report in support of the Suggestion begins with the observation that "[o]ne of the fundamental principles in evaluating discovery requests in connection with electronically stored information (ESI) is the principle of 'proportionality.'" The report states that proportionality is especially important with regard to the preservation and production of ESI in bankruptcy cases to ensure that the costs to the party being examined are not excessive in light of (1) "'the significance, financial and otherwise, of the matter in dispute and the need for the production of ESI in the matter'" or (2) "'the resources and sophistication of the debtor, the significance of the matter to which the ESI relates, and the amount or value of the property at issue.'" Suggestion 17-BK-B at 5-6 (quoting *Best Practices Report on Electronic Discovery Issues (ESI) in Bankruptcy Cases*, BUS. LAW. 1116-17, 1121-22, 1126 (Aug. 2013)). The importance of proportionality, the report says, was underscored by the 2015 amendments to the Federal Rules of Civil Procedure, which added proportionality as a factor in determining the scope of discovery under Rule 26(b)(1).

The ABA Committee's report acknowledges that courts have generally recognized a broad scope of permissible examination under Rule 2004, often referring to the rule as allowing a "fishing expedition." But, the report notes, courts have also stated that the scope of examination is not without limits. They have observed that the examination may not exceed the scope

specified by Rule 2004(b) and that good cause for the examination must be found in light of all the circumstances of the case.

The report then proceeds to argue that proportionality, although not expressly referred to in Rule 2004, is already a factor to be taken into account regarding the production of documents under Rule 2004(c). That provision authorizes the compulsion of attendance and production of documents under Rule 9016. Rule 9016, in turn, makes Civil Rule 45 (Subpoena) applicable in bankruptcy cases. Rule 45(d)(1) and (d)(3)(A) state the need to avoid imposing an undue burden or expense on the witness, and Rule 45(e)(1)(D) requires the consideration of the limitations in Rule 26(b)(2)(C) when the court orders the discovery of ESI that is not reasonably accessible. Rule 26(b)(2)(C) requires, among other things, that the court limit discovery that exceeds the scope permitted by Rule 26(b)(1), and that provision requires that discovery be "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

The ABA Committee suggests that, to eliminate any ambiguity, the relevance of proportionality under Rule 2004(c) should be made explicit, and for that reason it proposes the additional sentence at the end of subdivision (c). It notes that its proposed amendment would also introduce a reference to "electronically stored information" to the rule, just as has been done to the civil discovery rules.

The Suggestion is limited to adding proportionality considerations to production of documents and ESI. The ABA Committee report says that whether proportionality should apply to the Rule 2004 examination itself should be left to courts to decide on a case-by-case basis.

Two documents are attached to the Suggestion. The first is an opinion by Judge Bernstein in *In re* SunEdison, Inc., 562 B.R. 243 (Bankr. S.D.N.Y. 2017), in which he states that, although Rule 2004 has not been amended like Civil Rule 26(b)(1), "the spirit of proportionality is consistent with the historic concerns regarding the burden on the producing party and is relevant to the determination of cause [under Rule 2004(c)]." *Id.* at 250. Applying that principle, he denies much of the applicant's request for the production of documents, including ESI, in connection with a Rule 2004 examination.

The other document is an email message from Judge Christopher Klein (Bankr. E.D. Cal.), a former member of the Advisory Committee who was asked to review the Suggestion. He states support for the proposal but suggests that the statement "proportionality considerations apply" should be more specific. He offers the following alternative wording for the added sentence at the end of Rule 2004(c): "Requirements of proportionality and avoiding undue burden and expense, as provided in FRCivP 26(b) and 45(d), apply to a request for the production of documents or electronically stored information in connection with a Rule 2004 examination."

The Subcommittee's Discussion

Members of the Subcommittee thought that the principle underlying the Suggestion was sound because there is no reason to think that a *dis*proportionate request for documents and ESI in connection with a Rule 2004 examination should be allowed. The need to consider proportionality seems especially strong in bankruptcy cases, where it is important not to expend resources fruitlessly or unnecessarily.

The Subcommittee also concluded that an amendment of the type proposed is needed, despite the argument that proportionality is already an applicable consideration under Rule 2004.

