ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Denver, CO
March 31, 2016

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 31
Denver Colorado

Discussion Agenda

1. Greetings. (Judge Ikuta)

2. Approval of minutes of Washington DC meeting of October 1, 2015. (Judge Ikuta)

Tab 2: Draft minutes.

3. Oral reports on meetings of other committees:

(A) January 7, 2016 meeting of the Committee on Rules of Practice and Procedure. (Judge Ikuta, Professor Harner)

Tab 3A: Draft minutes of Standing Committee meeting.

(B) November 5, 2015 meeting of the Advisory Committee on Civil Rules. (Judge Harris)

(C) December 10-11, 2015 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Bernstein, Judge Smith)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris, Professor Gibson, and Professor Harner)

(A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases (Judge Harris, Professor Gibson)

Tab 4A: Memo of March 3, 2016 by Professor Gibson.
-Proposed Rule 9037(h)

(B) Suggestion 15-BK-E to amend or eliminate Rule 4003(c), which currently allocates the burden of proof in exemption litigation.

Tab 4 B: Memo of March 4, 2016 by Professor Harner.
-Supplemental Memorandum of February 11, 2016

5. Report by the Subcommittee on Forms. (Judge Dow, Professor Gibson, Professor Harner, Mr. Myers, Ms. Healy)

(A) Discussion regarding proposed chapter 13 plan form (Official Form 113), and related proposed amendments to certain bankruptcy rules. (Judge Dow, Professor Gibson)

Tab 5A: Memo of March 7, 2016 by Professor Gibson.
-Proposed Rules 3015 and 3015.1

(B) Report regarding suggestion for Notice of Change of Address Form (Suggestion 15-BK-D) submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of National Association of Chapter 13 Trustees. (Professor Harner)

Tab 5B: Memo of March 3, 2016 by Professor Harner.
-Appendices A and B

6. Report by the Subcommittee on Business Issues. (Judge Bernstein, Professor Gibson, Professor Harner)

(A) Recommendation regarding proposed amendments to Official Forms 25A, 25B, 25C and 26 (including renumbering the forms as 425A, 425B, 425C, and 426).

Tab 6A: Memo of March 3, 2016 regarding Official Forms 425A, 425B, and 425C by Professor Harner.
Memo of March 3, 2016 regarding Official Form 426 by Professor Harner.
-Proposed Official Forms 425A, 425B, 425C, and 426.

(B) Suggestion 12-BK-H regarding a new rule allowing a district court to treat a bankruptcy court judgment as proposed findings of fact and

conclusions of law. (Judge Bernstein, Professor Gibson)

Tab 6B: Memo of March 4, 2016 with proposed Rule 8018.1 by Professor Gibson.

(C) Report on preliminary research on noticing issues in bankruptcy cases (Judge Bernstein and Professor Harner)

Tab 6C: Memo of March 4, 2016 by Professor Harner including consideration of Suggestions 12-BK-M, 12-BK-B, 15-BK-H, and Comment BK-2014-0001-0062 (includes Appendices A, B, and C).
-Appendix D (Memo to reporters and attachment)

7. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Jordan, Professor Gibson)

(A) Recommendation concerning pending amendments to the Federal Rules of Appellate Procedure and whether to publish similar amendments to the Federal Rules of Bankruptcy Procedure.

Tab 7A: Memo of March 7, 2016 by Professor Gibson.
-Proposed Rules 8002, 8011, 8013, 8015, 8016, 8017, 8022.
-Appendix to Part VIII Rules length limits.
-Proposed Official Form 417A (Notice of Appeal)
-Proposed Official Form 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements and Type-Style Requirements)
-Proposed Director's Form 4170 (Inmate Filer's Declaration)

8. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge Hamilton, Professor Harner)

(A) Status report on proposed amendment to Rule 5005(a)(2) to address proposed amendments to Civil Rule 5(d).

Information Items

10. Future meetings: Fall 2016 meeting, October/November, in Washington D.C. Suggestions for possible locations and dates for the spring 2017 meeting.

11. Deferred Recommendations.

The following previously approved recommendations will be included in the report of this meeting and submitted to the Standing Committee at its next meeting:

- Recommendation to publish amendment to line 8 of Official Form 309F. *Approved at fall 2015 Advisory Committee meeting.*

-Recommendation to publish amendments to Rules 8002 (Time for Filing Notice of Appeal), 8006 (Certifying a Direct Appeal to the Court of Appeal), and 8023 (Voluntary Dismissal). *All approved at fall 2015 Advisory Committee meeting.*

The following recommendations for final approval, all approved at the fall 2015 Advisory Committee meeting, will be bundled with the proposed amendments to Rules 3015 and 3015.1 at Discussion Agenda 5 and submitted to the Standing Committee in the future.

-Chapter 13 Plan Form (Official Form 113) and associated Rules 2002, 3002, 3012, 4003, 5009, 7001, and 9009 (*note that an amendment to Rule 3007(a) that was previously approved by the Advisory Committee in connection with the chapter-13-plan-form package of rule amendments is not included because of the recommendation that it be withdrawn at Consent Item 3A below*).

12. New business.

13. Adjourn.

Proposed Consent Agenda

The Chair and Reporters 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 **Thursday, March 24, 2016.**

1. Subcommittee on Consumer Issues.

(A) Recommendation of no action regarding Suggestion 14-BK-G to remove Social Security Number from mailed or electronically distributed 341 notices.

Tab Consent 1A: Memo of March 7, 2016 by Professor Gibson.

(B) Report on comments concerning proposed amendment to Rule 1006(b) (payment of filing fees in installments) and recommendation to approve the amendment.

Tab Consent 1B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1006(b)

2. Subcommittee on Forms.

(A) Recommendation to approve technical changes to Official Bankruptcy Forms.

Tab Consent 2A: Memo of February 29, 2016 by Ms. Healy and Mr. Myers.

(B) Recommendation of no action regarding suggestion 15-BK-J (seeking clarification of proposed amendments to Rule 9009).

Tab Consent 2B: Memo of March 2, 2016 by Professor Gibson.

(C) Recommendation of no action regarding suggestion 16-BK-A concerning NAICS code on Official Form 201.

Tab Consent 2C: Memo of March 2, 2016 by Professor Gibson.

3. Subcommittee on Business Issues.

(A) Recommendation to remove a previously approved amendment to Rule 3007(a) from the chapter-13-plan-form package of rule amendments and that it be reconsidered in connection with the Advisory Committee's noticing project.

Tab Consent 3A: Memo of March 3, 2016 by Professor Gibson.

(B) Report on comments and recommendation concerning proposed amendment to Rule 1001(scope of rules and forms) and recommendation to approve the amendment.

Consent Tab 3B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1001.

TAB 1

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Members: **Honorable Adalberto Jordan** United States Court of Appeals James Lawrence King Federal Justice Building Room 900 99 N.E. Fourth Street Miami, FL 33132 Phone 305 523-5560 x5862 Fax 305 523-5569 ajordan@ca11.uscourts.gov elsa_pazos@ca11.uscourts.gov	**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 Phone 314 244-7600 Fax 314 244-7609 jean_hamilton@moed.uscourts.gov
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Secretary of the Committee **on Rules of Practice and Procedure:** **Rebecca Womeldorf** Secretary, Committee on Rules of Practice and Procedure Room 7-240, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20544 Phone 202 502-1820 Fax 202 502-1766 Rebecca_Womeldorf@ao.uscourts.gov	
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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective July 7, 2015

Subcommittee on Consumer Issues Judge Arthur I. Harris, Chair Judge Adalberto Jordan Judge Dennis R. Dow Jeff J. Hartley, Esq. Jill Michaux, Esq. Richardo I. Kilpatrick, Esq. Professor Edward R. Morrison James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Business Issues** Judge Stuart M. Bernstein, Chair Judge Jean C. Hamilton Judge Robert James Jonker Judge Amul R. Thapar Jeff J. Hartley, Esq. Tom Mayer, Esq. James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Forms Judge Dennis R. Dow, Chair Judge A. Benjamin Goldgar Judge Arthur I. Harris Richardo I. Kilpatrick, Esq. Jill Michaux, Esq. James J. Waldron, *ex officio* Diana Erbsen, Esq., *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Style** Judge A. Benjamin Goldgar, Chair Judge Arthur I. Harris Jeff J. Hartley, Esq. Diana Erbsen, Esq., *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Privacy, Public Access and Appeals Judge Adalberto Jordan, Chair Judge A. Benjamin Goldgar Judge Jean C. Hamilton Diana Erbsen, Esq., *ex officio* Tom Mayer, Esq. Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Attorney Conduct and Healthcare** Judge Robert James Jonker, Chair Jeff J. Hartley, Esq. Tom Mayer, Esq. Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Technology and Cross Border Insolvency Judge Jean C. Hamilton Judge Arthur I. Harris Professor Edward R. Morrison Ramona D. Elliott, Esq., *EOUST liaison*	**Ad Hoc Subcommittee on Rule 3002.1 (joint project of Consumer & Forms)** Judge A. Benjamin Goldgar – Chair Judge Dennis R. Dow Judge Arthur I. Harris Jill Michaux, Esq. Richardo I. Kilpatrick, Esq James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
	Civil Rules Liaison: Judge Arthur I. Harris

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TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of October 1, 2015
Washington D.C.

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert James Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Arthur I. Harris
Diana Erbsen, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Jill Michaux, Esquire
Thomas Moers Mayer, Esquire
Professor Edward R. Morrison

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, assistant reporter
Circuit Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Professor Daniel Coquillette, reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Bankruptcy Judge Roger Efremsky
Bankruptcy Judge Martin Isgur
Bankruptcy Judge Eugene R. Wedoff
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Molly Johnson, Senior Research Associate, Federal Judicial Center
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
James Wannamaker, Esq., consultant to the Committee
Derek Webb, Administrative Office
Michael T. Bates, Lindquist & Vennum, LLP, Minneapolis, Minnesota
John Crane, John M. Crane, P.C., Port Chester, New York
Sims Crawford, Chapter 13 Trustee, Northern District of Alabama

Marcy Ford, Trott Law Firm, Farmington Hills, Michigan
Michael McCormick, McCalla Rayner, LLC, Roswell, Georgia
Raymond J. Obuchowski, National Association of Bankruptcy Trustees
Lance Olson, RCO Legal, Bellevue, Washington
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees
Daniel A. West, SouthLaw, P.C., St. Louis, Missouri

Discussion Agenda

1. Introductions.

Judge Sandra Ikuta started the meeting at 9:00 am. She introduced assistant reporter Professor Michelle Harner, who was appointed in July 2015. Professor Harner spoke briefly. Judge Ikuta noted the re-appointments to the Committee, and thanked Judge Arthur Harris for his work in reviewing the forms. She completed her remarks by welcoming Judge Eugene Wedoff and Jon Waage, who both served as consultants for the Committee's work on the chapter 13 plan form. The members and visitors introduced themselves.

2. Approval of minutes of spring 2015 meeting.

The minutes were approved with minor edits.

3. Oral reports on meetings of other committees.

(A) May 28-29, 2015 meeting of the Committee on Rules of Practice and Procedure.

All of the bankruptcy action items were approved, including the chapter 15 items, the 3-day rule change, the various issues related to mortgage reporting, and the final approval of the modernized forms. The modernized forms were approved by the Judicial Conference on September 17, 2015, and are set to go into effect on December 1, 2015. Two rule amendments were published in August 2015: Rules 1006(b) and 1001.

(B) June 11-12, 2015 meeting of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee).

The Bankruptcy Committee concurred in a recommendation from the Committee on Court Administration and Case Management (CACM) to amend the preamble of the miscellaneous fee schedule regarding Bankruptcy Appellate Panel services. Also, the Bankruptcy Committee approved a request for the Federal Judicial Center (FJC) to study the impact of Chapter 9 cases on the bankruptcy system. Finally, the Bankruptcy Committee

recommended that the Administrative Office (AO) develop procedures regarding interpretation services.

4. Report by the Subcommittee on Consumer Issues.

(A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases.

Judge Harris reported that this was an information item. Jim Waldron surveyed clerks' offices to determine how these matters are handled. The results showed that courts are divided as to notice to affected parties. Most courts do not require the reopening of a closed case to request a redaction. Since submitting the suggestion to the Committee, CACM made a separate request to the Judicial Conference for a specific fee for redaction requests, thus permitting redactions without requiring case reopening. As part of the request to the Judicial Conference, CACM included language regarding the potential impact and notice to affected parties. CACM's recommendation was approved by the Judicial Conference.

Judge Harris noted that the subcommittee has a small group working on the issue; they will consider privacy issues, appropriate notice, and developing a simple procedure for courts and parties. They plan to have a draft amendment ready for consideration for the spring 2016 meeting.

(B) Suggestion 15-BK-E to amend Rule 4003(c) to change the burden of proof where state law provides the rule of decision.

Judge Harris explained that the suggestion is to amend Rule 4003(c) to accommodate the decision in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000). The primary issue is the burden of proof in litigation involving a debtor's entitlement to a claimed exemption under section 522 of the Bankruptcy Code. Specifically, the suggestion asserts that the language of Bankruptcy Rule 4003(c), which places the burden of proof on the party objecting to the claimed exemption, alters the substantive rights of the parties in violation of the Rules Enabling Act. Judge Harris advised that the issue would remain under consideration by the subcommittee.

5. Joint Report by the Subcommittees on Consumer Issues and Forms.

(A) Discussion regarding proposed chapter 13 plan form (Official Form 113), and related proposed amendments to certain bankruptcy rules.

Judge Dennis Dow explained the subcommittee's process, discussion, and final recommendation regarding the chapter 13 plan and related rules. He reminded the group that the plan form and rules were published twice; after the second publication, the Committee received a compromise proposal from a group of bankruptcy judges and others that suggested permitting districts to opt out of using the national plan form if certain conditions were met. The subcommittees consulted with Judge Wedoff and Mr. Waage, as a former Committee member and Chapter 13 trustee, respectively, regarding the compromise proposal and related matters.

The subcommittees reviewed the comments on the published form and rules (these comments were included in the spring 2015 Committee meeting agenda materials), evaluated the compromise proposal, and considered the impact on the related rule amendments. The subcommittees also sought input from Judge Marvin Isgur and Judge Roger Efremsky as representatives of the group that submitted the compromise proposal.

The subcommittees' recommendation included revisions to Rule 3015 that would permit a district to opt out of using a national plan form and impose specific requirements for opting out. The subcommittees included in the agenda materials a proposed amended version of 3015 and a proposed new Rule 3015.1, along with proposed changes to the form itself, including language regarding the location of non-standard provisions to address the problem at issue in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010).

Judge Dow advised that subcommittee members would continue to share the revisions with the bankruptcy community in an effort to ensure that all interested parties are aware of the revised plan and rules. He reached out to the National Association of Chapter 13 Trustees (NACTT), the National Conference of Bankruptcy Judges (NCBJ), the American Bankruptcy Institute (ABI), the National Bankruptcy Conference (NBC), and the National Association of Consumer Bankruptcy Attorneys (NACBA). In doing this, he also asked for recommendations from these groups as to others who could be notified.

Judge Isgur and Judge Efremsky noted their individual support for the revised form and rules. They also indicated that they had surveyed members of the group that submitted the compromise proposal, and that such survey showed a lack of controversy over the revised form and rules. In addition, they reached out to the NACBA and the NACTT in both submitting the compromise proposal earlier in the year and in consideration of the revised plan form and rules. Judge Dow advised that while the majority of the subcommittee supported the recommendation to approve the plan form and related rules, there were a few members who objected.

Professor Gibson spoke briefly about the issue of republication. She stated that if a decision were made to republish, it would likely be to publish the revised Rule 3015 and new Rule 3015.1 rather than the plan form and other related rules. The subcommittee recommended postponing a decision on republication until the spring 2016 meeting. Judge Dow advised that the Rules Committee Support Office was contacted by two members of Congress, who expressed concern about the publication process for any revised plan or rules.

The specific recommendations of the subcommittee for approval were: (1) to approve the final version of Official Form 113 and the related rules other than Rules 3015 and 3015.1, with the understanding that the form and rules would not go forward to the Standing Committee at this time, and (2) to defer the final decision regarding republication until the spring 2016 meeting. Judge Ikuta advised that nothing would prevent the Committee from revisiting the plan form or related rules at a later time. She noted the Committee's consensus that the proposed amendments to the rules and the national plan form were a package, and neither would go forward without the other.

A motion was made to approve Official Form 113, Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, pending submission to the Standing Committee. It passed with one opposition. Proposed amended Rule 3007 was referred to the Business Subcommittee for consideration of an issue with the language in the version of the rule in the agenda materials. Amended Rule 3015 and new rule 3015.1 will continue to be considered by the Forms Subcommittee for a recommendation at the spring 2016 meeting.

(B) Report concerning the development of forms for subsections (f) and (g) of Rule 3002.1 - Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence, and additional amendments to the rule.

Professor Gibson explained that these issues relate to the mortgage form and rule amendments that went into effect in 2011. The issues were raised as part of a 2012 mini-conference on mortgage issues.

