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December 16, 2010

TO: Honorable John G. Roberts  
Chief Justice of the United States

RE: Summary of Proposed Amendments to the Federal Rules

The amendments to the Federal Rules of Practice and Procedure transmitted from the Judicial Conference are intended to have the following consequences.

**APPELLATE RULES**

The proposed amendments to Rules 4 and 40 clarify the time to appeal or to seek rehearing in a case in which a United States officer or employee is a party. The proposed amendment to Rule 4(a)(1)(B) makes clear that the 60-day appeal period applies in cases in which an officer or employee of the United States is sued in an individual capacity for acts or omissions occurring in connection with duties performed on behalf of the United States. The proposed amendment to Rule 40(a)(1) makes clear that the 45-day period to file a petition for rehearing applies in such cases. To avoid any potential jurisdictional issue raised by *Bowles v. Russell*, 551 U.S. 205 (2007), the Judicial Conference will seek legislation amending 28 U.S.C. § 2107 to have the same provisions and to take effect on the same day as the amendments to Rule 4. The proposed amendments to Rules 4 and 40 and the proposed amendments to § 2107 include two “safe harbor” provisions that make explicit that the longer periods apply in any case in which the United States either represents the officer or employee when the judgment was entered or files the notice of appeal or petition on the officer’s or employee’s behalf. The two safe harbors are not exclusive and other circumstances may qualify for the extended period.

**BANKRUPTCY RULES**

Proposed new Rule 1004.2 requires that a petition for recognition of a foreign proceeding under new chapter 15 of the Bankruptcy Code identify the countries where a foreign proceeding is pending against the same debtor and the country where the debtor has its “center of main interests.”

## Summary of Proposed Amendments to the Federal Rules

Page 2

The rule sets out applicable notice provisions and generally requires that a challenge to the debtor's designation of the center of main interests be raised at least seven days before the hearing on the petition for recognition.

The proposed amendments to Rule 2003(e) require a presiding official who "adjourns" a meeting of creditors to file a statement specifying the date and time to which the meeting is adjourned. The requirement ensures that the record clearly reflects whether the meeting of creditors was concluded or extended to another day and if extended, when it will resume.

The proposed amendments to Rule 2019, which applies in chapter 9 and chapter 11 proceedings, require committees, groups, or entities that consist of or represent creditors or equity security holders who are acting in concert to identify their "disclosable economic interests" relating to the debtor. The amendments broadly define the term to include economic rights and interests that are affected by the value, acquisition, or disposition of a claim or interest. Under the proposed amendments, every such group, committee, or entity is required to provide a verified statement of, among other things, the nature and amount of each disclosable economic interest relating to the debtor. In addition, each member of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee must disclose the acquisition date of each "disclosable economic interest" by quarter and year, unless the interest was acquired more than a year before the bankruptcy petition was filed.

The proposed amendments to Rule 3001 require creditors to provide additional information supporting certain proofs of claim and impose penalties if creditors fail to comply with the new disclosure requirements. The proposed amendments continue and clarify the long-established disclosure requirement that a creditor presenting a claim in an individual-debtor case provide an itemized statement of the interest, fees, expenses, and other charges incurred before the petition was filed. Special disclosure requirements apply under the amendments if the claim is secured by a security interest in the individual debtor's property. In such a case, a statement of the amount necessary to cure any prepetition default and, for home mortgages, a statement of any escrow account must also be provided. The proposed amendments also strengthen the penalties for failing to comply with the Rule 3001 requirements. The sanctions provision permits a court to prohibit the creditor from presenting omitted information as evidence in a contested matter or adversary proceeding in the case, but only if the failure to provide the required information was not "substantially justified or . . . harmless"; further emphasizes the court's discretion to determine whether that sanction or any other should be imposed; and makes it clear that "notice and hearing" is required before the imposition of any sanction.

Proposed new Rule 3002.1 implements § 1322(b)(5) of the Bankruptcy Code, which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. Under the proposed rule, the holder of a home mortgage claim must give: (1) a notice itemizing any postpetition fees, expenses, or charges within 180 days after they are incurred; and (2) at least 21 days' advance notice to the debtor, debtor's counsel, and the trustee of any postpetition changes in the mortgage payment amount. The proposed rule also establishes a

procedure for determining whether the debtor has cured any default and is otherwise current on mortgage payments at the close of a chapter 13 case. Finally, the proposed rule provides for sanctions if the holder of a claim secured by the debtor's principal residence fails to provide any of the required information.

The proposed amendments to Rule 4004 provide that a party may seek an extension of time, based on newly discovered information, to object to a debtor's discharge after the time for objecting expires but before a discharge is granted.