The linkage between Rule 2004 and the reference to proportionality in Civil Rule 26(b)(1)—as traced by the ABA Committee's report—is sufficiently attenuated that an express reference to proportionality in Rule 2004 would make its applicability clearer. Moreover, because debtors do not have to be subpoenaed to a Rule 2004 examination,[1] the pathway to proportionality through Rule 45 does not apply.

It was noted that Rule 2004 is intended to be broader in scope than the civil discovery rules that are made applicable in bankruptcy to adversary proceedings and contested matters.[2] Despite the broader scope of Rule 2004, the Subcommittee decided that, in light of the potentially burdensome task of producing ESI, it is now appropriate for the rule to expressly embrace Rule 26(b)(1)'s proportionality limitation.

Having agreed that a proportionality amendment to Rule 2004 should be proposed, the Subcommittee spent a good deal of time, during its conference call and by email correspondence afterwards, discussing how the amendment should be worded. It generally agreed with Judge Klein that the Suggestion's statement that "proportionality considerations apply" is too imprecise. Judge Klein proposed alternative wording that refers to "[r]equirements of proportionality and avoiding undue burden and expense" and then cross-references Civil Rules 26(b) and 45(d). The Subcommittee debated whether it would be better to propose an amendment with this succinct wording or to set out the proportionality factors listed in Rule

[1] *See* 9 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 2004.03 (16th ed. 2017) ("When Rule 2004(d) is invoked to summon the debtor, there would be no need to involve Federal Rule of Civil Procedure 45 and Rule 9016, for no subpoena would be necessary. All that is necessary is a court order.")

[2] *See id.* at ¶ 2004.02 ("The scope of a Rule 2004 examination is 'unfettered and broad' and the rule itself is 'peculiar to bankruptcy law and procedure because it affords few of the procedural safeguards that an examination under Rule 26 of the Federal Rules of Civil Procedure does.' *In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983); *In re GHR Companies, Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984).").

26(b)(1). In the end, it decided that a listing of the proportionality factors would be preferable for the sake of clarity and so that the bankruptcy rule would not be automatically amended should the factors in the civil rule ever be amended. While the Subcommittee concluded that the civil proportionality factors would not be relevant for all bankruptcy cases in which a Rule 2004 examination is sought, they would each be relevant in some situations. In addition to the civil factors, the Subcommittee concluded that one more factor is relevant and should be included—"the purpose for which the request is being made."

The Subcommittee agreed with the ABA Committee's decision to limit the reference to proportionality to the production of documents and ESI and not to make it applicable to the attendance of an entity for examination. The report explains the basis for that decision as follows: "Although not rejecting the concept that proportionality considerations may apply to the scope of Rule 2004 examinations, it was felt that determination should be left to the courts on a case-by-case basis depending on the facts and circumstances of each case." The Subcommittee favored retaining that flexibility in Rule 2004(a) and limiting an express proportionality requirement to the production of documents and ESI under subdivision (c) because that is the situation that is most likely to cause undue burden and expense.

Finally, the Subcommittee considered the need for a conforming amendment to Rule 2004(c) that is outside the scope of the Suggestion. Rule 2004 has not been amended since Civil Rule 45 was significantly amended in 2013. Under amended Rule 45, a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it. Rule 2004(c) provides that "an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in

which the case is pending." To be consistent with Rule 9016, which makes Rule 45 applicable in bankruptcy cases, the Subcommittee proposes that the quoted sentence be amended to state that "an attorney may issue and sign a subpoena on behalf of the court ~~for the district in which the examination is to be held~~ in which the case is pending if the attorney is admitted to practice in that court ~~or in the court in which the case is pending~~."

Recommendation

Based on the Subcommittee's discussion, it recommends that the Committee propose for publication the following amendment to Rule 2004(c):

Rule 2004. Examination

* * * * *

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or electronically stored information, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court ~~for the district in which the examination is to be held~~ in which the case is pending if the attorney is admitted to practice in that court ~~or in the court in which the case is pending~~. A request for the production of documents or electronically stored information in connection with an examination under this rule shall be proportional to the needs of the case and of the party seeking production, in light of the following factors, to the extent relevant: the importance of the issues at

stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving issues, whether the burden or expense of the proposed discovery outweighs its likely benefit, and the purpose for which the request is being made.