First, there are two proposed new Director's Forms: Form 4100N, Notice of Final Cure Payment (to implement Rule 3002.1 (f)); and Form 4100R, Response to Notice of Final Cure Payment (to implement Rule 3002.1(g)). The forms provide a vehicle for reporting information regarding the cure of arrearages, and were reviewed by the NACTT. Both proposed forms were included in the agenda materials. Currently courts have various requirements for reporting this information, and uniformity would be helpful, although the subcommittee determined that the forms did not need to be official forms. As these forms are issued by the Director of the Administrative Office and their use is not mandatory, approval of the Standing Committee and the Judicial Conference is not necessary, and the forms could be issued on December 1, 2015 along with other forms scheduled to go into effect this year. On motion, the Committee recommended that the Administrative Office issue the forms effective December 1, 2015.

Second was a proposed amendment to Rule 3002.1(b), the section of the rule that requires notice of post-petition changes to a mortgage payment. Rule 3002.1(e) provides a procedure for challenging a claimed fee, expense, or charge after the servicer gives notice of it under subdivision (c), but the rule does not provide a similar procedure for payment changes that are reported under subdivision (b). The proposed amendment would suspend the change in payment from going into effect if the debtor or trustee challenges the change within 21 days after the notice is served. If approved, it would be published in August 2016, along with a prior amendment to the same subsection that the Committee approved for publication at the fall 2014 meeting. That amendment regarding home equity lines of credit was held in abeyance so that it could be submitted with any additional amendments to the rule that the Committee decided to propose. Issues were raised with shifting the burden of persuasion to the objecting party and with limiting objections to the debtor or the trustee. The group discussed whether other parties in interest have standing to object without a change in the proposed language.

A motion was made to approve the version of the amended rule in the agenda materials with the clarification that parties in interest (in addition to the debtor and trustee) may object, and the motion passed. The amendment will go forward for publication and the outstanding issues can be considered, if needed, following the publication period.

The final issue was an amendment to Official Form 410S2 regarding notice of post-petition fees and charges. The proposed amendment deletes an instruction to Form 410S2 not to report fees and charges already approved by the court and adds an instruction that requires the creditor to indicate if a fee has previously been approved by the court to avoid double-payments. The recommendation was to seek approval without publication as a conforming amendment. The motion to approve the recommendation was approved.

6. Report by the Subcommittee on Forms.

(A) Recommendation to request that the Judicial Conference delegate to the Advisory Committee the authority to make non-substantive, technical, conforming changes to Official Bankruptcy Forms as needed.

The Forms Subcommittee recommended that the Committee approve a request to the Judicial Conference to delegate authority to the Committee to make non-substantive, technical, and conforming changes to the Official Forms as needed. The types of changes include: typos and erroneous cross-references, amendments to conform to a change in the law, a change in fee amounts that appear on the forms, or a technical change to accommodate a requirement of the Next Generation of CM/ECF (Next Gen). Scott Myers provided several examples of these changes, including proofreading edits. Judge Sutton suggested that a process be developed to provide notice to the Judicial Conference and the Standing Committee. Judge Ikuta suggested that the subcommittee's recommendation be changed to permit the Committee to implement these types of changes immediately, with retroactive notice and request for approval to the Standing Committee and Judicial Conference. A motion was made to approve the amended recommendation, and the motion was approved.

(B) Report regarding suggestion for Notice of Change of Address Form (Suggestion 15-BK-D) submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of National Association of Chapter 13 Trustees.

The suggestion, from a subcommittee of the NACTT, was to create a form to provide notice of changes of address. Professor Harner reported that there are several options for implementing the suggestion, including a new Official Form, a new Director's Form, an amendment of Form 410, or an amendment to the instructions for Form 410. Samples of these options were included with the agenda materials. The subcommittee determined that it did not have enough information or data to make a decision as to how to best approach this issue, and it instructed the assistant reporter to conduct a survey of courts to determine how the matter is currently handled along with an analysis of any technological issues with implementing a new form or method of indicating a change of address. Nancy Whaley (NACTT) stated that a form would be helpful for chapter 13 cases as chapter 13 trustees are under pressure about the amount of money contributed to the registrars of courts, and that correct changes of address would likely help.

7. Report by the Subcommittee on Business Issues.

(A) Recommendation regarding *Stern* amendments to Rules 7008, 7012, 7016, 9027, 9033, previously approved by the Judicial Conference in September 2013, but withdrawn from Supreme Court consideration pending decisions in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014) and *Wellness International Network, Ltd. v. Sharif*, 35 S. Ct. 1932 (2015); recommendation regarding *Stern*-related Suggestions 11BK-K and 15-BK-F.

The rule amendments were previously approved by the Committee but were withdrawn from consideration by the Supreme Court following the Supreme Court's grant of certiorari in *Executive Benefits Ins. Agency v. Arkison*, 134 S.Ct. 2165 (2014). Later the Court held in *Wellness International Network, Ltd. v. Sharif*, 35 S.Ct. 1932 (2015 that parties could consent to a bankruptcy court's adjudication of proceedings that would otherwise be outside the scope of its constitutional authority. The subcommittee considered whether the original proposed rule amendments should be resubmitted or if any amendments were required based on the Court's decisions. The rule amendments, which were included in the agenda book, were published for public comment in August 2012. They were given final approval by the Standing Committee in June 2013 and by the Judicial Conference in September 2013.

After deliberations, the subcommittee recommended that the Committee ask that the Judicial Conference resubmit the original amended rules to the Supreme Court. In making its recommendation, the subcommittee considered three possible approaches for amending the Bankruptcy Rules to authorize bankruptcy courts, with the parties' consent, to adjudicate proceedings that would otherwise require Article III adjudication: (1) the pending amendments; (2) the magistrate judge model; and (3) the Seventh Amendment model. The subcommittee determined that the alternative models had practical issues as well as possible concerns regarding knowing and voluntary waivers.

A motion to approve the subcommittee's recommendation to request that the Judicial Conference resubmit the amended rules to the Supreme Court was approved. Judge Sutton stated that he would give consideration as to the best process for the approval of the amended rules.

(B) Suggestion regarding rule amendment for district court treatment of bankruptcy court judgment as proposed findings and conclusions (Suggestion 12-BK-H).

In response to the suggestion that proposed a rule amendment to address the situation in which a district judge treats a judgment or order entered by a bankruptcy judge as proposed findings of fact and conclusions of law, the subcommittee recommended amendments to the title of Rule 9033 and subsection (a) of the rule. The subcommittee concluded that *Arkison* provides legal support for the validity of the approach contained in the suggestion. After the agenda materials were published, a Committee member submitted a suggestion to change the amendment slightly to incorporate references to the other sections of the rule. The group discussed the suggested amendments, and several edits and other revisions were proposed. The Committee decided to return the issue to the subcommittee for further discussion.

(C) Report on work plan for bankruptcy rules noticing project.

The Advisory Committee has received several comments that relate to noticing issues in bankruptcy cases. Professor Harner proposed a work plan for considering general notice issues, and the specific suggestions related to noticing, including Suggestions 12-BK-M, 12-BK-B, 15-BK-H, and Comment BK-2014-0001-0062.

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

(A) Recommendation concerning pending amendments to the Federal Rules of Appellate Procedure (FRAP) and whether to publish similar amendments to the Federal Rules of Bankruptcy Procedure.

The recently revised bankruptcy appellate rules (the Part VIII Rules), are modeled on many FRAP provisions. Because the Part VIII rules track FRAP wording rather than incorporate FRAP by reference, the pending FRAP amendments will not automatically apply to bankruptcy appeals in district courts and bankruptcy appellate panels.

The prospect of changes to FRAP required the subcommittee to determine which of the FRAP provisions proposed for amendment have parallels in the Part VIII rules and whether those bankruptcy rules should be similarly amended. One of the main issues considered by the subcommittee was the change in the length limit rules in FRAP. The subcommittee will continue to consider these issues and make any suggested amendments at the spring 2016 meeting. Professor Gibson reminded the group that any changes to the bankruptcy rules would go into effect in 2018.

9. Report by the Subcommittee on Technology and Cross Border Insolvency.

(A) Proposed amendment to Rule 5005(a)(2) to address proposed amendments to Civil Rule 5(d).

Professor Gibson reported that at the spring 2015 meeting the Committee voted to propose for publication an amendment to Rule 5005(a)(2) that would conform to the proposed amendment to Civil Rule 5(d). Because the language of the proposed amendment to Civil Rule 5(d) was still under discussion at that time, the Committee authorized the chair and the reporter to participate in inter-committee negotiations over the language of the proposed Rule 5(d) amendment and to incorporate into the proposed amendment to Rule 5005(a)(2) language that was acceptable to the advisory committees. The Civil Rules Committee subsequently decided not to seek publication of amendments to Rule 5 in order to give the other advisory committees more time to consider any similar amendments they want to propose. The main concern raised by the advisory committees was the impact on pro se filers of a change in Civil Rule 5.

The proposed amendments to Civil Rule 5, as well as a possible amendment to Criminal Rule 49, are still under consideration. The subcommittee discussed how any amendment to the Civil Rule would impact Bankruptcy Rule 5005. The potential versions of Civil Rule 5 were included in the agenda materials. The subcommittee preferred the more recent version of the Civil Rule 5 amendment. No concerns were raised with regard to the specific amendments being considered by the Civil Rules Committee.

In addition to the filing amendments, the Civil Rules Committee is considering an amendment to permit notice via a court's electronic filing system. The Criminal Rules Committee is considering a similar amendment to Criminal Rule 49. The proposed amendment to Rule 5(b)(2)(E) would eliminate the consent requirement for the use of electronic service of documents filed after the original complaint, and the proposed versions of the amendments were included in the agenda materials. Members of the subcommittee expressed a preference for the second version of the Civil Rule amendment, which would eliminate the consent requirement only for service through the CM/ECF system.

A final issue is to allow the Notice of Electronic Filing (NEF) to take the place of a certificate of service. This was original proposed by CACM and is under consideration by the Civil Rules Committee. The proposed Civil Rule amendment to Civil Rule 5(d), if approved, would become applicable in adversary proceedings pursuant to Rule 7005. Rule 9014, however, does not incorporate Rule 5(d). No concerns were raised by the Committee in its prior consideration of the proposed amendment.

Judge Sutton recommended that the Civil, Criminal, and Bankruptcy Committee reporters meet to develop a consensus recommendation for the Standing Committee.

10. Report by the Subcommittee on Attorney Conduct and Health Care.

(A) Recommendation concerning the subcommittee's consideration of Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 (Employment of Professional Persons).

The subcommittee determined to take no further action on this suggestion to amend the requirement that an application to hire a professional list all of the professional's connections with specified persons. Judge Jonker explained the history of the Committee's consideration of this issue. The subcommittee considered various alternatives in reviewing the suggestion, and determined that there were good points in the suggestion. Some of these could be implemented through training and educational programs rather than a rule change.

11. Report on the status of bankruptcy-related legislation.

Mr. Myers advised that legislation granting an exception from the means test requirements for service members and certain homeland security members is set to expire in December 2015. It has been renewed in the past; however, if not, an amendment to the means test forms (Official Forms 122) will be required.

12. Future meetings.

The spring 2016 meeting will be held March 31-April 1, 2016 in Denver, Colorado.

13. New business.

A suggestion was submitted within the past few weeks for consideration of several amendments, including one regarding social security numbers. The Privacy, Public Access and Appeals subcommittee will consider these issues.

Consent Agenda

The Chair and Reporters proposed several items for study and consideration prior to the Advisory Committee's meeting for approval by acclamation at the meeting if no objection was raised. Judge Ikuta advised that no comments were received on the items listed on the consent agenda. A motion was made to approve the items on the consent agenda and the motion was approved. The items are detailed below.

1. Subcommittee on Consumer Issues.

(A) Suggestion 13-BK-G to amend Fed. R. Bankr. P. 1015(b)

The subcommittee recommended amending Rule 1015(b) to eliminate language suggesting that only opposite-sex married couples may file a joint bankruptcy petition under §303 or that single-sex married couples are subject to different rules regarding their choice of exemptions, per Suggestion 13-BK-G. The suggestion was previously approved at the spring 2014 meeting, but held pending a decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). The subcommittee also recommended that the Standing Committee approve the amendment without publication.

(B) Suggestion 14-BK-G regarding inclusion of the debtor's full social security number on the version of the meeting of creditor's notice that is sent to the creditors listed in the debtor's schedules.

The subcommittee recommended that the Committee not consider the issue, given its thorough consideration of a similar suggestion in 2012. The subcommittee will engage in some additional informal outreach to certain creditors to inquire whether they are reliant on full social security numbers and report back at the spring 2016 meeting.

2. Subcommittee on Forms.

(A) Suggestion 15-BK-A by Derek S. Tarson recommending that bankruptcy schedules be made gender neutral in light of *United States v. Windsor*, 570 U.S. 12 (2013).

The subcommittee determined that because the amended Official Forms that take effect December 1, 2015 address Mr. Tarson's concerns, it recommended no further action on this matter.

(B) Suggestion 15-BK-B by Bankruptcy Judge Martin Teel Jr. proposing revisions Director's Form 263, Bill of Costs.

The subcommittee agreed with the proposal to amend Director's Form 263, and an amended version of the form was included in the agenda materials. The subcommittee recommended that the Director of the Administrative Office adopt the changes as set forth in the revised Director's Form 263 and the related instructions.

(C) Recommendation to renumber Official Forms 20A, Notice of Motion or Objection, and 20B, Notice of Objection to Claim.

The subcommittee recommended that the forms be renumbered, a minor wording change be made, and that the Committee propose the forms for final approval without publication.

3. Subcommittee on Business Issues.

(A) Possible changes to Official Forms 25A-C, and 26, and Exhibit A to Official Form 201 (renumbered as Official Form 201A at the spring 2015 meeting, and on track to go into effect December 1, 2015).

The subcommittee recommended no further revisions to Official Form 201A (formerly Exhibit A), and will consider possible changes to Official Forms 25A-C, and 26 with recommendations at the spring 2016 meeting.

4. Privacy, Public Access, and Appeals.

(A) Suggestion regarding amendment of Rule 8018 (Serving and Filing Briefs; Appendices) (Suggestion 15-BK-C).

The subcommittee determined that Bankruptcy Rules 8018(a)(1) and 8010(c) adequately provide that the briefing schedule set forth in Rule 8018(a) is triggered only upon the transmission of the complete record by the clerk, unless otherwise ordered by the court. Accordingly, the subcommittee recommended no action on this matter at this time.

(B) Recommendation concerning timing of publication of deferred recommendations to revise Rules 8002(a)(5) and 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Advisory Committee meeting), and Rule 8023 (approved at the spring Advisory Committee meeting); and concerning Comments 12-BK-005, 12-BK-015, and 12-BK-040 regarding designation of the record in bankruptcy appeals.

As to the three previously approved amendments, revisions to Rules 8002(a)(5) and 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Advisory Committee meeting), and Rule 8023 (approved at the spring Advisory Committee meeting), the subcommittee recommended that they be submitted to the Standing Committee in June 2016, with a request that they be published with the Part VIII amendments that will be proposed to conform to the FRAP amendments. With regards to Comments 12-BK-005, 12-BK-015, and 12-BK-040 regarding designation of the record in bankruptcy appeals, the subcommittee initially referred the matters to the Standing Committee's CM/ECF Subcommittee. Given that the CM/ECF Subcommittee took no action on the comments and is now disbanded, the subcommittee recommended no further action on the comments.

Following the vote to approve the matters on the consent agenda, the meeting was adjourned at 2:40 pm.

Respectfully submitted,

Michelle Harner, assistant reporter

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MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of January 7, 2016 | Phoenix, AZ

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ATTENDANCE

The Judicial Conference on Rules of Practice and Procedure held its spring meeting in Phoenix, Arizona on January 7, 2016. The following members participated in the meeting:

Judge Jeffrey S. Sutton, Chair
Associate Justice Brent E. Dickson
Roy T. Englert, Esq.
Gregory G. Garre, Esq.
Daniel C. Girard, Esq.
Judge Neil M. Gorsuch
Judge Susan P. Graber
Professor William K. Kelley
Judge Patrick J. Schiltz
Judge Amy St. Eve
Judge Richard C. Wesley
Judge Jack Zouhary

The following attended on behalf of the advisory committees:

Advisory Committee on Appellate Rules –
Judge Steven M. Colloton, Chair
Professor Gregory E. Maggs, Reporter

Advisory Committee on Bankruptcy Rules –
Judge Sandra Segal Ikuta, Chair
Professor S. Elizabeth Gibson, Reporter (by teleconference)
Professor Michelle M. Harner, Reporter

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

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

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

Elizabeth J. Shapiro, Esq., Deputy Director for the Civil Division of the Justice Department, represented the Department of Justice on behalf of the Honorable Sally Quillian Yates, Deputy Attorney General.

Other meeting attendees included: Judge David G. Campbell; Judge Scott Matheson, Jr. (teleconference); Judge Robert M. Dow (teleconference); Judge Phillip R. Martinez and Sean Marlaire, representing the Court Administration and Case Management Committee ("CACM"); Professor Bryan A. Garner, Style Consultant; Professor R. Joseph Kimble, Style Consultant; Professor Geoffrey C. Hazard, Jr., Consultant.