The proposed amendments to Rule 6003 clarify that the 21-day waiting period before a court can enter certain orders at the beginning of a case—including an order approving employment of counsel—does not prevent the court from specifying in the order that it is effective on a date earlier than when the order is entered.

## **CRIMINAL RULES**

The proposed amendments and new rule clarify and regulate the use of technology in applying for and issuing certain documents and in conducting certain proceedings. The proposals recognize some practices that are emerging while serving the important function of regulating and limiting those practices.

The proposed amendments to Rule 1 expand the definition of "telephone" to include any technology that enables live-voice conversations, including cell phone technology and calls over the internet.

The proposed amendments to Rule 3 provide that a court may consider a complaint based on information submitted by reliable electronic means. Together with proposed amended Rules 4 and 9 and new Rule 4.1, the amendments to Rule 3 provide a court with flexibility to handle the submission of a complaint and a request for an arrest warrant when the circumstances make the law enforcement officer's physical presence before the judge impractical.

The proposed amendments to Rule 4 work in conjunction with the proposed amendments to Rule 3 and provide that a court may issue an arrest warrant or summons based on information submitted by reliable electronic means. The proposed amendments also authorize the preparation and use of duplicate original arrest warrants when the original warrant is issued electronically, and authorize the return of warrants by reliable electronic means.

Proposed new Rule 4.1 brings together in a single rule the procedures for using phones or other reliable electronic means to review complaints and apply for and issue warrants and summonses. The procedures governing requests for search warrants "by telephonic or other reliable electronic means" under current Rule 41(d)(3) and (e)(3) have been relocated to this rule, reordered for easier application, and extended to arrest warrants, complaints, and summonses.

The proposed amendments to Rule 6 allow the return of an indictment by video teleconference “to avoid unnecessary cost or delay.” Having a judge in the same courtroom as the grand jury when returns are made remains the preferred practice; the video teleconferencing option is to be used sparingly and in limited circumstances.

The proposed amendments to Rule 9 provide that a court may issue an arrest warrant or summons based on information communicated by reliable electronic means on the return of an indictment or the filing of an information. The amendments parallel the proposed amendments to Rule 4, which permit a court to issue an arrest warrant or summons based on information submitted by a law enforcement agent through reliable electronic means.

The proposed amendments to Rule 40 provide that a court may permit a defendant to appear by video teleconference in a proceeding involving an arrest for failing to appear in another district or for violating conditions of release set in another district, but only if the defendant consents.

The proposed amendments to Rule 41 permit the return of warrants and inventories by reliable electronic means. Those aspects of Rule 41 that currently specify the procedure for securing warrants with information transmitted electronically have been moved to proposed new Rule 4.1.

The proposed amendments to Rule 43 provide that a court may permit a defendant to appear by video teleconference in a misdemeanor or petty offense proceeding. Under the current rule, a defendant may consent not to be physically present during the entirety of a misdemeanor or petty offense proceeding, including trial and sentencing. Instead of the accused relinquishing the right to attend the misdemeanor or petty offense proceeding altogether, the proposed amendments offer the judge the option of permitting the accused to participate in the arraignment, plea, trial, and sentencing by video teleconference. This option is intended to be used in limited circumstances, contingent on the defendant’s written consent and on the court’s discretion.

The proposed amendments to Rule 49 provide that a court may allow, by local rule, papers to be filed, signed, or verified by electronic means that are consistent with the technical standards established by the Judicial Conference.

Proposed technical and conforming amendments to Rule 32(d)(2)(F) and (G) reverse two items in a list, moving the “catch-all” provision to the end, and remedy a lack of parallelism within the rule. Proposed technical and conforming amendments to Rule 41 delete references to “calendar days.” These references should have been omitted as part of the time-computation amendments that became effective on December 1, 2009, but were inadvertently retained.

## **EVIDENCE RULES**

The comprehensive “style” revision of the Evidence Rules is intended to make the rules clearer and easier to read, without changing substantive meaning. The drafting approaches and style

conventions used in the restyling are the same as those used in the previous restyling work on the Appellate, Civil, and Criminal Rules.

The style changes included formatting changes to achieve clearer presentation by breaking up dense block paragraphs and lengthy sentences. The style changes reduced the use of inconsistent words that say the same thing in different ways, reduced the use of inherently ambiguous words, minimized the use of redundant words and terms, removed words and terms that were outdated or archaic, and removed redundant cross-references. The style changes also eliminated numerous “intensifiers,” expressions that might seem to add emphasis but instead state the obvious and create negative implications for other rules.

The restyled rules keep the same numbers to minimize the effect on research. Subdivisions were rearranged in some rules to achieve greater clarity and simplicity. Words and terms that have acquired special status from years of interpretation were retained.