* * * * *

Committee Note

Subdivision (c) is amended in three respects. First, the provision now refers expressly to the production of electronically stored information, in addition to the production of documents. This change is an acknowledgment of the form in which information now commonly exists and the type of production that is frequently sought in connection with an examination under Rule 2004.

Second, subdivision (c) is amended to bring its subpoena provision into conformity with the current version of F.R. Civ. P. 45, which Rule 9016 makes applicable in bankruptcy cases. Under Rule 45, a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it. In light of this procedure, a subpoena for a Rule 2004 examination is now properly issued from the court where the bankruptcy case is pending and by an attorney authorized to practice in that court, even if the examination is to occur in another district.

Third, subdivision (c) now requires parties requesting the production of documents and electronically stored information in connection with a Rule 2004 examination to limit the request to what is proportional to the needs of the case and the requesting party's needs. While the scope of an examination under this rule remains broad, as spelled out in subdivision (b), it is not unlimited. In order to prevent unnecessary or inappropriate Rule 2004 discovery in bankruptcy cases, subdivision (c) now requires requesting parties seeking production of documents and electronically stored information to keep their requests within the bounds of proportionality as determined by the circumstances of the case. Such considerations are already applicable to the scope of discovery in adversary proceedings and contested matters under Rules 7026 and 9014, which make F.R. Civ. P. 26 applicable. Now subdivision (c) of this rule requires consideration of the relevant proportionality factors set out in Rule 26(b)(1), along with an additional one—"the purpose for which the request is made"—which is appropriate for the more open-ended nature of a Rule 2004 examination.

TAB 7A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: RECONSIDERATION OF AMENDMENT TO RULE 8023

DATE: SEPTEMBER 5, 2017

In August 2016 the Standing Committee published an amendment to Rule 8023 (Voluntary Dismissal). As published, the rule and Committee Note provided as follows:

> **Rule 8023. Voluntary Dismissal**
>
> Subject to Rule 9019, ~~T~~the clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.
>
> **Committee Note**
>
> The rule is amended to provide a reminder that, when dismissal of an appeal is sought as the result of a settlement by the parties, Rule 9019 may require approval of the settlement by the bankruptcy court.

No comments were submitted on the amendment during the notice-and-comment period.

At the spring 2017 meeting, when the Subcommittee recommended that the Advisory Committee give its final approval to the amendment, the Department of Justice representative, Mr. Hubbert, raised some concerns that the Department had concerning the change. Specifically, he noted that making the clerk's authority "subject to Rule 9019" might mean that every attempt to seek a voluntary dismissal based on a signed agreement of the parties would require the clerk

to determine whether Rule 9019 applied or to seek a judicial determination of its applicability. As a result, either clerks would end up making determinations more appropriate for the judiciary, or voluntary dismissals would be delayed awaiting the court's ruling. After committee discussion in which varying views were expressed, the matter was referred back to the Subcommittee for further consideration. The Subcommittee considered the proposed amendment during its August 25 conference call, and **it now recommends that the amendment be withdrawn and that no further action be taken on it**.

Background Information

The amendment to Rule 8023 was proposed in response to a comment from the National Conference of Bankruptcy Judges ("NCBJ") that the current rule fails to take account of the fact that one of the parties to an appeal being voluntarily dismissed might be the bankruptcy trustee, who, according to the NCBJ, "is obliged under Fed. R. Bankr. P. 9019 to obtain court approval of any compromise."[1] The NCBJ raised the concern that, by its silence, Rule 8023 could be read as overriding Rule 9019. On the Subcommittee's recommendation, the Advisory Committee approved for publication an amendment that cross-references Rule 9019—to signify that Rule 8023 does not supersede it—without attempting to resolve the division in the case law concerning a bankruptcy court's jurisdiction to approve a settlement of a matter on appeal.[2]