Providing support to the Committee:

Professor Daniel R. Coquillette	Reporter, Standing Committee
Rebecca A. Womeldorf (by teleconference)	Secretary, Standing Committee
Julie Wilson (by teleconference)	Attorney Advisor, RCSO
Scott Myers	Attorney Advisor, RCSO
Bridget M. Healy (by teleconference)	Attorney Advisor, RCSO
Shelly Cox	Administrative Specialist
Tim Reagan	Senior Research Associate, FJC
Derek A. Webb	Law Clerk, Standing Committee
Amelia G. Yowell (by teleconference)	Supreme Court Fellow, AO

INTRODUCTORY REMARKS

Judge Sutton called the meeting to order. He introduced two new members of the Standing Committee, Daniel Girard and William Kelley, welcomed back Bryan Garner as a Style Consultant, welcomed Judge John Bates as the new chair of the Advisory Committee on Civil Rules and Judge Donald Molloy as the new chair of the Advisory Committee on Criminal Rules, and introduced Greg Maggs as the new reporter for the Advisory Committee on Appellate Rules and Michelle Harner as a new reporter for the Advisory Committee on Bankruptcy Rules. He thanked Judge Phillip Martinez and Sean Marlaire for representing CACM. And he reminded the attendees that Justice O'Connor would attend the dinner meeting.

Judge Sutton reported that the civil rules package, which included revisions of Rules 1, 4, 16, 26, 30, 31, 33, 34, 37, and 55, and abrogation of Rule 84, and Bankruptcy Rule 1007, went into effect on December 1, 2015. He observed that Chief Justice Roberts devoted his year-end report to that package.

Judge Sutton also reported that the Judicial Conference submitted various rule proposals to the Supreme Court on October 9, 2015 (Appellate Rules 4, 5, 21, 25, 26, 27, 28, 28.1, 29, 32, 35, and 40, and Forms 1, 5, and 6, and proposed new Form 7; Bankruptcy Rules 1010, 1011, 2002, 3002.1, 9006(f), and new Rule 1012; Civil Rules 4, 6, and 82; and Criminal Rules 4, 41, and 45) and again on October 29, 2015 (Bankruptcy Rules 7008, 7012, 7016, 9027, and 9033, known as the "*Stern* Amendments").

APPROVAL OF THE MINUTES OF THE LAST MEETING

Upon a motion by a member, seconded by another, and by voice vote: **The Standing Committee approved the minutes of the May 28, 2015 meeting.**

INTER-COMMITTEE WORK

Judge Sutton reserved discussion of electronic filing, service, and notice requirements for the Advisory Committee on Criminal Rules' report on Criminal Rule 49.

Professor Capra discussed the 2015 study conducted by Joe S. Cecil of the Federal Judicial Center entitled *Unredacted Social Security Numbers in Federal Court PACER Documents*, which discussed unredacted social security numbers in documents filed in federal courts and thus available in PACER, notwithstanding the "privacy rules" adopted in 2007 that require redaction of such information. The Standing Committee concluded that this problem could not be resolved by another rule amendment, and offered to support those in CACM who would address implementation of the existing rule at their summer 2016 meeting.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Molloy reported that the Advisory Committee on Criminal Rules had no action items and six information items.

Information Items

Rule 49 – Rule 49 provides that service and filing must be made "in the manner provided for a civil action." The Advisory Committee is considering ways to amend this rule in anticipation of a likely change in the civil rules that will require all parties to file and serve electronically. After study by the Rule 49 Subcommittee chaired by Judge David Lawson, the Advisory Committee concluded that such an electronic default rule could be problematic in the criminal context for two reasons. First, pro se defendants and pro se prisoners filing actions under § 2254 and § 2255 rarely have unfettered access to the CM/ECF system. Second, the architecture of CM/ECF does not permit non-party filings in criminal cases. Therefore, the Advisory Committee favors severing the link to the civil rules governing service and filing and is drafting a stand-alone Rule 49 that does not incorporate Civil Rule 5. They plan to submit a final draft rule to the Standing Committee in June 2016.

The Standing Committee then discussed the general topic of incorporation by reference across the various sets of rules. Consensus formed around the idea that whenever an advisory committee is considering changing a rule that is incorporated by reference, or is parallel with language in another set of rules, it should always first coordinate with the committee responsible for those other rules before sending proposed changes out for notice and comment.

Members also agreed that the presumption in favor of parallel language across the rules suggested that changes to Rule 49 should depart as little as possible from the language of Civil Rule 5.

Rule 12.4(a)(2) – After an amendment in 2009, the Code of Judicial Conduct no longer treats as "parties" all victims entitled to restitution. The Department of Justice consequently recommended a corresponding amendment to Rule 12.4(a)(2), which assists judges in

determining whether to recuse themselves based on the identity of any organizational or corporate victims. The Advisory Committee agreed with this recommendation and created a subcommittee to draft a proposed amendment. Because a parallel provision exists in the Appellate Rules, the Advisory Committee on Criminal Rules is working with the Advisory Committee on Appellate Rules to draft the amendment.

Rule 15(d) – The Advisory Committee appointed a subcommittee to study whether to amend this rule and its accompanying note, which governs payment of deposition expenses, in light of an inconsistency between the text of the rule and the committee note. Judge Molloy said the text of the rule accurately identifies who bears the costs, but the note slightly mischaracterizes the rule by suggesting that the Department of Justice would have to pay for certain depositions overseas even if it did not request them. The Advisory Committee is struggling with how to fix this problem given the presumption that it cannot amend a note absent a rule revision. The Subcommittee will make its recommendations about how to fix this potential problem at the April 2016 meeting of the Advisory Committee.

Rule 32.1 – At the suggestion of Judge Graber, the Advisory Committee has examined whether Rule 32.1 should track the language of Rule 32 and require the court to give the government an opportunity to allocute at a hearing for revocation or modification of probation or supervised release. In a couple of cases, the United States Court of Appeals for the Ninth Circuit has held that the court must grant the government this opportunity and imported procedural rules from Rule 32 to fill "gaps" in Rule 32.1. After discussing the matter at its September 2015 meeting, the Advisory Committee decided to let this issue percolate and watch for developments in other circuits before considering any rule amendments.

Rule 23 – The Advisory Committee considered a suggestion to revise Rule 23 to allow oral waivers of trial by jury. The current rule requires a written stipulation from the defendant if they want to waive a jury trial and from the parties if they want to have a jury composed of fewer than twelve persons. Several cases have held that an oral waiver is sufficient if it is made knowingly and intelligently and have held that the failure to make the waiver in writing was harmless error. After study, the Advisory Committee decided against pursuing an amendment to Rule 23 because so many other criminal rules require written waivers and because the doctrine of harmless error covers this issue.

Rule 6 – In response to a suggestion to consider several amendments to Rule 6, which governs grand jury procedures, after a thorough discussion, the Advisory Committee decided to retain the current rule.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Colloton reported that the Advisory Committee on Appellate Rules had three action items in the form of three sets of proposed amendments to be published this upcoming summer for which it sought the approval of the Standing Committee.

Action Items

STAYS OF THE ISSUANCE OF THE MANDATE: RULE 41 – The Advisory Committee sought approval of several amendments to Rule 41 designed to respond to two Supreme Court cases that highlighted some ambiguity within the Rule and to remove some redundancy from the Rule.

The proposed amendment to Rule 41(b) clarifies that a circuit court can extend the time of a stay of its mandate "by order" and not simply by inaction. In response to a question from a member, the Standing Committee discussed the pros and cons of inserting "only" in front of "by order" but decided to leave the language as is, with the potential to revisit at the June 2016 Standing Committee meeting. The proposed amendment to Rule 41(d)(4) next clarifies that a circuit court can "in extraordinary circumstances" stay a mandate even after it receives a copy of a Supreme Court order denying certiorari, thereby adopting the same extraordinary circumstances standard that the Supreme Court has found is required to recall a mandate. Finally, the Advisory Committee proposed deleting Rule 41(d)(1), which replicates Rule 41(b) regarding the effect of a petition for rehearing on the mandate, and is therefore redundant.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendments to Rule 41 and their accompanying Committee Notes.**

AUTHORIZING LOCAL RULES ON THE FILING OF AMICUS BRIEFS: RULE 29(A) – The Advisory Committee sought approval of an amendment to Rule 29(a) that would authorize local rules that prohibit the filing of amicus briefs, even if the parties have consented to their filing, in situations where they would disqualify a judge. As it stands, Rule 29(a) appears to be inconsistent with such local rules because it implies that there is an absolute right to file an amicus brief if the parties consent: "Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing." The proposed amendment adds to that sentence "except that a court of appeals may by local rule prohibit the filing of an amicus brief that would result in the disqualification of a judge."

The Standing Committee members raised and discussed several potential stylistic issues with the proposed amendment. Judge Colloton noted in advance that he plans to shorten "the disqualification of a judge" to "a judge's disqualification." Judge Sutton recommended omitting the phrase "by local rule," which received support from the members. Others raised stylistic concerns with the "except that" phrase as a whole, preferring to start a new sentence beginning with "But" or "A court of appeals may," or breaking up the sentence with a semicolon and beginning the second clause with "provided however that." Others pointed out that a third sentence might suggest that the exception would also apply to the first sentence of Rule 29(a), which governs amicus briefs submitted by the government. Finally, some members raised a concern with the meaning of the phrase "prohibit the filing," asking whether it referred to prohibiting the actual submission of the document, its delivery to the panel, or its continued appearance in the record.

Judge Colloton decided to "remand" the proposal back to the Advisory Committee for further consideration of these largely stylistic revisions before re-submission to the Standing Committee.

EXTENSION OF TIME FOR FILING REPLY BRIEFS: RULES 31(A)(1) AND 28.1(F)(4) – The Advisory Committee sought approval of an amendment to Rules 31(a)(1) and Rule 28.1(f)(4), which would lengthen the time to serve and file a reply brief from 14 days to 21 days after the service of the appellee's brief. This amendment comes in anticipation of the elimination of the "three day rule," which would effectively reduce the time to file a reply brief from 17 to 14 days. After appellate lawyers on the Advisory Committee expressed the concern that this reduced window of time would adversely effect the quality of reply briefs, and in the hope that the extra time might lead to shorter reply briefs, the Advisory Committee decided to increase the time allowed. The Advisory Committee elected to shift from 14 days to 21 days in keeping with the established convention to measure time periods in 7-day increments where feasible. Judge Colloton noted that the phrase "the committee concluded that" will be deleted from the draft Committee Notes for both amended rules.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendments to Rule 31(a)(1) and Rule 28.1(f)(4) and their accompanying Committee Notes.**

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Sessions reported that the Advisory Committee on Evidence Rules had no action items and four information items.

Information Items

SYMPOSIUM ON HEARSAY REFORM – Judge Sessions reported on the Symposium on Hearsay Reform in Chicago on October 9, 2015. Inspired by a recent decision by Judge Posner in which he had suggested the removal of all the specific exceptions to the federal rule against hearsay in favor of greater discretion for the presiding judge, the symposium brought together prominent judges, lawyers, and professors to re-examine the continuing vitality of the hearsay rule and its exceptions. Participants considered reform of the hearsay rule in the context of the electronic information era and discussed the pros and cons of various potential amendments to the hearsay rule. Participants entertained a proposal to replace the rule-based system with a guidelines system akin to the Sentencing Guidelines. Another proposal favored replacing the system of exceptions with a Rule 403 balancing analysis. And yet another was to retain the current system while expanding use of the residual exception in Rule 807. Judge Sessions added that none of these changes was likely to happen soon, particularly in view of the nearly uniform position of the practicing attorneys that the specificity of the current rules works well. He and several members remarked upon how successful the symposium had been and thanked Judge St. Eve, Judge Schiltz and Professor Capra for their help with the event.

PROPOSED AMENDMENTS TO RULES 803(16) AND RULE 902 ISSUED FOR PUBLIC COMMENT – The Advisory Committee has two proposed amendments out for public comment. The first, Rule 803(16), eliminates the hearsay exception for ancient documents. The second, Rule 902, would ease the burden of authenticating certain electronic evidence. Judge Sessions reported that since November 2015 the Advisory Committee has received more than 100 letters on the first rule governing the ancient documents exception, principally from lawyers in asbestos and

environmental toxic litigation criticizing the proposed amendment. Most expressed concern that the proposed rule would prevent the admission of documents over 20 years old, a concern Judge Sessions believed misplaced because the proposed rule does not alter the rules for authenticity, but rather reliability. Judge Sutton asked whether a Committee Note might help clarify this issue, and Professor Capra concurred. With respect to Rule 902, the proposal elicited little public comment and seems to have been universally accepted. Professor Capra added that the magistrate judges support both proposed amendments.

PROPOSED AMENDMENTS TO THE NOTICE PROVISIONS IN THE FEDERAL RULES OF EVIDENCE – The Advisory Committee continues to consider ways to increase uniformity among the various notice provisions throughout the Federal Rules of Evidence. Uniformity cannot be achieved for all provisions. For example, the notice provisions of Rules 412–415 dealing with sex abuse offenses, are congressionally mandated and cannot therefore be amended through the rules process. The Advisory Committee continues to consider uniform language that would work for other notice provisions.

Turning to specific notice provisions, the Advisory Committee is considering removing the requirement in Rule 404(b) that a criminal defendant must request notice of the general nature of any evidence that the prosecutor intends to offer at trial. Judge Sessions added that the Advisory Committee believed the existing rule was a "trap for an incompetent lawyer" and unfair because it punishes defendants whose lawyers fail to request notice. The Advisory Committee is also considering inclusion of a good faith exception to the pretrial notice provision in Rule 807.

BEST PRACTICES MANUAL ON AUTHENTICATION OF ELECTRONIC EVIDENCE – In an effort to assist courts and litigants in authenticating electronic evidence such as e-mail, Facebook posts, tweets, YouTube videos, etc., and following a suggestion from Judge Sutton, the Advisory Committee is creating a best practices manual on the subject. Judge Sessions reported that Professor Capra has worked on this manual along with Greg Joseph and Judge Paul Grimm, and the final product should be completed for presentation to the Standing Committee by its June meeting.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Ikuta reported that the Advisory Committee had five action items and four information items to present to the Standing Committee. She also announced that the modernized bankruptcy forms became effective on December 1, 2015. She added that they have been well received and that the only "criticism" made against them is that they are so clear and easy to use that they might encourage more pro se filings.

Action Items

Judge Ikuta explained that because the first three action items (a proposed change to Rule 1015(b), proposed changes to Official Forms 20A and 20B, and a proposed change to Official Form 410S2) involved just minor or conforming changes, the Advisory Committee recommended to the Standing Committee that they go through the regular approval process but without notice and public comment. She added that this would result in a December 1, 2017

effective date for the rule rather than the December 1, 2016 effective date stated in the agenda book. The forms, she said, would remain on track to go into effect on December 1, 2016.

RULE 1015(B) (CASES INVOLVING TWO OR MORE RELATED DEBTORS) – In light of the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015), the Advisory Committee proposed that Rule 1015(b) be amended to substitute the word "spouses" for "husband and wife" in order to include joint bankruptcy cases of same-sex couples.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 1015(b).**

OFFICIAL FORMS 20A (NOTICE OF MOTION OR OBJECTION) AND 20B (NOTICE OF OBJECTION TO CLAIM) – The Advisory Committee proposed that Official Forms 20A and 20B be renumbered to 420A and 420B, to conform with the new numbering convention of the Forms Modernization Project. It also proposed substituting the word "send" for "mail" in this rule to encompass other permissible methods of service and to maintain consistency with other new forms.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Official Forms 20A and 20B.**

OFFICIAL FORM 410S2 (NOTICE OF POSTPETITION FEES, EXPENSES, AND CHARGES) – The Advisory Committee proposed resolving an inconsistency between Rule 3002.1(c) and Official Form 410S2. The rule requires a home mortgage creditor to give notice to the debtor of all fees without excluding ones already ruled on by the bankruptcy court. The form that implements the rule, however, says that the creditor should not "include…any amounts previously…ruled on by the bankruptcy court." The Advisory Committee proposed deleting the form's inconsistent instruction and adding an instruction that tells the lender to flag the fees that have already been approved by the bankruptcy court.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Official Form 410S2.**

RULE 3002.1(B) (NOTICE OF PAYMENT CHANGES) AND (E) (DETERMINATION OF FEES, EXPENSES, OR CHARGES) – The Advisory Committee sought approval from the Standing Committee of three proposed amendments to Rule 3002.1(b) for publication for public comment in August 2016. First, the Advisory Committee recommends creating a national procedure by which any party in interest can file a motion to determine whether a change in the mortgage payment made by the creditor is valid. Second, the Advisory Committee recommends giving the court the discretion to modify the 21-day notice requirement in the case of home equity lines of credit because the balance of such loans is constantly changing. And third, the Advisory Committee recommends amending Rule 3002.1(e) by allowing any party in interest, and not just a debtor or trustee as currently allowed under the rule, to object to the assessment of a fee, expense, or charge.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendments to Rule 3002.1(b) and 3002.1(e) for publication for public comment.**

REQUEST FOR A LIMITED DELEGATION OF AUTHORITY – The Advisory Committee requested a limited delegation of authority to allow it to make necessary non-substantive, technical, and conforming changes to the official bankruptcy forms that would be effective immediately but subject to retroactive approval by the Standing Committee and notice to the Judicial Conference. Judge Ikuta explained that there were three categories of such changes that would benefit from this procedure: 1) typos; 2) changes to the layout or wording of a form to ensure that CM/ECF can capture the data; and 3) conforming changes when statutes, rules, or Judicial Conference policies change in non-substantive ways. Discussion led to consensus around the idea that after the Advisory Committee identified the need for a minor change in a form, it would vote on the proposed change, and notify the chair of the Standing Committee during that approval process. Some members observed that because the process to amend forms concludes with approval by the Judicial Conference, and does not require the full Rules Enabling Act process, the delegation of authority to the Advisory Committee to make minor changes effective immediately, but subject to retroactive approval by the Standing Committee and notice to the Judicial Conference, posed no procedural problems.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously agreed to seek Judicial Conference delegation of authority to the Advisory Committee on Bankruptcy Rules to make non-substantive, technical, and conforming changes to official bankruptcy forms, with any such changes subject to retroactive approval by the Standing Committee and notice to the Judicial Conference.**

Information Items

STERN AMENDMENTS RESUBMITTED TO THE SUPREME COURT – Professor Gibson gave a brief update on the *Stern* Amendments. After the Supreme Court's decision in *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015), which upheld the validity of party consent to bankruptcy courts entering final judgment on *Stern* claims, the Advisory Committee resubmitted to the Standing Committee its *Stern* Amendments. It had originally submitted these amendments in 2013, and secured the approval of the Standing Committee and the Judicial Conference, but the Judicial Conference withdrew them given the Supreme Court's decision to hear *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014). The Standing Committee reapproved the amendments by e-mail vote in October 2015 and the Judicial Conference approved them shortly thereafter. The Judicial Conference submitted them to the Supreme Court as a supplemental transmittal on October 29, 2015. If approved by the Supreme Court in the spring of 2016, they will go into effect on December 1, 2016. Professor Gibson and Judge Ikuta expressed the Advisory Committee's appreciation of the Standing Committee's quick action on the *Stern* Amendments.

CHAPTER 13 PLAN FORM AND OPT-OUT PROPOSAL – Judge Ikuta gave a report on the history and current status of the Advisory Committee's plan to create a national Chapter 13 plan official form. The Advisory Committee commenced work on this at its spring 2011 meeting. It published its proposed plan form and related rules in August 2013. In response to comments received, the package was revised and republished in August 2014. The second publication prompted additional comments, most notably from numerous bankruptcy judges expressing their

preference to retain their local forms. In response, the Advisory Committee voted unanimously to consider a proposal to approve the plan form and most of the related rules with minor amendments, but to consider further rule revisions that would allow a district to use a single district-wide local plan form so long as it met certain criteria. At its April 2016 meeting, the Advisory Committee will decide whether to recommend that this "opt-out" proposal go forward without further notice and public comment. Judge Sutton and Professor Coquillette suggested that while republication might not be required because the Chapter 13 package has been published twice before, prudence might favor republication given the demonstrated public interest over the past two publication periods and the somewhat new concept of the opt-out proposal. Members generally supported the idea of further publication, but only to the rule changes needed to implement the proposed opt-out procedure, and, if acceptable to the Judicial Conference and the Supreme Court, on an accelerated basis that would allow for an effective date of December 2017, rather than December 2018. To accomplish this, the rule changes could be published for three months (August–November, 2016) and the entire Chapter 13 package could be considered by the Standing Committee in January 2017, the Judicial Conference in March 2017, and the Supreme Court by May 2017, with a target December 1, 2017 effective date assuming no contrary congressional action.

RULE 4003(C) (EXEMPTIONS – BURDEN OF PROOF) – Professor Harner reported the Advisory Committee's ongoing study regarding whether Rule 4003(c), which places the burden of proof in any litigation concerning a debtor's claimed exemptions on the objecting party, violates the Rules Enabling Act. In light of the Supreme Court's decision in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000), which held that the burden of proof is a substantive component of a claim, Chief Judge Christopher M. Klein, U.S. Bankruptcy Court for the Eastern District of California, suggested to the Advisory Committee that by placing the burden of proof on the objector, as opposed to the debtor which many states do, Rule 4003(c) alters a substantive right and thereby violates the Rules Enabling Act. Professor Harner explained that the Advisory Committee is studying whether, à la *Hanna v. Plumer*, the rule announced in *Raleigh* is substantive or procedural.

RULE 9037 (PRIVACY PROTECTION FOR FILINGS WITH THE COURT) – REDACTION OF PREVIOUSLY FILED DOCUMENTS – Judge Ikuta reported that the Advisory Committee is studying CACM's recent suggestion that it amend Rule 9037. CACM suggested that the rule require notice be given to affected individuals when a request is made to redact a previously filed document that mistakenly included unredacted information. Because a redaction request may flag the existence of unredacted information, consideration is being given to procedures to prevent the public from accessing the unredacted information before the court can resolve the redaction request. Further consideration at the Advisory Committee's spring 2016 meeting may result in a proposal.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Bates reported that the Advisory Committee on Civil Rules had no action items but four information items to put before the Standing Committee.

Information Items

RULE 23 SUBCOMMITTEE – Judge Bates reported on the work of the Rule 23 Subcommittee, chaired by Judge Robert Dow, which has been in existence since 2011. After various conferences and multiple submissions, the Subcommittee has identified six topics for possible rule amendments:

1. "Frontloading" in Rule 23(e)(1), requiring upfront information relating to the decision whether to send notice to the class of a proposed settlement.
2. Amendment to Rule 23(f) to clarify that a decision to send notice to the class under Rule 23(e)(1) is not appealable under Rule 23(f).
3. Amendment to Rule 23(c)(2)(B) to clarify that the Rule 23(e)(1) notice triggers the opt-out period under a Rule 23(b)(3) class action.
4. Another amendment to Rule 23(c)(2)(B) to clarify that the means by which the court gives notice may be "by United States mail, electronic means or other appropriate means."
5. Addressing issues raised by "bad faith" class action objectors. Finding a way to deter objectors from holding settlements "hostage" while pursuing an appeal until they receive a payoff and withdraw their appeal has received considerable attention. Members of the Subcommittee seem inclined to recommend a simple solution which would require district court approval of any payment in exchange for withdrawing an appeal. One potential issue with this solution is jurisdictional: Once the notice of appeal is filed, jurisdiction over a case typically transfers from the district court to the court of appeals. The Subcommittee is currently studying this issue. The Subcommittee is also considering a more complicated solution whereby it would amend both Rule 23 and Appellate Rule 42(c), on the model of an indicative ruling.
6. Refining standards for approval of proposed class action settlements under Rule 23(e)(2). The proposed amendment focuses and expands upon the "fair, reasonable, and adequate" standard incorporated into the rule in 2003 by offering a short list of core considerations in the settlement-approval setting.

The Standing Committee principally discussed the "bad faith" objector issue. Some members raised the question of whether sanctioning lawyers might help address the problem. Others asked whether securing district court approval for a payoff might actually worsen the problem by incentivizing bad faith objectors to do more work and run up a bill that they can justify to a court.

Judge Bates next reported on those issues that the Rule 23 Subcommittee has decided to place on hold.

1. Ascertainability. Because this issue is currently getting worked out by several circuit courts, is the subject of a few pending cert petitions to the Supreme Court, and may be affected by the class action cases already argued this term before the Court, the Subcommittee has decided not to propose a rule amendment at this time.
2. "Pick-off" offers of judgment. This issue has also recently been litigated in the circuit courts and, as of the time of the meeting, was pending before the Supreme Court in *Campbell-Ewald v. Gomez*, 136 S.Ct. 663 (2016).

3. Settlement class certification standards. Given the feeling of many in the bar that they and the courts can handle settlement class certification without the need for a rule amendment, the Subcommittee has decided to place this issue on hold.
4. Cy Pres. Given the many questions that have emerged in this controversial area, including the necessity of a rule and whether a rule might violate the Rules Enabling Act, the Subcommittee has decided to place this issue on hold.
5. Issue classes. The Subcommittee has concluded that whatever disagreement among the circuits there may have been on this issue at one time, it has since subsided.

RULE 62: STAYS OF EXECUTION – Judge Bates reported on the work of the joint Subcommittee of the Appellate and Civil Rules Advisory Committees chaired by Judge Scott Matheson. The Subcommittee has developed a draft amendment for Rule 62 that straightforwardly responds to three concerns raised by a district court judge and other members of the Appellate Rules Advisory Committee. First, the draft extends the automatic stay from 14 days to 30 days to eliminate a gap between the current 14-day expiration of the automatic stay and the 28-day time set for post-trial motions and the 30-day time allowed for appeals. Second, it allows security for a stay either by bond or some other security provided at any time after judgment is entered. And third, it allows security by a single act that will extend through the entirety of the post-judgment proceedings in the district court and through the completion of the appeal. Judge Bates concluded by noting that the Subcommittee had considered but withdrawn a proposal that spelled out several details of a court's inherent power to regulate several aspects of a stay. The Subcommittee withdrew it after discussion at the Advisory Committee meetings because a stay is a matter of right upon posting of a bond and because they concluded that such an amendment was not necessary to solve any problems. This preliminary draft has yet to be approved by either Advisory Committee. Judge Bates said that he planned to submit this to the Standing Committee in June 2016 for publication.

EDUCATIONAL PROGRAMS REGARDING THE CIVIL RULES PACKAGE – Judge Bates reported that the Advisory Committee has been collaborating with the Federal Judicial Center to create educational programs for judges and lawyers to help spread the word about the new discovery amendments that went into effect on December 1, 2015. Judge Campbell and others have starred in various educational videos highlighting the new rules. Judge Sutton and Judge Bates sent out letters to all chief judges of the circuit, district, and bankruptcy courts on December 1, 2015, explaining the changes. Various circuit courts are creating educational programs of their own for circuit conferences and other court gatherings. The American Bar Association and other bar groups have started to create programs as well. The Education Subcommittee, chaired by Judge Paul Grimm, is now working on additional steps in collaboration with the Federal Judicial Center. Judge Sutton underlined the ongoing responsibility of Standing Committee members to help support these local and national educational efforts.

PILOT PROJECTS – Judge Campbell reported on the ongoing work of the Pilot Project Subcommittee. The Subcommittee investigates ways to make civil litigation more efficient and collects empirical data on best practices to help inform rule making. The Subcommittee consists of members of the Advisory Committee on Civil Rules along with Judges Sutton, Gorsuch and St. Eve from the Standing Committee, Jeremy Fogel and others from the Federal Judicial Center, and in the near future one or more members of CACM. Over the past several months, members

of the Subcommittee have been researching pilot projects and various studies that have already been conducted, including 11 projects in 11 different states, efforts in 2 federal courts particularly noted for their efficiency, a pilot project conducted during the 1990s at the direction of Congress, the work of the Conference of State Court Chief Justices, and a multi-year FJC study conducted at CACM's request that examined the root causes of court congestion.

The Subcommittee has decided to focus on two possible pilot projects. First, it is looking into enhanced initial disclosures in civil litigation. Some research indicates that initial disclosure of helpful and hurtful information known by each party can improve the efficiency of litigation. But the experience with a mandatory disclosure regime in the 1990s under then Rule 26(a), which involved fierce opposition, a dissent by three Supreme Court Justices, multiple district court opt-outs, and eventual abandonment of the rule, provides something of a cautionary tale. The Subcommittee is exploring and conducting empirical and historical research on this topic at both the federal and state level. They have concluded that conducting pilot projects that test the benefits of more robust initial disclosures would be a sensible next step before proceeding to the drafting and publishing of any new possible rule amendments. Judge Campbell sought the perspective of members on several tough questions, including what the scope of the discovery requirement should be, how to handle objections to discovery obligations, how to handle electronically stored information, how to get around a categories-of-documents-based approach to discovery obligations, and how to measure the success of any pilot projects in this area (cost of litigation, time to disposition, number of discovery disputes, etc.).

The second category of possible pilot projects would focus upon expedited litigation. The Federal Judicial Center has shown that there exists a linear relationship between the length of a lawsuit and its cost. There are already a number of federal and state courts that have expedited schedules, including the Eastern District of Virginia, Southern District of Florida, Western District of Wisconsin, and the state courts of Utah and Colorado. Under the CJRA, researchers found in the 1990s that early judge intervention, efficient and firm discovery schedules, and firm trial dates are among the factors most helpful in moving cases along. Because Rule 16, in existence in its current form since 1983, already permits judges to do all of this, a change in a federal rule of procedure is less necessary than a change in local legal culture to help speed up case disposition times. The Subcommittee is considering running a pilot project that could address a court's legal culture by setting certain benchmarks for it, including requiring case management conferences within 60 days, setting firm discovery schedules and trial dates, and measuring how well the local court is meeting those benchmarks over a three-year period. At the same time, the Federal Judicial Center would provide training for the pilot judges in that court in accelerated case management.

Judge Campbell discussed another possible pilot project of having the Federal Judicial Center regularly publish a chart showing the average disposition time by a district court of different kinds of suits compared to the national average.

And finally, speaking on his own and not on behalf of the Pilot Project Subcommittee, Judge Campbell discussed with members the pros and cons of possibly shortening the time before cases and motions were placed on the CJRA list from 3 years to 2 years, and from 6 months to 3 months.

REPORT OF THE ADMINISTRATIVE OFFICE

REPORT ON THE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT'S CONSIDERATION OF PROTECTION OF COOPERATOR INFORMATION – Judge Martinez, assisted by Sean Marlaire, reported on CACM's work on the issue of harm or threat of harm to government cooperators and their families in criminal cases. This problem, which goes back at least a decade, has proven a tricky one, and seems to pit the interest in protecting cooperators from retaliation against the interest of access to court records and proceedings. CACM met in early December in Washington, D.C., where it discussed the issue. Judge Martinez reported that Judge William Terrell Hodges, the chair of CACM, recommends that the Standing Committee refer this issue to the Advisory Committee on Criminal Rules. CACM has concluded that a national approach, whether in the form of rule change or suggested best practices, would be preferable to one based on diverse local rules. Members of the Standing Committee generally agreed that the problem was a serious one that required collaboration across multiple committees and consultation with the Department of Justice and the Bureau of Prisons. Judge Molloy, on behalf of the Advisory Committee on Criminal Rules, and in consultation with his Reporters, welcomed the reference of the issue to his Committee. He added that he looked forward to inviting interested parties to the discussion, and pledged to keep the Advisory Committee on Appellate Rules informed of the Committee's work.

STRATEGIC PLAN FOR THE FEDERAL JUDICIARY – Judge Sutton observed that the Standing Committee had various ongoing initiatives that support the strategies and goals of the current *Strategic Plan for the Federal Judiciary*, which the Judicial Conference approved on September 17, 2015.

CONCLUDING REMARKS

Judge Sutton thanked the Reporters for all of the impressive work they had done on their memoranda for the meeting and the members of the Rules Committee Support Office for helping to coordinate the meeting. He then concluded the meeting. The Standing Committee will next meet in Washington, D.C., on June 6–7, 2016.

Respectfully submitted,

Rebecca A. Womeldorf
Secretary, Standing Committee

TAB 4A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: REDACTION OF PREVIOUSLY FILED DOCUMENTS

DATE: MARCH 3, 2016

In response to a suggestion submitted by the Committee on Court Administration and Case Management ("CACM"), the Subcommittee presents for the Committee's consideration a proposed amendment to Rule 9037 (Privacy Protections for Filings Made with the Court). The proposed amendment would add a new subdivision (h) to the rule to provide a procedure for redacting personal identifiers in documents that were previously filed without complying with the rule's redaction requirements. Because other advisory committees may be interested in considering similar amendments to their rules, the Subcommittee recommends that, if the Committee approves the proposed amendment for publication for public comment, it ask the Standing Committee to delay publication of Rule 9037(h) until any parallel amendments to the other sets of rules can be published along with it.

After providing a brief summary of the CACM suggestion and the Committee's prior deliberations on the matter, this memorandum discusses some of the issues that the Subcommittee considered in arriving at its proposal.

The Suggestion and the Committee's Prior Deliberations

In Suggestion 14-BK-B, CACM expressed the need for a uniform national procedure for belatedly redacting personal identifiers in documents that were filed in bankruptcy courts without complying with Rule 9037(a)'s protection of social security numbers, financial account numbers, birth dates, and names of minor children. The suggestion consisted of two parts. First, CACM

suggested that Bankruptcy Rule 5010 (Reopening Cases) be amended to reflect the recently adopted judiciary policy that a closed bankruptcy case does not have to be reopened in order for the court to order the redaction of information described in Rule 9037. Second, CACM suggested that Rule 9037 be amended to require that notice be given to affected individuals of a request to redact a previously filed document. Such an amendment would reflect the Judicial Conference's recent addition of § 325.70 to the privacy policy, which states in part that "the court should require the . . . party [requesting redaction] to promptly serve the request on the debtor, any individual whose personal identifiers have been exposed, the case trustee (if any), and the U.S. trustee (or bankruptcy administrator where applicable)."

As the Subcommittee previously reported, it decided that any amendments that might be proposed should be made exclusively to Rule 9037 and not to Rule 5010. With the assistance of Jim Waldron, the Subcommittee gathered information about bankruptcy courts' current practices for the redaction of previously filed documents. The Subcommittee was particularly interested in learning the various ways in which courts are attempting to accommodate the need to inform individuals that belated redaction of personal identifiers is being sought without drawing attention to the public availability of the unredacted documents. The Subcommittee reported the results of that survey at the fall 2015 meeting, and the Committee approved the Subcommittee's plan to present a proposed amendment to Rule 9037 at the spring 2016 meeting.