[1]Although the rule addresses the court's authority and is permissive ("the court may approve"), it is often cited as requiring a trustee or debtor in possession to obtain court approval of any settlements entered into on behalf of the estate. *See, e.g.*, Reynaldo Anaya Valencia, *The Sanctity of Settlements and the Significance of Court Approval: Discerning Clarity from Bankruptcy Rule 9019*, 78 OR. L. REV. 425, 439 (1999) (stating as the majority rule that compliance with Rule 9019 is mandatory). It is probably more accurate to read Rule 9019 as providing a procedure for court approval of settlements when a provision of the Bankruptcy Code, such as § 363(b), requires it. *See, e.g., In re Commercial Loan Corp.*,316 B.R. 690, 697 n.5 (Bankr. N.D. Ill. 2004)).

[2] The Committee approved the amendment for publication at the spring 2014 meeting, but it was held in abeyance until 2016 to provide a chance for the revised bankruptcy appellate rules to go into effect and

Options Considered by the Subcommittee

In considering what recommendation to make to the Committee regarding Rule 8023 and its relationship to Rule 9019, the Subcommittee discussed three basic options: (1) abandon the published amendment and recommend that no amendment be pursued; (2) propose a different amendment that will achieve the original goal without raising the problems noted by Mr. Hubbert; or (3) stick with the published amendment and recommend that the Committee approve it. In addition, going beyond the concern about the applicability of Rule 9019, a Subcommittee member suggested that it might be advisable to propose a broader amendment to Rule 8023 that would remove the role of the clerk.

No amendment. Since 1983, Rule 8023 and its predecessor, Rule 8001(c), have required the clerk to dismiss an appeal based on the parties' agreement, and Rule 9019 has provided for court approval of settlements. The NCBJ, in suggesting a possible amendment to Rule 9023, admitted that the issue it raised regarding the possible applicability of Rule 9019, did "not appear to be disrupting bankruptcy administration." Furthermore, the reporter's research revealed no reported decision that raises any issue about the relationship between the voluntary dismissal of a bankruptcy appeal pursuant to the parties' agreement and Rule 9019. Because the proposed amendment was intended, not to change the current rule, but only to call attention to the possibility that Rule 9019 might also apply, the Subcommittee considered that there might be an insufficient reason to amend Rule 9023 if doing so could cause problems of the sort suggested by Mr. Hubbert.

A different amendment. Mr. Hubbert proposed alternative language that the Department of Justice suggested would meet its concerns raised at the spring meeting. The Department

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for experience under the revised rules to reveal whether other amendments to those rules might be needed.

suggested dropping the "subject to" language and instead including a statement that Rule 8023 does not affect any requirements in Rule 9019. Mr. Hubbert said that, while they would prefer that this language go into the Committee Note in order to be consistent with Rule 7041 and all other federal rules dealing with dismissals, they suggested the language as a change to the rule itself in order to be consistent with the original proposal and to avoid adding commentary without a rule change. The Subcommittee noted that the Advisory Committee is not permitted to alter a Committee Note without amending the rule.

The amendment proposed by the Department of Justice provided as follows:

Rule 8023. Voluntary Dismissal

The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP. This rule does not affect any requirement under Rule 9019 for bankruptcy court approval of a compromise or settlement of any controversy affecting the estate.[3]

[3] Mr. Hubbert explained that the phrase "any controversy affecting the estate" comes from Rule 9019(c).

This language was intended to clarify that Rule 8023 does not override Rule 9019 without stating that the clerk's authority to dismiss is subject to a determination of whether Rule 9019 applies.

Another possibility considered by the Subcommittee was to make the language of Rule 8023 consistent with the wording of Appellate Rule 42(b). The first sentence of the latter provision says, "The Circuit Clerk *may* dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due" (emphasis added). When the Part VIII rules were revised in 2014, Rule 8023 adopted the mandatory language ("must dismiss") of its predecessor, Rule 8001(c), rather than the permissive language of FRAP 42(b). If the FRAP wording were adopted for Rule 8023—merely authorizing, not directing, the clerk to dismiss an appeal based on the parties' agreement—it would avoid the suggestion that Rule 8023 overrides Rule 9019.