The Proposed Draft of Rule 9037(h)

In considering the proposed amendment, the Subcommittee assumed the availability of court technology that allows the filing under seal of a motion to redact and that immediately restricts access to the filed document that is to be redacted. Jill Michaux said that her local court's electronic filing system has that capacity. The Subcommittee thought that being able to

restrict access to the motion and the unredacted document would be important in preventing the filing of the motion from highlighting the existence of the unredacted document on file. The Subcommittee concluded that the rule itself should not specify the precise technological methods to be used, since they will likely evolve over time.

The Subcommittee became aware of the existence of services that maintain and make available to subscribers parallel dockets for all the bankruptcy courts. The existence of these dockets outside the control of the courts means that an unredacted document can continue to be accessible despite a belated redaction and the court's restriction of access to the unredacted document in the court's files. The Subcommittee concluded that resolution of this problem is outside the scope of rulemaking authority and that the proposed rule should address only documents within the courts' control. Knowledge of the existence of these services, however, did lead the Subcommittee to conclude that, following a successful motion to redact, access to the motion and the unredacted document should remain restricted. The Subcommittee also recommends that CACM be made aware of the potential impact that these unofficial dockets have on the effectiveness of courts' belated redaction of filed documents.

The Subcommittee concluded that there is no need to set out in a rule the Judicial Conference policy that closed cases do not have to be reopened in order to redact a filed document. The proposed Committee Note, however, does explain that the prescribed procedures apply to both open and closed cases.

The Subcommittee also decided that the rule should not attempt to prescribe a procedure for redacting large numbers of cases. Instead, as the Committee Note explains, those procedures are left up to individual court discretion.

The draft of proposed Rule 9037(h) follows this memorandum in the agenda materials.

The Subcommittee recommends that the Committee submit the amendment to the Standing Committee with a request that it be published for public comment at the appropriate time. It also recommends that CACM and other appropriate bodies be alerted to the inability of courts to fully remedy the failure of parties of redact personal identifiers as required by Rule 9037 because of the existence of privately maintained bankruptcy dockets.

Rule 9037. Privacy Protection for Filings Made With the Court

* * * * *

(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT.

(1) *Content of the Motion; Service.* Unless the court orders otherwise, an entity must file a motion under seal if it seeks to redact from a previously filed document information that is subject to privacy protection under subdivision (a). The motion must: (A) have an attached copy of the original document, identical except for the proposed redactions; (B) include the docket or proof-of-claim number of the document to be redacted: and (C) unless the court orders otherwise, be served on the debtor, debtor's attorney, trustee if any, United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

(2) *Protecting an Unredacted Document from Public Access.* Upon receiving the motion, the court must promptly restrict public access to the motion and the unredacted document pending a ruling on the motion. If the court grants the motion, these restrictions on public access remain in effect until a further court order. If the court denies the motion, the restrictions must be lifted, unless the court orders otherwise.

Committee Note

Subdivision (h) is new. It prescribes a procedure for the belated redaction of documents that were filed without complying with subdivision (a).

Generally, whenever someone discovers that information entitled to privacy protection under subdivision (a) appears in a document on file with the court—regardless of whether the case in question remains open or has been closed—that entity may file under seal a motion to redact the document. A single motion may relate to more than one unredacted document. The moving party may be, but is not limited to, the original filer of the document. The motion must identify by location on the case docket or claims register each document to be redacted. It should not, however, include the unredacted information itself.

Subsection (h)(1) authorizes the court to alter the prescribed procedure. This might be appropriate, for example, when the movant seeks to redact a large number of documents. In that situation the court by order or local rule might require the movant to file an omnibus motion, initiate a miscellaneous proceeding, or proceed in another manner directed by the court.

The moving party must attach to the motion a copy of the original document as it is proposed to be redacted. Except for the redaction, the attached document must be identical to the one previously filed. Service of the motion and the attachment must be made on all of the following individuals who are not the moving party: debtor, debtor's attorney, trustee, United States trustee, the filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

Because the filing of the redaction motion may call attention to the existence of the unredacted document as maintained in the court's files or downloaded by third parties, courts should take immediate steps to protect that document from public access. This restriction may be accomplished electronically, simultaneous with the electronic filing of the redaction motion. For motions filed on paper, restriction should occur at the same time that the motion is docketed so that no one receiving electronic notice of the filing of the motion will be able to access the unredacted document in the court's files.

If the court grants the motion to redact, the redacted document should be placed on the docket, and public access to the motion and the unredacted document should remain restricted. If the court denies the motion, generally the restriction on public access to the motion and the document should be lifted.

This procedure does not affect any remedies that an individual whose personal identifiers are exposed may have against the entity that filed the unredacted document.

TAB 4B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION TO AMEND RULE 4003(c) (Burden of Proof/Exemptions)

DATE: MARCH 4, 2016

The Advisory Committee received a suggestion, Suggestion 15-BK-E, from Chief Judge Christopher M. Klein, U.S. Bankruptcy Court for the Eastern District of California, to consider the amendment or elimination of Bankruptcy Rule 4003(c), which provides: "(c) Burden of Proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."[1] The primary issue is the burden of proof in litigation involving a debtor's entitlement to a claimed exemption under section 522 of the Bankruptcy Code. Specifically, the suggestion posits that the language of Bankruptcy Rule 4003(c), which places the burden of proof on the party objecting to the claimed exemption, alters the substantive rights of the parties in violation of the Rules Enabling Act.

The Subcommittee presented this matter to the Advisory Committee at its Fall 2015 meeting. At that time, the Subcommittee did not make a recommendation on Suggestion 15-BK-E. Rather, the Subcommittee explained the key issues relating to the suggestion and its view that the suggestion warranted further research and consideration before any recommendation could be made. It also reported to the Advisory Committee that it had asked the Assistant Reporter to conduct additional research to supplement the preliminary memorandum, dated August 30, 2015.

[1] *See* Suggestion 15-BK-E, submitted by letter dated July 10, 2015.

This memorandum summarizes the additional research performed on Suggestion 15-BK-E, which is set forth more fully in the attached supplemental memorandum, dated February 11, 2016 (the "Supplemental Memorandum"). It also details the Subcommittee's deliberations on Suggestion 15-BK-E during its conference call on February 17, 2016.

As explained further below and for the reasons set forth in the Supplemental Memorandum, the Subcommittee recommends that the Advisory Committee take no action on Suggestion 15-BK-E at this time. Under the Supreme Court's holding in *Hanna v. Plumer*, 380 U.S. 460 (1965), a federal rule promulgated under the Rules Enabling Act is valid so long as it is within Congress's Article I power and is within the scope of the Rules Enabling Act. The test for Article I constitutionality is whether the rule is "rationally capable" of being characterized as procedural. Because several states characterize the burden of proof as being procedural, Bankruptcy Rule 4003(c) clearly meets this test. The test for whether a rule is within the scope of the Rules Enabling Act is whether the rule "really regulates procedure." Because there is a strong argument that Bankruptcy Rule 4003(c) does really regulate procedure, the Subcommittee recommends that there is no need to amend Bankruptcy Rule 4003(c) at this time. The Subcommittee also recommends that the Advisory Committee continue to monitor case law developments concerning both Bankruptcy Rule 4003(c) and the Rules Enabling Act more generally.

Summary of Additional Research in the Supplemental Memorandum

At the Fall 2016 meeting, the Chair of the Subcommittee and the Assistant Reporter discussed the primary justification articulated by Chief Judge Klein to support his assertion that Bankruptcy Rule 4003(c) violates the Rules Enabling Act—i.e., that under the Supreme Court's decision in *Raleigh v. Illinois Department of Revenue,* 530 U.S. 15 (2000), the burden of proof is

a substantive part of a litigant's claim and therefore should be governed by applicable nonbankruptcy law in exemption litigation. They also highlighted the need to conduct further research to understand better the history of Bankruptcy Rule 4003(c) and the impact of the Supreme Court's holding in *Hanna v. Plumer*, 380 U.S. 460 (1965), regarding the validity of federal rules promulgated under the Rules Enabling Act. The Supplemental Memorandum sets forth the results of this additional research.

As explained in the Supplemental Memorandum, Suggestion 15-BK-E differs from the claims litigation at issue in *Raleigh* in at least one significant way: Suggestion 15-BK-E involves a potential conflict between a federal rule and state law. The *Raleigh* decision did not involve a federal rule. This distinction requires the Advisory Committee to consider the Supreme Court's jurisprudence on the Rules Enabling Act; this jurisprudence underscores that a different analysis applies to conflicts involving federal rules and that the procedural-substantive determination may differ in the federal rules context (compared to, for example, an *Erie* choice of law context).

Under the Supreme Court's decision in *Hanna*, the Advisory Committee must consider whether (i) the state law and federal rule conflict; (ii) the federal rule is within the scope of the Rules Enabling Act; and (iii) the federal rule under the Rules Enabling Act is constitutional, that is, within Congress's Article I power. *Hanna* articulated the standard for determining whether a federal rule is constitutional as whether the rule was "rationally capable" of being characterized as procedural. *Hanna*, 380 U.S. at 472. *Hanna* articulated the standard for determining whether a federal rule is within the scope of the Rules Enabling Act as "'whether a rule really regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law

and for justly administering remedy and redress for disregard or infraction of them.'" *Hanna*, 380 U.S. at 464 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)).

As explained in the Supplemental Memorandum and discussed below, the issue presented to the Advisory Committee is a difficult one. The *Hanna* test does not clearly define what is substantive or procedural for purposes of the Rules Enabling Act. Moreover, the Court's most recent decision on the Rules Enabling Act raises questions about the application of the *Hanna* test and whether the inquiry (i.e., procedural or substantive) focuses on the nature of the federal rule or, rather, the state law at issue. *See Shady Grove Orthopedic Assocs. v. Allstate Ins. Co*., 559 U.S. 393 (2010). Nevertheless, on balance and based on the history of the federal bankruptcy rules[2] and the *Hanna* test, the Supplemental Memorandum concludes that a strong argument exists that Bankruptcy Rule 4003(c) is presumptively valid.

The Subcommittee's Deliberations and Recommendations

The Subcommittee discussed at length the issues presented by Suggestion 15-BK-E. The members of the Subcommittee acknowledged Chief Judge Klein's thoughtful analysis of Bankruptcy Rule 4003(c) and the *Raleigh* decision in *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Ca. 2015). They also agreed, however, that the Supreme Court's decision in *Hanna* required a broader analysis of the issues. The Subcommittee found that the first and third elements of the *Hanna* test were satisfied in that Bankruptcy Rule 4003(c) conflicted with at least California law and that Bankruptcy Rule 4003(c) was rationally capable of being characterized as procedural for purposes of the Constitutional analysis. The Subcommittee then turned to the second element of

[2] The Supplemental Memorandum includes a detailed history of Bankruptcy Rule 4003(c) and its predecessor, Bankruptcy Rule 403(c). It explains the legislative history to section 522 of the Bankruptcy Code and the relationship between section 522 and Bankruptcy Rule 4003(c). It also identifies at least one instance in the legislative history in which Congress delegated the allocation of the burden of proof to the federal bankruptcy rules, which is consistent with Congress' authority under the Bankruptcy Clause of the U.S. Constitution.

the *Hanna* test and examined the nature of the burden of proof not only under *Raleigh*, but also under *Hanna* and similar cases that endorse a different approach to the procedural-substantive determination.

The members of the Subcommittee noted the ways in which the burden of proof could be characterized as procedural in terms of governing "the judicial process for enforcing rights and duties recognized" by federal bankruptcy law.[3] Bankruptcy Rule 4003(c), as its predecessor Bankruptcy Rule 403(c), places the burden of proof on the party objecting to a claimed exemption, regardless of the identity of the objector. This approach aligns with the presumption in favor of a debtor's claimed exemptions under section 522(l) of the Bankruptcy Code, as well as the general process for scheduling, asserting, and preserving exemptions under section 522 of the Bankruptcy Code. Several members observed that the ability of states to opt out of the federal exemption scheme was only one part of the overarching exemption process in federal bankruptcy litigation—a process enacted by Congress under the Bankruptcy Clause of the U.S. Constitution. Accordingly, although the Subcommittee acknowledged the Supreme Court's language on the nature of the burden of proof in *Raleigh* (and some members believed that it was a close case), the Subcommittee generally agreed that Bankruptcy Rule 4003(c) could be characterized as really regulating procedure for purposes of *Hanna* and the Rules Enabling Act.

The Subcommittee also discussed the history to Bankruptcy Rule 4003(c) and the fact that the Advisory Committee previously analyzed its ability to promulgate a rule allocating the burden of proof in exemption litigation. Specifically, when the Advisory Committee was overhauling the federal bankruptcy rules in connection with the adoption of the 1978 Bankruptcy Code, the Advisory Committee considered whether the federal bankruptcy rules could shift the burden of proof away from the moving party. This issue was raised, in part, because of a

[3] *See Sibbach*, 312 U.S. at 14.

comment in the legislative history (a report from the House of Representatives) that the bankruptcy rules would not address burden of proof issues. Nevertheless, that same legislative history (as well as a subsequent report from the Senate) specifically noted that Congress intended the federal rules committee to promulgate a bankruptcy rule allocating the burden of proof in at least the claims litigation context. Notably, similar issues were raised in the context of former Bankruptcy Rule 403(c). The Subcommittee found the long history of a federal bankruptcy rule allocating the burden of proof in exemption litigation—despite issues similar to those identified in Suggestion 15-BK-E being raised and considered—to be persuasive evidence of Bankruptcy Rule 4003(c)'s presumptive validity.

Overall, the Subcommittee believed that the promulgation of Bankruptcy Rule 4003(c) was appropriate in light of the history to the Bankruptcy Code and the federal bankruptcy rules, as well as the Supreme Court's precedent on the Rules Enabling Act. Several members of the Subcommittee commented on the objective of uniformity underlying both the Bankruptcy Clause and the Rules Enabling Act and observed that Bankruptcy Rule 4003(c) fosters uniformity in the administration and adjudication of exemption litigation in federal bankruptcy cases. The Subcommittee recognized that section 522 of the Bankruptcy Code invites variation through the incorporation of certain states' exemption laws, but members generally did not view the opt out provision as eviscerating the importance of uniformity in the federal bankruptcy system.

Finally, the Subcommittee considered the impact of the Supreme Court's decision in *Shady Grove*, and the apparent disagreement among the Justices concerning the Rules Enabling Act. It recognized and discussed the potential import of this uncertainty, as well as the fact that only a few bankruptcy courts in California have declared Bankruptcy Rule 4003(c) invalid. Accordingly, in addition to generally agreeing that Bankruptcy Rule 4003(c) satisfies the three-

part test of *Hanna* and is presumptively valid, the Subcommittee also determined that it would be premature to take any action on Bankruptcy Rule 4003(c).

For all of the foregoing reasons, the Subcommittee recommends that the Advisory Committee take no action on Suggestion 15-BK-E at this time. The Subcommittee also recommends that the Advisory Committee continue to monitor case law developments concerning both Bankruptcy Rule 4003(c) and the Rules Enabling Act more generally.

Attachment

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SUPPLEMENTAL MEMORANDUM

TO: SUBCOMMITTEE ON CONSUMER ISSUES

FROM: MICHELLE HARNER, ASSISTANT REPORTER

RE: SUGGESTION TO AMEND RULE 4003(c)

DATE: FEBRUARY 11, 2016

The Advisory Committee received a suggestion from Chief Judge Christopher M. Klein, U.S. Bankruptcy Court for the Eastern District of California, to consider the amendment of Rule 4003(c) of the Federal Rules of Bankruptcy Procedure ("Rule 4003(c)").[1] The primary issue is the burden of proof in litigation involving a debtor's entitlement to a claimed exemption under section 522 of the Bankruptcy Code. Specifically, the suggestion posits that the language of Rule 4003(c), which places the burden of proof on the party objecting to the claimed exemption, alters the substantive rights of the parties in violation of the Rules Enabling Act. This memorandum proceeds as follows: (i) an executive summary of the key issues and potential resolutions; (ii) a brief review of the Advisory Committee's past deliberations on this particular issue; (iii) a description of the relevant sections of the Bankruptcy Code, federal bankruptcy rules, and policy considerations; (iv) an overview of key decisions by the U.S. Supreme Court concerning the allocation of the burden of proof and the resolution of conflicts between state law and federal rules; (v) an analysis of the impact of Supreme Court decisions on the issue raised by Suggestion 15-BK-E; and (vi) a discussion of the issue presented to the Advisory Committee.[2]

[1] *See* Suggestion 15-BK-E, submitted by letter dated July 10, 2015.
[2] This memorandum supplements a preliminary memorandum on Suggestion 15-BK-E, dated August 2015. This memorandum incorporates relevant portions of the August 2015 preliminary memorandum for ease of reference and to provide a complete analysis of the issues.

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I. Executive Summary

Suggestion 15-BK-E presents a basic question: May the federal bankruptcy rules address the burden of proof in bankruptcy exemption litigation, or is the burden of proof controlled by the law governing the rule of decision, absent express language in the Bankruptcy Code? To answer this question, the Advisory Committee must consider two different standards articulated by the U.S. Supreme Court for assessing conflicts between state and federal law. The first standard is set forth in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000), and it provides that "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Raleigh*, 530 U.S. at 21. The second standard is explained in *Hanna v. Plumer*, 380 U.S. 460 (1965), and it recognizes a different analysis when the apparent conflict arises from a federal rule enacted pursuant to the Rules Enabling Act.[3] As the Supreme Court explained in *Hanna*, "When a situation is covered by one of the Federal Rules, the question facing the court is a far cry from the typical, relatively unguided *Erie* Choice: the court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions." 380 U.S. at 471.