Although such an amendment would have the advantage of aligning Rule 8023 more closely with the appellate rule, which was one of the goals of the Part VIII revision project, it would be a more fundamental change to the rule than adding a cross-reference to Rule 9019 would be. It would give clerks discretionary authority to decline to dismiss, despite the parties' agreement, without providing any guidance about when failure to dismiss would be appropriate. On balance, the Subcommittee thought that the Department of Justice suggestion was preferable.

The same amendment. The Subcommittee recognized that another option was to recommend that the Committee approve the published amendment to Rule 8023. It did not draw any negative comments during the notice-and-comment period, and it merely points out the existing relationship between Rule 8023 and Rule 9019.

Given the Department of Justice's objection, however, no one favored this option. First, it is not clear that any amendment is really needed. Second, if the Subcommittee were to

recommend an amendment to Rule 8023 in response to the NCBJ's comment, the language suggested by the Department of Justice more clearly states the relationship between the two rules.

Judge Goldgar's suggestion. Judge Goldgar, a member of the Subcommittee, suggested that, even without the proposed amendment, Rule 8023 appears problematic because it requires the clerk of court, rather than the judge, to take action in a case. Rules giving authority to the clerk to take action are feasible, he said, only when the action to be taken depends on a simple, mechanical determination and no legal analysis or interpretation necessary. Rule 8023, however, requires the clerk, not the judge, to dismiss an appeal "if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due." Judge Goldgar said that that directive places the burden on the clerk to decide whether the agreement describes how costs are to be paid and whether the description is sufficiently specific—a determination, he asserted, that was more than mechanical.

Judge Goldgar noted that the published amendment would make the clerk's job even harder. Agreeing with the concern raised by Mr. Hubbert, he said that clerks may well read the "subject to Rule 9019" language to require them to decide in each instance whether the bankruptcy court must approve the settlement before the appeal can be dismissed. That decision, he submitted, is a legal one that is beyond what a district court or BAP clerk can, or should, do.

Judge Goldgar suggested going further than just rejecting the published amendment. He suggested revising Rule 8023 to remove the role of the clerk. He proposed modeling the rule on Civil Rule 41(a)(1)(A)(ii), which says that the "plaintiff may dismiss an action by filing . . . a stipulation of dismissal signed by all parties who have appeared." The dismissal by means of stipulation is effective without an order from the court or any action by the clerk.

Since at least 1983, however, the Bankruptcy Rules have directed the clerk to dismiss bankruptcy appeals on the agreement of the parties if (1) the agreement specifies how costs are to be paid and (2) any fees that are due are paid. No one has suggested to the Committee that this procedure has caused any problems, so there does not appear to be any reason to pursue an amendment eliminating the role of the clerk at this time.

Recommendation

After discussing the various options, the Subcommittee concluded that the best course is to make no amendment to Rule 8023. There does not seem to be a significant problem for which an amendment is needed, so any amendment might cause more problems than it solves. Mr. Hubbert indicated that the Department of Justice would be satisfied with this resolution, and other Subcommittee members agreed. Therefore, the Subcommittee recommends that the proposed amendment be withdrawn.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: AMENDMENT TO RULE 8012 TO CONFORM TO PROPOSED FRAP 26.1 AMENDMENT

DATE: SEPTEMBER 5, 2017

Rule 8012 (Corporate Disclosure Statement) requires a nongovernmental party to an appeal in the district court or bankruptcy appellate panel to file a statement identifying any parent corporation and any publicly held corporation that owns 10% or more of the party's stock (or file a statement that there is no such corporation). Modeled on FRAP 26.1, Rule 8012 requires the disclosure of information needed by appellate judges to make a disqualification decision.

The Appellate Rules Committee has proposed amendments to FRAP 26.1 that were published for comment in August, including one that is specific to bankruptcy appeals. During the Subcommittee's August 25 conference call, it considered whether Rule 8012 should be amended accordingly. **For the reasons discussed below, the Subcommittee recommends that Rule 8012 be proposed for amendment to conform substantially to the relevant amendments to FRAP 26.1.**

Proposed Amendments to FRAP 26.1

FRAP 26.1, as proposed for amendment, provides as follows:

> **Rule 26.1 ~~Corporate~~ Disclosure Statement**
>
> **(a) ~~Who Must File~~Nongovernmental Corporate Party.** Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held

corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Organizational Victim in a Criminal Case. In a criminal case, unless the government shows good cause, it must file a statement identifying any organizational victim of the alleged criminal activity. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 26.1(a) to the extent it can be obtained through due diligence.