Suggestion 15-BK-E involves a conflict between a federal bankruptcy rule—Rule 4003(c)—and state law applicable in individual bankruptcy cases pursuant to section 522(b)

[3] The Rules Enabling Act provides, "The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. *See also Hanna*, 380 U.S. at 464 (discussing the scope of the Rules Enabling Act and noting that "'[t]he test must be whether a rule really regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them'") (citations omitted).

of the Bankruptcy Code. This key factor distinguishes Suggestion 15-BK-E from the *Raleigh* decision in that the claims litigation at issue in *Raleigh* did not involve a federal bankruptcy rule. Accordingly, although *Raleigh* is informative and should be factored into the analysis, the *Hanna* decision is more directly on point. The *Hanna* test does not focus on the outcome determinative nature of the rule at issue, but takes a more traditional approach to assessing whether a particular federal rule is substantive or procedural for purposes of the Rules Enabling Act.

Under the standard articulated by Court in *Hanna* and subsequent decisions, the Advisory Committee must consider whether (i) the state law and federal rule conflict; (ii) the federal rule is within the scope of the Rules Enabling Act; and (iii) the federal rule under the Rules Enabling Act is constitutional, that is, within Congress's Article I power. *Hanna* articulated the standard for determining whether a federal rule is constitutional as whether the rule was "rationally capable" of being characterized as procedural. *Hanna*, 380 U.S. at 472. *Hanna* articulated the standard for determining whether a federal rule is within the scope of the Rules Enabling Act as "'whether a rule really regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them.'" *Hanna*, 380 U.S. at 464 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)).

Applying these standards to Rule 4003(c), we know that in certain states, including California, the state law burden of proof conflicts with the burden of proof imposed by Rule 4003(c). Therefore, the state law and the federal rule may conflict, satisfying the first prong of the *Hanna* standard. As to the third prong of the *Hanna* standard, because several states characterize the burden of proof as procedural, we can readily conclude that the burden of proof imposed by Rule 4003(c) is rationally capable of being characterized as procedural. Therefore,

the question for the Advisory Committee relates to the second prong of the *Hanna* standard: whether the burden of proof imposed by Rule 4003(c) "really regulates procedure," in which case it is within the scope of the Rules Enabling Act and presumptively valid, or whether we must characterize the burden of proof as substantive, given the Supreme Court's indication in contexts not involving a federal rule that the burden of proof is an "essential element of the claim itself." *Raleigh*, 530 U.S. at 21. *See also Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S.Ct. 843 (2014) (same).

The issue presented to the Advisory Committee is a difficult one. The *Hanna* test does not clearly define what is substantive or procedural for purposes of the Rules Enabling Act. Moreover, the Court's most recent decision on the Rules Enabling Act raises questions about the application of the *Hanna* test and whether the inquiry (i.e., procedural or substantive) focuses on the nature of the federal rule or, rather, the state law at issue. *See Shady Grove Orthopedic Assocs. v. Allstate Ins. Co*., 559 U.S. 393 (2010). Nevertheless, on balance and based on the history of the federal bankruptcy rules and the *Hanna* test, a strong argument exists that Rule 4003(c) is presumptively valid.[4] The remainder of this memorandum more fully analyzes the strengths and weaknesses of the various arguments in support of, and against, a decision that Rule 4003(c) is presumptively valid.

[4] *See, e.g.*, *Rosales v. Honda Motor Co.*, 726 F.2d 259, 262 (5th Cir. 1984) ("In such circumstances, *Hanna v. Plumer* teaches, the state's characterization of its own rule as substantive rather than procedural, must nevertheless yield to the strong presumptive validity of the properly promulgated federal procedural rule, which will be upheld as controlling the procedure in the federal court.").

II. Past Deliberations

The Advisory Committee previously considered a suggestion to amend Rule 4003(c), which was very similar in substance to Suggestion 15-BK-E.[5] The previous suggestion also was based on the Supreme Court's holding in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000), that the burden of proof is a substantive part of a claim, and the potential conflict that this decision creates in the context of Rule 4003(c). Based on the relevant report from the Advisory Committee meeting, the Advisory Committee decided to defer consideration of the suggestion to allow the law to develop further on the relevant legal issues.

III. Analysis of Section 522 of the Bankruptcy Code and Rule 4003(c)

A. Section 522 of the Bankruptcy Code

The 1978 Bankruptcy Code introduced a new approach to exempting property from the reach of creditors in a debtor's bankruptcy case:

- The debtor would file a list of exempt property with her bankruptcy petition, and those claimed exemptions would be presumed valid unless a party objected. Under prior law, the trustee in bankruptcy would file a report identifying which of the debtor's claimed exemptions would be allowed or disallowed, and the debtor (or other party in interest) could object.[6]

- A debtor's choice of exemptions also changed. The debtor could choose between federal exemptions and state exemptions, unless the applicable state had opted out of the federal exemption scheme. Under prior law, state law governed exemptions in bankruptcy.[7]

[5] *See* Advisory Committee on Bankruptcy Rules Agenda Book, September 18-19, 2003, at 135-136 (Memorandum from Jeff Morris, Reporter, to the Advisory Committee Regarding the Burden of Proof for Objections to Exemptions).

[6] FED. R. BANKR. P. 403 (repealed 1983). Subsection (a) of Rule 403 provided that the debtor "shall claim his exemptions in the schedule of his property required to be filed by Rule 108," and subsection (b) then directed the trustee to "examine the [debtor's] claim for exemptions … and report to the court the items set apart, the amount or estimated value of each, and the exemptions claimed tat are not allowable." *Id.*

[7] *See, e.g.*, Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 24 (1995) ("The exemption question, so divisive under the 1867 Act, was resolved in

The latter change was a last minute compromise between those policymakers concerned with uniformity in bankruptcy laws and those concerned with preserving state law rights.[8] Overall, the changes appeared to further the "fresh start" policy of the 1978 Bankruptcy Code.[9]

Section 522(b) of the Bankruptcy Code identifies the kinds of exemptions a debtor may claim in her bankruptcy case. Section 522(b)(1) provides that "[n]otwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection." 11 U.S.C. § 522(b)(1). Section 522(b)(3), in turn, provides that exempt property includes "any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. § 522(b)(3)(A). The majority of states have opted out of the federal exemption scheme.[10] For example, the applicable California statute provides: "Pursuant to the authority of [section 522(b)], the exemptions set forth in [section 522(d)] are not authorized in this state." CAL. CODE CIV. P. § 703.140.

Section 522(l) arguably creates a presumption in favor of the list of exemptions filed by the debtor, stating: "The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section.... Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(l). The Bankruptcy Code does not, however,

favor of allowing the debtor to claim only state exemptions. No separate federal exemptions were permitted.").

[8] Indeed, the 1978 Bankruptcy Code originally proposed giving the debtor the choice of federal or state exemptions. A last minute change to the legislation incorporated the opt-out provision, which allowed states to require debtors in their states to use state law exemptions. *See* Tabb, *supra* note 7, at 37. *See also* Veryl Victoria Miles, *A Debtor's Right to Avoid Liens Against Exempt Property Under Section 522 of the Bankruptcy Code: Meaningless or Meaningful?*, 65 AM. BANKR. L.J. 117, 121-125 (1991).

[9] *See, e.g.*, *Schwab v. Reilly*, 130 S.Ct. 2652 (2010) ("We agree that 'exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a "fresh start."'") (citations omitted).

[10] *See* Tabb, *supra* note 7, at 37-38.

allocate the burden of proof if a party objects to a debtor's claimed exemptions. Rather, Rule 4003(c) provides: "In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." FED. R. BANKR. P. 4003(c).

B. History of Rule 4003(c)

The Advisory Committee appears to have considered its ability to promulgate Rule 4003(c) when it was overhauling the federal bankruptcy rules in 1980. Notably, in a May 7, 1980 memorandum to the Advisory Committee, Professor King (who was serving as Reporter to the Advisory Committee at the time) observed:

> Subdivision (c) [to proposed Rule 4003] may be unnecessary and it is, accordingly, bracketed. Under the former rule, the burden was placed on the objector, but the objection was to the report of the trustee which either accepted the claim of exemptions or disallowed the claim. Thus, either the debtor or the creditor had the burden of proof. Under the Code, the trustee does not file a report. If the subdivision is deleted, the burden may be on the creditor or the trustee, whoever is objecting. If the subdivision is left in, the burden can be placed on the debtor or dependent to substantiate his claim of exemptions or placed, explicitly, on the objecting party. I question, however, whether the burden may be shifted from the moving party. According to H. Rep. No. 95-595, p. 308, that would be beyond the scope of the rules but no explanation is given for such a conclusion.

LAWRENCE P. KING, MEMORANDUM ON DRAFT OF RULES FOR PART IV, at 2 (May 7, 1980). The section of the Report of the U.S. House of Representatives referenced in Professor King's memorandum is titled "The Supreme Court's Rulemaking Authority," and it discusses how the proposed Bankruptcy Code "contains very little of a procedural nature" in an effort to make the Supreme Court's "new rulemaking authority workable and flexible." H.R. REP. 95-595, pp. 292-293 (1977). The section provides a lengthy list of the kinds of procedural matters to be

addressed by Supreme Court, including procedural matters relating to exemption litigation.[11] It then continues to the language noted by Professor King,

> Finally, there are several matters that may not be dealt with by the rules. An exhaustive list is beyond the scope of this appendix, but a few areas deserve mention. The rules may not shift the burden of proof from the moving party; the rules may not alter statutes of limitation; the rules may not affect substantive rights; and the rules may not be inconsistent with procedure prescribed in the statute.[12]

H.R. REP. 95-595, p. 308 (1977). Notably, this same House Report later provides, in the context of claims litigation, "[t]he burden of proof on the issuance of allowance [of a claim] is left to the Rules of Bankruptcy Procedure."[13]

The Advisory Committee's materials that were located from this period do not further address the issue in any specific detail. Rather, the next documentation concerns the version of Rule 4003(c) submitted to the Supreme Court in 1982, which largely tracks the current version of the rule and explains in the Advisory Committee Note:

[11] For example, in the lengthy list of procedures to be regulated by federal rule, the Report identifies, among others:

> (89) Method for claiming exempt property including the time and place for claiming exemptions, who may claim exemptions, and the manner of indicating what property is claimed as exempt;
> (90) Procedure for objecting to property claimed as exempt; including time, form, manner, and who may object;
> (91) Procedure for resolving an objection concerning exemptions including kind of notice and form of hearing and method of valuing property claimed as exempt;
> (92) Form and kind of notice of exemptions claimed to be given by clerk; …

H.R. REP. 95-595, p. 296 (1977).

[12] As Professor King observes, the Report contains no explanation for identifying the burden of proof in this manner. In the case of exemption litigation, although it may not be completely clear who would be identified as the "moving party," it is the objecting party who commences the litigation by filing an objection to the debtor's list of claimed objections. Placing the burden of proof on the objecting party is consistent with the practice under former Rule 403. Moreover, the Report identifies the burden of proof separately from its statement that "the rules may not affect substantive rights."

[13] H.R. REP. 95-595, p. 352 (1977). *See also* S. REP. 95-989, p. 62 (1978) ("The burden of proof on the issuance of allowance [of a claim] is left to the Rules of Bankruptcy Procedure.").

> This rule is derived from § 522(l) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of the parties in interest to raise objections in the absence of which "the property claimed as exempt on such list is exempt."

FED. R. BANKR. P. 4003, cmt. From the materials located, the public comments to proposed Rule 4003(c) in 1982 relate primarily to the time for parties in interest to file an objection to the debtor's claimed exemptions. They do not appear to address the allocation of the burden of proof. Accordingly, it appears that after considering the House Report and Professor King's May 7, 1980 memorandum, the Advisory Committee determined that keeping the burden of proof with the objecting party under Rule 4003(c) was consistent with section 522(l) of the Bankruptcy Code and the Rules Enabling Act.

C. Courts' Application of Rule 4003(c)

The case law resolving exemption disputes has largely applied Rule 4003(c) regardless of whether a debtor's exemptions were governed by federal or state law.[14] More recently however,

[14] Even following the Supreme Court's decision in *Raleigh*, many courts have continued to apply Rule 4003(c) in exemption litigation, or did not find it necessary to address the potential conflict to resolve the particular issue in the case. *See, e.g., Tyner v. Nicholson (In re Nicholson),* 435 B.R. 622, 633-34 (9th Cir. B.A.P. 2010) ("Because Congress has regulated the allowance of exemptions in bankruptcy, the Code and Rules may alter burdens of proof relating to exemptions, even if those burdens are part of the 'substantive' right under state law."); *Walters v. Bank of the West (In re Walters),* 450 B.R. 109, 113 (8th Cir. B.A.P. 2011) ("However, the burden of proof is largely irrelevant in this case, because the bankruptcy court found that the bank had provided sufficient evidence and it found that there was no credible evidence to rebut the bank's showing. The burden of proof only would have made a difference if the evidence had been in equipoise or if the bank had failed to offer any credible evidence to support its case."); *In re Fratzke*, 2015 WL 4735654 (Bankr. D. Mont. Aug. 10, 2015) (recognizing Chief Judge Klein's decision in *Tallerico*, but finding that it was not necessary to resolve the issue for purposes of the pending dispute). In addition, some courts have articulated a shifting burden that first places the burden of production on the objecting party to rebut the presumption; if rebutted, places the burden of production on the debtor "'to come forward with unequivocal evidence to demonstrate that the exemption is proper'"; but at all times leaves the burden of persuasion with the objecting party. *See, e.g., In re Scioli*, 586 Fed.Appx. 615, 617 (3d Cir. 2014) (quoting *Carter v. Anderson (In re Carter),* 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)). Finally, in the context of avoidance litigation concerning exempt property, some courts have placed the burden of proof on the debtor to establish the debtor's entitlement to the exemption

some courts have questioned the rule in light of Supreme Court precedent treating the burden of proof as a substantive part of the claim.[15] Characterizing the burden of proof in this manner suggests that the law governing the underlying claim (i.e., the law providing the rule of decision) should also govern the burden of proof. This potentially creates a conflict between Rule 4003(c) and state law in those cases in which state law governs the exemption but places the burden of persuasion for establishing the exemption on the debtor.[16]

IV. Relevant Supreme Court Case Law

A. Supreme Court Jurisprudence on Burden of Proof

In *Raleigh v. Illinois Department of Revenue*, the Supreme Court stated, "[T]he burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." 530 U.S. 15, 21 (2000). *Raleigh* involved a creditor's proof of claim under section 502 of the Bankruptcy Code. The Supreme Court held that the state law governing the creditor's claim also governed the burden of proof in the claims litigation. Chief Judge Klein's decision in *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Ca. 2015), attached to his July 10, 2015 letter to the Advisory Committee, does an excellent job of explaining the Supreme Court's *Raleigh* decision and its potential implications for exemption litigation under

as part of the debtor's motion to avoid the lien under section 522(f) of the Bankruptcy Code. *See, e.g., In re Tinker*, 355 B.R. 380, 383 (Bankr. D. Mass. 2006).

[15] *See, e.g., Gonzalez v. Davis (In re Davis)*, 323 B.R. 732 (9th Cir. B.A.P. 2005) (Klein, J., concurring); *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Ca. 2015) (Klein, J.); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Ca. 2015) (Jaime, J.). *See also In re Gilman*, 2016 WL 154827 (Bankr. C.D. Cal. Jan. 12, 2016) (Kaufman, J.) ("Given the Supreme Court's holding [in] *Raleigh*, this Court finds the reasoning of *Pashenee* and similar cases compelling. Nonetheless, the Court need not decide here which burden of proof is applicable; as set forth below, Debtor is not entitled to a disability homestead exemption under either allocation of the burden of proof.").

[16] For example, California law provides, "the exemption claimant has the burden of proof." CAL. CODE CIV. P. § 703.580(b). California also has a slightly different standard for the burden of proof in the context of its homestead exemption.

Rule 4003(c). Since *Raleigh*, the Supreme Court has reiterated its general position that the burden of proof is a substantive part of a claim, most recently in the context of patent litigation in *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S.Ct. 843 (2014).[17]

Notably, the Supreme Court's decisions in *Raleigh* and *Medtronic* did not involve a federal rule; rather, they focus on a different choice of law problem: In the absence of a federal rule on point, does state law (in *Raleigh*) or other federal law (in *Medtronic*) control? As explained in the next section, the Supreme Court has distinguished such cases from ones involving a potential conflict between state law and a federal rule.

B. Supreme Court Jurisprudence on Rules Enabling Act

In *Hanna v. Plumer*, 380 U.S. 460 (1965), the Supreme Court rejected the argument that a rule is either substantive or procedural for all purposes. Rather, the Court explained:

> The line between "substance" and "procedure" shifts as the legal context changes. "Each implies different variables depending upon the particular problem for which it is used." Guaranty Trust Co. of New York v. York, supra, 326 U.S. at 108, 65 S.Ct. at 1469; Cook, The Logical and Legal Bases of the Conflict of Laws, pp. 154—183 (1942). It is true that both the Enabling Act and the Erie rule say, roughly, that federal courts are to apply state "substantive" law and federal "procedural" law, but from that it need not follow that the tests are identical. For they were designed to control very different sorts of decisions.