(c) Bankruptcy Proceedings. In a bankruptcy proceeding, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that identifies each debtor not named in the caption. If the debtor is a corporation, the statement must also identify any parent corporation and any publicly held corporation that owns 10% or more of its stock, or must state that there is no such corporation.

(d) Intervenors. A person who wants to intervene must file a statement that discloses the information required by Rule 26.1.

~~**(b)**~~**(e) Time for Filing; Supplemental Filing.** ~~A party must file the~~The Rule 26.1~~(a)~~ statement must be filed with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the ~~party's~~ principal brief must include the statement before the table of contents. ~~A party must supplement its~~The statement must be supplemented whenever the information ~~that must be disclosed~~ required under Rule 26.1~~(a)~~ changes.

~~**(c)**~~**(f) Number of Copies.** If the Rule 26.1~~(a)~~ statement is filed before the principal brief, or if a supplemental statement is filed, ~~the party must file~~ an original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

Committee Note

The new subdivision (b) follows amendments to Criminal Rule 12.4(a)(2). It requires disclosure of organizational victims in criminal cases because a judge might have an interest in one of the victims. But the disclosure requirement is relaxed in situations in which disclosure would be overly burdensome to the government. For example, thousands of corporations might be the victims of a criminal antitrust violation, and the government may have great difficulty identifying all of them. The new subdivision (c) requires disclosure of the name of all of the debtors in bankruptcy proceedings. The names of the debtors are not always included in the caption in appeals of adversary proceedings. The new subdivision (d)

> requires persons who want to intervene to make the same disclosures as parties. Subdivisions (e) and (f) now apply to all of the disclosure requirements.

The principal changes that are proposed are the addition of three new subdivisions to FRAP 26.1. New subdivision (b) concerns criminal appeals and is not relevant to Rule 8012. New subdivisions (c) and (d), concerning bankruptcy proceedings and intervenors, along with certain stylistic changes to the rule, are relevant and are discussed below. The stylistic changes to what would become subdivision (f) do not need to be considered because Rule 8012 does not have a parallel provision.

Disclosure About the Debtor

The Appellate Rules Committee consulted with the Subcommittee last winter about the possible addition of a provision to FRAP 26.1 to deal specifically with bankruptcy cases. The Appellate Committee was initially considering a broad provision that would have required disclosure of the name of all debtors, if not named in the caption; the members of the creditors' committees; the parties to an adversary proceeding; and the active participants in a contested matter. After discussion, the Subcommittee advised the Appellate Committee that, if the parties and active participants in all adversary proceedings and contested matters in a bankruptcy case had to be disclosed, in some large chapter 11 cases the lists would be extensive and extremely burdensome. And if the rule required the disclosure of only the parties and active participants in the adversary proceeding or contested matter on appeal, those names would frequently be revealed by the caption of the appeal, and existing Rule 26.1(a) would already require disclosure regarding those that were nongovernmental corporations. The Appellate Committee agreed with the Subcommittee's recommendation that an amendment was needed to require only the

disclosure of the names of any debtors not revealed by the caption and that the requirements of subdivision (a) should apply to any corporate debtors.

The Subcommittee concluded that, if such disclosure is required in the courts of appeals, the same disclosure should be required at the earlier stage of bankruptcy appeals—to district courts and BAPs. Thus it recommends that a similar amendment be proposed for Rule 8012.[1]

The Subcommittee did identify what might be a slight gap in the proposed provision. It says, "If the debtor is a corporation, the statement must also identify any parent corporation and any publicly held corporation that owns 10% or more of its stock, or must state that there is no such corporation." But the previous sentence could be read as requiring a statement to be filed only if all debtors are not named in the caption. And subdivision (a)'s disclosure requirement applies only to parties to the proceeding in the appellate court. If the caption of an appeal involving nondebtor parties properly includes the name of a corporate debtor—such as Trustee v. Smith Corp. (*In re* Jones Corp.)—neither subdivision (a) nor proposed subdivision (c) would require disclosure of the debtor's parent corporation or any publicly held corporation that owns 10% or more of the debtor's stock, even though the purpose of the proposed rule appears to be to disclose that information. To close that gap, the Subcommittee suggests that subdivision (c) should be reworded as follows:

> **(c) Bankruptcy Proceedings.** In a bankruptcy proceeding, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that (1) identifies each debtor not named in the caption and (2) for each debtor in the bankruptcy case that is a corporation, identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock, or must state that there is no such corporation.

[1] A similar amendment is not needed for the disclosure rules applicable in the bankruptcy court. Rule 7007.1 (Corporate Ownership Statement) applies to adversary proceedings and requires disclosure by corporate parties *other than the debtor* or a governmental unit. Other rules already impose a disclosure requirement on debtors—Rule 1007(a)(1) for a debtor in a voluntary case and Rule 1011(f) for a debtor in an involuntary case.

Disclosure About Intervenors

Proposed FRAP 26.1(d) extends the disclosure requirements of the rule to a person seeking to intervene in an appeal. Subdivision (e) would require the intervenor to file its Rule 26.1 statement at the time it files its motion to intervene. Intervention in a bankruptcy proceeding on appeal to the district court or BAP is governed by Rule 8013(g), which is based on the FRAP intervention rule. Failing to identify any reason why Rule 8012 should not conform to FRAP 26.1(d) in this regard, the Subcommittee recommends that a similar amendment be proposed.

Proposed Amendment to Rule 8012

With the proposed provisions of FRAP 26.1 regarding bankruptcy proceedings and intervenors incorporated, along with stylistic changes, Rule 8012 would provide as follows:

Rule 8012. ~~Corporate~~ Disclosure Statement

(a) ~~WHO MUST FILE~~NONGOVERNMENTAL CORPORATE PARTY. Any nongovernmental corporate party appearing in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) BANKRUPTCY PROCEEDINGS. In a bankruptcy proceeding, the debtor, the trustee, or, if neither is a party, the appellant must file a statement that (1) identifies each debtor not named in the caption and (2) for each debtor in the bankruptcy case that is a corporation, identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock, or must state that there is no such corporation.

(c) INTERVENORS. A person who wants to intervene must file a statement that discloses the information required by Rule 8012.

~~(b)~~(d) TIME TO FILE; SUPPLEMENTAL FILING. ~~A party must file the~~The Rule 8012 statement must be filed with ~~its~~the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the ~~party's~~ principal brief must include ~~a~~the statement before the table of contents. ~~A party must supplement its~~The

statement must be supplemented whenever the required information changes.

Committee Note

The rule is amended to conform to recent amendments to Fed. R. App. P. 26.1(c). New subdivision (b) requires disclosure of the name of all of the debtors in bankruptcy proceedings. The names of the debtors are not always included in the caption in appeals of adversary proceedings. It also requires, for corporate debtors, disclosure of the same information required to be disclosed under subdivision (a). New subdivision (c) requires persons who want to intervene to make the same disclosures as parties. Subdivision (d), previously subdivision (b), now applies to all of the disclosure requirements.

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MEMORANDUM

TO: The Rules Committees

FROM: Scott Myers -- Rules Committee Support Office

RE: Rules Coordination Report

DATE: September 6, 2017

At its June 2016 meeting, the Standing Committee asked the Rules Committee Support Office (RCSO) to identify and coordinate proposed changes to rules that have implications for more than one set of rules. The proposed changes listed below implicate more than one rule set.

Rules Published for Comment in 2017

Proposed Bankruptcy Rule 9037(h)

In response to a suggestion from CACM to address redaction of personal information from improperly filed proof of claim attachments, the Bankruptcy Rules Committee published an amendment to its privacy rule, Bankruptcy Rule 9037(h) to address redaction of privacy information from documents that have already been filed. The Appellate, Civil, and Criminal Rules Committees each concluded that a parallel amendment to their versions of the privacy rule are unnecessary.