Id. at 471.[18] Although neither *Raleigh* nor *Medtronic* was a diversity lawsuit that invoked the *Erie* doctrine,[19] both raise similar issues in the vertical choice of law context.[20] Accordingly,

[17] In *Medtronic*, the Supreme Court explained its historical preference for treating the burden of proof as a substantive component of the claim, "And we have held that 'the burden of proof' is a '"substantive" aspect of a claim.' *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20–21 (2000); Director, Office of Workers' Compensation Programs v. Greenwich Collieries, 512 U.S. 267, 271 (1994) ('[T]he assignment of the burden of proof is a rule of substantive law . . .'); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 249 (1942) ('[T]he burden of proof . . . [is] part of the very substance of [the plaintiff's] claim and cannot be considered a mere incident of a form of procedure')." 134 S.Ct. at 849.

[18] *See also, e.g.*, *Affholder, Inc. v. Southern Rock, Inc.*, 746 F.2d 305 (5th Cir. 1984) ("[W]hat is 'substantive' for *Erie* purposes and what is 'substantive' for purposes of the Rules Enabling Act are not

Supreme Court precedent comparing and contrasting the analysis required in the *Erie* context versus one involving a federal rule is instructive.

The *Hanna* case was a diversity lawsuit filed in the U.S. District Court for the District of Massachusetts. The issue in *Hanna* involved a conflict between a Massachusetts statute that required in-hand service of a complaint and Rule 4(d) of the Federal Rules of Civil Procedure that authorized service by leaving a copy of the summons and complaint at the person's dwelling. The plaintiff served her complaint in accordance with Civil Rule 4(d), and the defendant moved for summary judgment based on the plaintiff's failure to comply with the in-hand service requirement of Massachusetts's law. The outcome of the litigation depended on which law applied: "In this case, a determination that the Massachusetts service requirements obtain will result in immediate victory for respondent. If, on the other hand, it should be held that Rule 4(d)(1) is applicable, the litigation will continue, with possible victory for petitioner." *Hanna*, 380 U.S. at 466. The lower courts both determined that the conflict of law at issue was "'a substantive rather than a procedural matter'" and held that the Massachusetts law—as the law governing the rule of decision—should apply. *Id.* at 463-464 (citations omitted). The Supreme Court reversed.

1. <u>The Hanna Test</u>

In *Hanna*, the Supreme Court started by recognizing the three key questions in evaluating whether to apply a federal rule rather than state law: (i) does the federal rule conflict with

necessarily the same.") (this case was cited with approval by the Supreme Court in *Burlington Northern Railroad Co. v. Woods*, 480 U.S. 1, 7 (1987)).

[19] *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

[20] A federal court's decision whether to apply state law or federal law is sometimes referred to as a vertical choice-of-law issue, whereas a court's choice of the law of state one versus the law of state two is called a horizontal choice-of-law issue.

otherwise applicable state law or can the two co-exist; (ii) is the federal rule valid under the Rules Enabling Act; and (iii) was the promulgation of the federal rule within the courts' and Congress' constitutional powers. The Court found a direct conflict between the federal rule and Massachusetts law and thus proceeded to analyze the federal rule's validity. In considering the Rules Enabling Act, the Court endorsed the following standard: "'The test must be whether a rule really regulates procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them.'" *Hanna*, 380 U.S. at 464 (quoting *Sibbach v. Wilson & Co*., 312 U.S. 1, 14 (1941)).[21] The Court then considered the practical effect of Civil Rule 4(d) and found that it regulated procedure and only incidentally impacted the litigants' rights. *Id*. at 471. The Court also concluded that, because the federal rule could be characterized as procedural, it was within the courts' and Congress' constitutional powers to regulate. *Id.* at 472.

The Court adopted a more "traditional or common sense" approach in *Hanna* to the substance-procedure distinction for purposes of the Rules Enabling Act.[22] The different approach to a Rules Enabling Act versus an *Erie* (and Rules of Decision Act) analysis stems in part from the different objectives served by each.[23] Moreover, as subsequently explained by the

[21] The issue in *Sibbach* involved the compulsory medical examination provision of Civil Rule 35 and arguably conflicting state law. The plaintiff argued that Civil Rule 35 violated her "substantive" right of bodily integrity under state law. In discussing this argument, the Court notes, "Is the phrase 'substantive rights' confined to rights conferred by law to be protected and enforced in accordance with the adjective law of judicial procedure?" *Sibbach*, 312 U.S. at 14. This may help the Advisory Committee discern what is "really substantive" versus "really procedural" for purposes of the Rules Enabling Act. Based on this language, some commentators have argued that, so long as the federal rule does not create a "rule of decision," it is valid. *See* discussion of a "rule of decision" *infra* note 35.

[22] *See Hanna*, 380 U.S. at 465-466 (noting the divergence in a Rules Enabling Act versus an *Erie* analysis and explaining that case law "made it clear that *Erie*-type problems were not to be solved by reference to any traditional or common-sense substance-procedure distinctions").

[23] *See id.* at 467-468 (explaining the objectives of an *Erie* analysis as ensuring that filing a diversity lawsuit in federal court did not alter "the character of result of a litigation" and to reduce forum

Supreme Court in *Burlington Northern Railroad Co. v. Woods*, 480 U.S. 1 (1987), "the study and approval given each proposed Rule by the Advisory Committee, the Judicial Conference, and this Court, and the statutory requirement that the Rule be reported to Congress for a period of review before taking effect … give the Rules presumptive validity under both the constitutional and statutory constraints." *Id.* at 6. Indeed, a key takeaway from *Hanna* is that what is characterized as substantive for purposes of an *Erie* choice of law question may be characterized differently—as procedural—for purposes of the Rules Enabling Act.

2. Uncertainty in the *Hanna* Test

Although consistently cited as the seminal case distinguishing the Rules Enabling Act from the *Erie* doctrine, *Hanna* may not necessarily provide clear answers to all aspects of analyzing federal rules under the Rules Enabling Act.[24] For example, although the Court in *Hanna* acknowledges the need to evaluate both the validity of a federal rule under the Rules Enabling Act and the Constitution, the Court does not clearly articulate separate tests for each component. In some respects, the Court's determination in *Hanna* that the rule was "rationally capable" of being characterized as procedural appears to satisfy both components and validate the rule for all purposes. Justice Harlan suggests as much in his concurrence in *Hanna*, observing, "So long as a reasonable man could characterize any duly adopted federal rule as 'procedural,' the Court, unless I misapprehend what is said, would have it apply no matter how

shopping). *Erie* is based, in part, on the Rules of Decision Act. *See* 28 U.S.C. § 1652 ("The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.").

[24] For a detailed analysis of the Supreme Court's decisions interpreting the Rule Enabling Act and related commentary, see Robert J. Condlin, *Are Justices Ginsburg and Scalia Disabling the Enabling Act, or is Shady Grove Just Another Bad Opera?*, 8 NE. U. L.J. ___ (forthcoming 2016).

seriously it frustrated a State's substantive regulation of the primary conduct and affairs of its citizens." *Hanna*, 360 U.S. at 476.

In addition, with respect to the Rules Enabling Act, the Court's approach in *Hanna* and subsequent cases has generated a debate concerning whether a court need consider only if a rule regulates "practice and procedure" or if it must also consider the second prong of the Rules Enabling Act—i.e., whether "[s]uch rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury."[25] This debate was highlighted by Justice Stevens' concurrence in *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393 (2010), discussed below.[26]

3. The Current Divide on the Court Concerning *Hanna*

It also is worth noting that the Justices do not necessarily agree on the appropriate standard for evaluating the validity of federal rules when the rule at issue conflicts with otherwise applicable state law. In *Hanna*, Justice Harlan wrote a concurrence grounded in his belief that the majority's opinion weakened the important federalism concepts at issue. He opined:

> *Erie* recognized that there should not be two conflicting systems of law controlling the primary activity of citizens, for such alternative governing authority must necessarily give rise to a debilitating uncertainty in the planning of

[25] *Id.*

[26] Justice Stevens states:

> Justice SCALIA believes that the sole Enabling Act question is whether the federal rule "really regulates procedure," … which means, apparently, whether it regulates "the manner and the means by which the litigants' rights are enforced," ….I respectfully disagree. This interpretation of the Enabling Act is consonant with the Act's first limitation to "general rules of practice and procedure," … But it ignores the second limitation that such rules also "not abridge, enlarge or modify *any* substantive right," … and in so doing ignores the balance that Congress struck between uniform rules of federal procedure and respect for a State's construction of its own rights and remedies.

Shady Grove, 559 U.S. at 424-525 (citations omitted).

> everyday affairs. And it recognized that the scheme of our Constitution envisions an allocation of law-making functions between state and federal legislative processes which is undercut if the federal judiciary can make substantive law affecting state affairs beyond the bounds of congressional legislative powers in this regard. Thus, in diversity cases *Erie* commands that it be the state law governing primary private activity which prevails.

Hanna, 460 U.S. at 474-475 (citations omitted). Justice Ginsberg echoed these concerns in her dissent in *Shady Grove*, the Court's most recent significant decision concerning the Rules Enabling Act.[27]

In *Shady Grove*, the issue concerned whether, in a diversity class action lawsuit, New York law or Federal Rule of Civil Procedure 23 governed the certification of the class. The Court held that Civil Rule 23 was valid and preempted New York law. Justice Scalia, writing for a plurality of the Court, adopted a traditional *Hanna* analysis, considering if Civil Rule 23 "really regulates procedure." *Shady Grove*, 559 U.S. at 407. He concluded that it did. In doing so, he explained,

> The test is not whether the rule affects a litigant's substantive rights; most procedural rules do. What matters is what the rule itself regulates: If it governs only "the manner and the means" by which the litigants' rights are "enforced," it is valid; if it alters "the rules of decision by which [the] court will adjudicate [those] rights," it is not.

Id.

Justice Stevens' concurred in judgment, making Justice Scalia's basic conclusion concerning the validity of Civil Rule 23 the Court's holding. Justice Stevens and Justice Scalia did not, however, agree on the justifications for such holding.[28] Justice Stevens asserted that the Court should assess whether the state law is substantive or procedural, based on the state's

[27] The disagreement among the Justices and the import of the Shady Grove decision are further discussed in Part V.D.

[28] A careful reading of the plurality and the concurrence show no consensus—even on narrow grounds—concerning the justifications supporting the holding. Accordingly, under *Marks v. United States*, 430 U.S. 188 (1977), neither position is precedential.

intended effect of the law. He noted, "if a federal rule displaces a state rule that is '"procedural" in the ordinary sense of the term,' but sufficiently interwoven with the scope of a substantive right or remedy, there would be an Enabling Act problem, and the federal rule would have to give way." *Id.* at 429. Justice Scalia and the plurality expressly rejected this position, and countered that "it is not the substantive or procedural nature or purpose of the affected state law that matters, but the substantive or procedural nature of the Federal Rule." *Id*. at 410.

In her dissent, Justice Ginsberg stressed the importance of federalism and the need for the Court, in diversity lawsuits, to respect the mandates of both the Rules of Decision Act and the Rules Enabling Act.[29] Although the dissent ultimately concluded that the subject New York law and Civil Rule 23 address different aspects of class action litigation and could co-exist, it also endorsed a standard for evaluating federal rules in diversity lawsuits much more closely aligned with the concurrence rather than the plurality. This analytical divide among the Justices creates some uncertainty for future litigation challenging the validity of federal rules. Notwithstanding this uncertainty, as noted by Justice Scalia, *the Court has to date rejected every challenge to the federal rules under the Rules Enabling Act*. *Shady Grove*, 559 U.S. at 407.

V. Impact of Supreme Court Jurisprudence on Bankruptcy Exemption Litigation

Suggestion 15-BK-E suggests that, based solely on the Supreme Court's decision in *Raleigh*, the burden of proof in litigation involving a debtor's claim for exemptions under section 522 of the Bankruptcy Code should be governed by the same substantive law governing the exemption and not Rule 4003(c). The suggestion asks the Advisory Committee to invalidate the federal bankruptcy rule. Although *Raleigh* informs the issue before the Advisory Committee,

[29] For the scope of each, see *supra* notes 3 and 23.

the Advisory Committee must also examine the Court's discussion of the Rules Enabling Act in *Hanna* and subsequent decisions. This section considers the impact of Supreme Court precedent on Suggestion 15-BK-E.[30]

The Supreme Court's decision in *Raleigh* focused on: (i) the state law foundation of the tax claim underlying the creditor's proof of claim, and (ii) the Bankruptcy Code's failure to establish a burden of proof for claims litigation. The Supreme Court started from the basic principle set forth in *Butner v. United States* that "'[u]nless some federal interest requires a different result, there is no reason why [the state] interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.'" *Raleigh*, 530 U.S. at 20 (quoting *Butner v. United States*, 440 U.S. 48, 55 (1979)). It then determined that state law placed the burden of proof on the taxpayer (not the state, which was the creditor), and that Congress did not evidence any intent to change these state law entitlements.[31] Indeed, the Supreme Court rejected the trustee's argument that the Bankruptcy Code's silence permitted an equitable allocation of the burden of proof, noting that the Bankruptcy Code does, in certain instances, establish the burden of proof (e.g., section 362(g)).[32]

Similar to *Raleigh*, section 522 of the Bankruptcy Code does not establish the burden of proof for exemption litigation. The Code itself is silent on the issue. Although Congress suggested that the federal bankruptcy rules should allocate the burden of proof for claims

[30] *See* 28 U.S.C. § 2075.
[31] *Raleigh*, 530 U.S. at 21 ("Congress of course may do what it likes with entitlements in bankruptcy, but there is no sign that Congress meant to alter the burdens of production and persuasion on tax claims.").
[32] *Id.* at 22 ("But the Code makes no provision for altering the burden on a tax claim, and its silence says that no change was intended."). *See also Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 534 (2005) ("The plain text of [the Individuals with Disabilities Education Act] is silent on the allocation of the burden of persuasion. We therefore begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims.").

litigation under the Bankruptcy Code, the Advisory Committee did not propose such a rule.[33] As such, the Court did not address the Rules Enabling Act or *Hanna* in the *Raleigh* decision.

Unlike the claims litigation in *Raleigh*, the federal bankruptcy rules do address the burden of proof in exemption litigation. A federal rule allocating the burden of proof in exemption litigation existed under both the 1898 Bankruptcy Act and the 1978 Bankruptcy Code.[34] Moreover, as previously explained, the Advisory Committee specifically considered the validity of a rule allocating the burden of proof in adopting Rule 4003(c). Under *Hanna* and its progeny, a strong argument exists that Rule 4003(c) is presumptively valid and should be followed unless it is established that "the Advisory Committee, [the Supreme] Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the [Rules] Enabling Act nor constitutional restrictions." 380 U.S. at 471.

A. The Basic Parameters of the Analysis

The proper characterization of the burden of proof for purposes of the Rules Enabling Act is a difficult issue. Based on research to date, the Supreme Court has not specifically addressed the characterization of the burden of proof as either substantive or procedural for purposes of the Rules Enabling Act. The burden of proof appears to be less procedural than the rules at issue in *Hanna* and *Woods*, which involved the service of a complaint and the application of an

[33] In the claims litigation context, the legislative history to the Bankruptcy Code suggests that the burden of proof would be addressed by the federal bankruptcy rules. The new federal bankruptcy rules promulgated in 1983, however, were silent on the matter. As the Supreme Court in *Raleigh* explained: "The Bankruptcy Rules are silent on the burden of proof for claims; while Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim (the name for the proper form for filing a claim against a debtor) is 'prima facie evidence of the validity and amount of the claim,' this rule does not address the burden of proof when a trustee disputes a claim. The Rules thus provide no additional guidance." 530 U.S. 15, n.2.

[34] Rule 403(c) provided, "Any creditor or the bankrupt may file objections to the report within 15 days after its filing…. The burden of proof shall be on the objector." FED. R. BANKR. P. 403 (repealed 1983).

affirmance penalty, respectively.[35] Moreover, in choice of law contexts not involving a federal rule, the Supreme Court has been very direct in describing the burden of proof as "a part of the very substance of [plaintiff's] claim and … [not] a mere incident of a form of procedure." *Garrett v. Moore-McCormack Co*., 317 U.S. 239, 249 (1942).

As noted above, the Advisory Committee must first evaluate if state law and the federal rule conflict. Suggestion 15-BK-E explains the direct conflict between California law on the burden of proof and Rule 4003(c). The Advisory Committee must then also examine the validity of the federal rule under the Rules Enabling Act and the Constitution. Although the tests are somewhat vague (and some would argue somewhat confused), the Rules Enabling Act analysis is guided by the *Sibbach* test: Does Rule 4003(c) "really regulate[] procedure,—the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them."[36] 312 U.S. at 14. As explained above, some courts have answered this question by asking whether the rule is "rationally capable" of being characterized as procedural, or they have upheld federal rules as procedural so long as they do not create a rule of decision.[37] Under this approach—and focusing on the federal rule itself (as opposed to state law)—Rule 4003(c) can be described as

[35] *See, e.g.*, *Hanna*, 380 U.S. 460 (conflict between Federal Rule of Civil Procedure 4(d) and Massachusetts General Laws Chapter 197, Section 9 concerning manner of service of complaint and summons); *Woods*, 480 U.S. 1 (conflict between Federal Rule of Appellate Procedure 38 and Alabama Code Section 12-22-72 regarding whether affirmance penalty damages in appeal were mandatory). *See also Shady Grove Orthopedic Assocs. v. Allstate Ins. Co*., 559 U.S. 393 (2010) (upholding Federal Rule of Civil Procedure 23 against challenge that it conflicted with a similar rule under New York law and affected the litigants' substantive rights).