Proposed Appellate Rule 26.1 (Disclosure Statement)

The Appellate Rules Committee has published an amendment to its disclosure rule (Appellate Rule 26.1) that include a new subsection requiring disclosures of certain actors when an appeal originates from a bankruptcy proceeding. At its fall 2017 meeting (Agenda Item 7B), the Bankruptcy Rules Committee is considering a recommendation to add conforming amendments to Bankruptcy Rule 8012, which addresses corporate disclosures in bankruptcy appeals.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SUGGESTION REGARDING OFFICIAL FORM 423

DATE: SEPTEMBER 1, 2017

Chief Judge Pamela S. Hollis (Bankr. N.D. Ill.) has submitted Suggestion 17-BK-C on behalf of the bankruptcy judges of her district. She suggests that Official Form 423 (Certification About a Financial Management Course) contains an error in its instruction about when an individual chapter 11 debtor must file the form. The form states that such a debtor must file the form if § 1141(d)(3) applies. Because of the narrow set of circumstances under which § 1141(d)(3) is applicable, the Suggestion contends that the instruction is backwards and that the form should state that it must be filed by an individual chapter 11 debtor if § 1141(d)(3) does *not* apply. Although the position stated by the Suggestion may be supported by logic and policy considerations, for the reasons discussed below, **the Subcommittee concludes that the form is correct and recommends that no further action be taken on this Suggestion.**

Discussion

Among the 2005 Amendments to the Bankruptcy Code was a requirement that certain individual debtors complete an instructional course in personal financial management in order to receive a discharge. Section 727(a)(10) provides, subject to certain exceptions, that a chapter 7 individual debtor shall not receive a discharge if the debtor does not complete a personal financial management course after the petition is filed. Section 1328(g)(1) imposes a similar requirement for discharge in chapter 13.

The discharge statute for chapter 11 cases—§ 1141—does not, however, contain a parallel provision for individual debtors. While the 2005 Amendments did include certain provisions that make the treatment of individual debtors in chapter 11 closer to that of chapter 13 debtors,[1] it does not state that a discharge will be denied to individual debtors who do not complete a personal financial management course. Instead, the three circumstances under which a chapter 11 individual debtor who confirms a plan will not receive a discharge are the following:

- the court approves a written waiver of discharge executed by the debtor after the order for relief (§ 1141(d)(4));
- the debtor does not complete all payments under the plan (unless a hardship discharge is granted) (§ 1141(d)(5)); and
- the plan provides for liquidation of substantially all of the property of the estate, the debtor does not engage in business after consummation of the plan, and the debtor would be denied a discharge under § 727(a) if the case were under chapter 7 (§ 1141(d)(3)).

Official Form 423 correctly relies on the last provision ((d)(3)) to determine when a chapter 11 individual debtor must file a Certification About a Financial Management Course. That provision imposes such a requirement only if the debtor would have to complete a course in order to get a discharge in a chapter 7 case, plus the estate's assets are being liquidated and the debtor is not engaging in business after plan consummation. Otherwise, there is no requirement for a chapter 11 debtor to complete a financial management course.

The Suggestion points out that "As currently worded, . . . Official Form 423 would require individual chapter 11 debtors to take the personal financial management course *only* in

[1] *See, e.g.,* §§ 1129(a)(15) (disposable income test) and 1141(d)(5) (discharge delayed until completion of plan payments).

the rare cases. All other individual chapter 11 debtors would be exempt." That observation is correct. And while the Illinois judges believe that "the vast majority of individual chapter 11 debtors should have to take the course, just as chapter 7 and 13 debtors do," Congress apparently disagreed and chose to limit the course requirement to the circumstances stated in § 1141(d)(3).[2]

Because Official Form 423, just like former Official Form 23,[3] is consistent with the Code, the Subcommittee concluded that no action needs to be taken on the Suggestion.

[2] Section 1141(d)(3), which applies to corporate as well as individual debtors, preceded the 2005 Amendments.

[3] Like the current form, Official Form 23 provided that "every individual debtor in a . . . chapter 11 case in which § 1141(d)(3) applies must file this certification." That form was issued in 2005. Official Form 423 took effect in 2015.