[36] The Supreme Court has explained that answering this question requires a two-part analysis: (i) is the federal rule in question procedural in any respect; and (ii) if so, does it alter, modify, or abridge litigants' substantive rights. *See, e.g.*, *Woods*, 480 U.S. at 5-6. Some commentators suggest that courts, including the Supreme Court, tend to conflate the analysis and focus primarily on the first factor. Regardless, as explained below, Rule 4003(c) arguably satisfies both.

[37] *See supra* Part IV.B.2 (discussing "rationally capable" standard). *See also* Omar K. Madhany, *Towards a Unified Theory of "Reverse-Erie"*, 162 U. PA. L. REV. 1261, 1279 (2014) (citations omitted) ("[S]cholars have defined a 'rule of decision' as 'any rule by which issues in a case are decided.'").

implementing and regulating the process for claiming exemptions established by Congress in section 522 of the Bankruptcy Code. That may satisfy the inquiry, but the Advisory Committee also should consider the impact of the federal rule on litigants' substantive rights, as well as the constitutional question. Each of these issues is further discussed below.

B. The "Procedural" Aspects of Rule 4003(c)

Congress made at least two notable changes to exemption practice in bankruptcy cases with the enactment of section 522: (i) the Bankruptcy Code would establish federal exemptions, but also would allow states to limit a debtor's choice of exempt property to that otherwise permitted by state law; and (ii) the debtor would file the list of claimed exemptions directly with the court—the trustee no longer would review the debtor's requested exemptions and then file the list of presumptively allowed exemptions as under the 1898 Bankruptcy Act. As suggested by the second of these changes, Congress also arguably created a presumption in favor of the list of claimed exemptions filed by the debtor. 11 U.S.C. § 522(l). A well-respected bankruptcy treatise, in editions of the treatise published shortly after the enactment of the 1978 Bankruptcy Code and the new federal bankruptcy rules, explained: "The rules follow the language of the Code in making the claim of exemptions presumptively valid by placing the burden of proof on the party alleging that the exemptions were not properly claimed."[38] The language of section 552(l) could evidence Congressional intent to displace state laws on the burden of proof in federal bankruptcy cases.[39] Congress has such authority under the Bankruptcy Clause of the

[38] 8 COLLIER ON BANKRUPTCY ¶ 4003.05 (15th ed. 1996). *See also Tyner v. Nicholson (In re Nicholson),* 435 B.R. 622, 633-34 (9th Cir. B.A.P. 2010) ("Because Congress has regulated the allowance of exemptions in bankruptcy, the Code and Rules may alter burdens of proof relating to exemptions, even if those burdens are part of the 'substantive' right under state law.").

[39] Evidence that Congress intended to displace state law with a rule "rationally capable of classification as procedural" strengthens the argument that Rule 4003(c) is valid under the Rules Enabling Act, regardless

U.S. Constitution, and it could delegate that responsibility to the federal rules committee. *See* U.S. CONST. art. I, § 8, cl. 4.

Admittedly, Congress did not address the burden of proof in section 522 as it did in other sections of the Bankruptcy Code.[40] That absence could suggest deference to the law governing the claimed exemptions. It also could, however, reflect the fact that the 1973 federal bankruptcy rules governed the burden of proof under the 1898 Bankruptcy Act and that Congress was continuing such practice under the 1978 Bankruptcy Code. Specifically, former Rule 403 placed the burden of proof in exemption litigation on the party objecting to the list of exemptions filed by the trustee—i.e., either the debtor or a creditor. At least one commentator questioned whether former Rule 403 governed more substance than procedure;[41] consequently, the issue of whether the burden of proof is substantive or procedural in exemption litigation for purposes of the Rules Enabling Act is not a new issue raised only since *Raleigh*. Commentary on the promulgation of both the 1973 and 1983 federal bankruptcy rules suggests that the issue was known and considered.[42] Moreover, as noted above, Congress suggested that federal rules, rather than the statute, address the burden of proof at least in the claims litigation context.[43]

of the focus of the inquiry. *See infra* notes 67-69 and accompanying text. Justice Stevens recognized that we should not presume that federal law displaces state law "'unless that was the clear and manifest purpose of Congress.'" *Shady Grove*, 559 U.S. at 422 (quoting *Wyeth v. Levine*, 555 U.S. 555 (2009)).

[40] *See, e.g.*, 11 U.S.C. §§ 362(g) (automatic stay); 363(o) (adequate protection); 547(g) (preferential transfers).

[41] *See* Louis W. Levit, *The New Bankruptcy Rules*, 57 MARQ. L. REV. 1, 12 n.76 (1973) ("This burden of proof can be questioned on two grounds. First, even though probably consistent with former case law, is it really appropriate to place the burden on the objecting party in all instances whether he be the bankrupt or a creditor? Second, is this really a procedural matter? Does the imposition of the burden of proof really venture into the area of substantive law?").

[42] *See supra* notes 11-12 and accompanying text.

[43] The legislative history states, "The burden of proof on the issuance of allowance [of a claim] is left to the Rules of Bankruptcy Procedure." H.R. REP. 95-595, p. 352 (1977); S. REP. 95-989, p. 62 (1978). *See also supra* note 13 and accompanying text.

Rule 4003(c) also is arguably consistent with the process established by Congress for exemption litigation in section 522 and Congress's intent to provide individual debtors with a fresh start under the Bankruptcy Code, regardless of the debtor's state of residence.[44] Section 522(l) directs the debtor to file a list of claimed exemptions, as such exemptions are defined either under federal law or state law, even if a state has opted out of the federal exemption scheme.[45] This "opt-out" provision was a legislative compromise concerning the kinds of property a debtor could exempt in bankruptcy.[46] The legislative history does not suggest that Congress intended to offer or allow different procedures for claiming and litigating exemptions in bankruptcy. Notably, because a debtor may be entitled to both state law exemptions under section 522(b) and federally created exemptions under other subsections of section 522, allowing deference to state law burdens of proof could create uncertainty in bankruptcy exemption litigation.[47] It also would undercut the uniform administration of matters before the federal courts.[48]

[44] Courts and commentators have consistently interpreted exemption law as being "designed to assure that debtors have sufficient assets for a minimum standard of living, despite their impecuniousness." Margaret Howard, *Exemptions Under the 2005 Bankruptcy Amendments: A Tale of Opportunity Lost*, 79 AM. BANKR. L.J. 397, 397 (2005). *See also Schwab v. Reilly*, 130 S.Ct. 2652 (2010) ("We agree that 'exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a "fresh start."'"); *In re Hellen*, 329 B.R. 678, 681 (Bankr. N.D. Ill. 2005) ("The purpose of the exemption provision is to protect a debtor's fresh start in bankruptcy.").

[45] 11 U.S.C. § 522(l) ("The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section….").

[46] *See supra* notes 7-9 and accompanying text.

[47] Unlike the scenario in *Raleigh*, where the Supreme Court found little merit to the trustee's argument that all bankruptcy creditors should be treated equally, a persuasive argument exists that Congress intended all individual debtors to receive the same treatment under the Bankruptcy Code, even if the *kinds* of property subject to exemption varied under certain state law. To that end, some courts have recognized that the incorporation of state law exemptions under section 522(b) is limited in certain circumstances. *See, e.g., Drenttel v. Jensen-Carter (In re Drenttel)*, 403 F.3d 611, 614 (8th Cir. 2005) ("References to state exemption statutes do not invoke the entire law of the state. Instead, Congress used state-defined exemptions as part of a federal bankruptcy scheme, while limiting the application of state policies that impair those exemptions.") (citing *Owen v. Owen*, 500 U.S. 305, 313 (1991)). *But see Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) ("[E]xemptions must be determined in accordance

Finally, it is worth noting that the burden of proof in bankruptcy exemption litigation is not substantive in the sense that it does not influence a litigant's decision to bring an action in a federal or a state court.[49] In *Hanna*, the Supreme Court identified forum shopping as a significant factor underlying the *Erie* doctrine, noting:

> Though choice of the federal or state rule will at this point have a marked effect upon the outcome of the litigation, the difference between the two rules would be of scant, if any, relevance to the choice of a forum. Petitioner, in choosing her forum, was not presented with a situation where application of the state rule would wholly bar recovery; rather, adherence to the state rule would have resulted only in altering the way in which process was served.

380 U.S. at 469 (citations omitted).[50]

C. The "Procedural" Aspects of the Burden of Proof

Under both the Rules Enabling Act and the constitutional components of the *Hanna* decision, the nature of the rule and whether it is capable of being characterized as procedural are relevant in varying degrees to the analysis. Although the legislative history and the context of Rule 4003(c) discussed above may be sufficient for these purposes, a broader review of the burden of proof itself is useful.

with the state law applicable on the date of filing… And it is the *entire* state law applicable on the filing date that is determinative of whether an exemption applies.").

[48] *See, e.g.*, *Woods*, 480 U.S. at 5 (explaining purpose of federal rules is to create uniformity and consistency in federal practice and procedure).

[49] Litigation concerning a debtor's claimed exemptions takes place in the federal bankruptcy court, and a state may dictate the kinds of property that a debtor may exempt by opting out of the federal exemption scheme to the extent permitted by section 522(b) of the Bankruptcy Code.

[50] It also should be emphasized that the focus is on the procedural nature of the federal rule:

> In sum, it is not the substantive or procedural nature or purpose of the affected state law that matters, but the substantive or procedural nature of the Federal Rule. We have held since *Sibbach*, and reaffirmed repeatedly, that the validity of a Federal Rule depends entirely upon whether it regulates procedure. If it does, it is authorized by § 2072 and is valid in all jurisdictions, with respect to all claims, regardless of its incidental effect upon state-created rights.

Shady Grove Orthopedic Assocs. v. Allstate Ins. Co., 559 U.S. 393, 410 (2010) (plurality).

The burden of proof was not always treated as substantive and, indeed, some states still consider it procedural. "Classically burden of proof [was] a part of remedial law and the law of evidence and [was] procedural."[51] Suggestion 15-BK-E correctly notes that *Raleigh* characterizes the burden of proof as a substantive part of a litigants' claim. That case relies on Supreme Court precedent dating back to the late 1930s and early 1940s. Specifically, following the *Erie* decision, the Supreme Court determined that, at the federal level in the choice of law context not involving a federal rule, the "local law" should govern the burden of proof.[52] Notably, this did not generate a uniform change at the state level for horizontal choice of law purposes.[53]

In the state conflicts of law setting, many states consider the burden of proof a procedural rule, subject to certain exceptions.[54] The Restatement (Second) of Conflict of Laws provides,

[51] Note, *Procedure or Substance-Burden of Proof-Erie v. Tomkins and the New Federal Rules*, 15 IND. L.J. 329 (1940) (citations omitted).

[52] *See Palmer v. Hoffman*, 318 U.S. 109, 117 (1943) ("The question of the burden of establishing contributory negligence is a question of local law which federal courts in diversity of citizenship cases must apply."). *See also Cities Services Oil Co. v. Dunlap*, 308 U.S. 208 (1939) (burden of proof on issue on *bona fide* purchaser was part of substantive right); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 249 (1942) (burden of proof in context of Merchant Marine Act was substantive part of claim and governed by federal law (and not the law of the state court hearing the action)).

[53] *See, e.g.*, Richard Henry Seamon, *An Erie Obstacle to State Tort Reform*, 43 IDAHO L. REV. 37, 91 (2006) ("Likewise, Erie may require a federal court in a diversity action to apply the forum state's law governing the burden of proof (the burden of proof being substantive for Erie purposes) even when adjudicating a cause of action otherwise governed by the laws of another state (the burden of proof being procedural for choice-of-law purposes)."); Alfred Hill, *State Procedural Law in Federal Nondiversity Litigation*, 69 HARV. L. REV. 66, 73 (1955) ("But this development has been fortuitous, for the uniformity deemed by the Supreme Court to be demanded by the policy of *Erie* is uniformity with the courts of the forum state as such. Since the forum state will almost always treat such matters as statute of limitations, statute of frauds, and burden of proof as procedural, and thus will follow its own law, the consequences of applying these and similar rules of the forum state when the operative facts transpired in another state is to promote nonconformity with the probable outcome of the latter state.").

[54] *See, e.g.*, *Shaps v. Provident Life & Acc. Ins. Co.*, 826 So.2d 250, 254 (Fla. 2002) ("Although no Florida case has squarely addressed this issue, generally in Florida the burden of proof is a procedural issue."); *Carroll v. MBNA Am. Bank*, 220 P.3d 1080, 1087 (Id. 2009) (dispute involving arbitration award invoking the rule adopted in the Restatement; court stated that "[t]he Restatement notes that procedural matters to which forum law will be applied include forms of action, pleading and conduct of proceedings

"The forum will apply its own local law in determining which party has the burden of persuading the trier of fact on a particular issue unless the primary purpose of the relevant rule of the state of the otherwise applicable law is to affect decision of the issue rather than to regulate the conduct of the trial. In that event, the rule of the state of the otherwise applicable law will be applied."[55] Admittedly, this section of the Restatement cuts both ways in that it demonstrates that the burden of proof can be procedural, but also endorses an analysis of the state's intent in adopting the rule similar to the position articulated by Justice Stevens and suggested by Justice Ginsberg in *Shady Grove*. As the Comment to the Restatement section observes, "On which side of the line a given rule belongs may present a difficult problem for decision."[56] That kind of deference to state

before the court, allocation of burdens of proof, and admissibility and sufficiency of evidence. … Thus, Idaho law applies to all procedural matters."); *Hemispherx Biopharma, Inc. v. Asenio*, 2001 WL 1807641, at *3 (Pa. C. Pl. Sept. 6, 2001) ("'The questions of presumption and burden of proof in this regard are, of course, procedural and to be determined by the law of the forum.'") (citations omitted). *But see Meyers v. Intel Corp*., 2015 WL 227824, at *4 (Del. Sup. Ct. Jan. 15, 2015) (observing that "[g]enerally, burden of proof is considered a procedural issue and the forum will apply its burden of proof unless the "primary purpose of the relevant rule of the state of the otherwise applicable law is to affect decision of the issue rather than to regulate conduct of the trial" and concluding that "Colorado's heightened level of proof is intertwined with the outcome of trial concerning exemplary damages, and this Court will apply Colorado's beyond a reasonable doubt standard of proof in this case").

[55] Restatement (Second) Conflict of Laws § 133. The Comment explains:

> *b. Rationale.* Most rules relating to which party has the burden of persuasion are concerned primarily with questions of trial administration. When rules of this sort are involved, the forum will apply its own local law. To do so will not defeat the expectations of the parties, since it is not to be expected that at the time of planning their transaction the parties gave thought to the manner in which possible litigation arising out of the transaction would be conducted. Hence there is no reason why the forum should assume in such instances the burden that would be involved in ascertaining and then in applying the relevant rules of the state of the otherwise applicable law….

Restatement (Second) Conflict of Laws § 133, cmt. b.

[56] Restatement (Second) Conflict of Laws § 133. The Comment explains:

> A rule of general application dealing with the burden of persuasion is almost certainly concerned primarily with trial administration. Such a rule of the state of the otherwise applicable law will not be applied by the forum. On the other hand, a rule which singles out a relatively narrow issue from the general norm and gives it peculiar treatment may have been designed primarily to affect decision of the particular issue. A rule of the latter sort will usually be set forth in a statute. Such a rule of the state of the otherwise applicable law will be applied by the forum….

intent is irrelevant if the Rules Enabling Act (as opposed to a Rules of Decisions Act) focuses primarily on the nature of the federal rule.[57]

D. Arguments Against a Procedural Characterization

The *Hanna* decision presented the position of a strong majority of the Court. Nevertheless, as discussed above, Justice Harlan wrote a concurrence that questioned several key factors underlying the majority's opinion, and subsequent cases and commentary have raised questions concerning its application. In addition, the Court's most recent decision addressing these issues—*Shady Grove*—is a plurality decision with opposing perspectives set forth in both the concurrence and dissent.[58] These divisions complicate the Advisory Committee's analysis of Rule 4003(c).

In *Hanna*, Justice Harlan gave significantly more weight to *Erie*'s potential application to the conflict than did the majority. Justice Harlan noted that he viewed *Erie* "as one of the

Restatement (Second) Conflict of Laws § 133, cmt. b. This approach appears consistent with the historical treatment of the burden of proof in the conflicts context. *See also* Note, *supra* note 51, at 330 ("In conflicts cases 'burden of proof' is considered procedural; but where the procedure of the forum would for practical purposes destroy substantive rights the foreign rule of procedure sometimes is applied.") (citations omitted).

[57] As discussed in the next section, the plurality and the concurrence in *Shady Grove* disagree regarding the focus of the inquiry (i.e., whether the nature of the federal rule, as opposed to the state law, is at issue). *See supra* notes 67-69 and accompanying text. Nevertheless, the following language from *Hanna* suggests that the primary (if not sole) focus of the inquiry is whether the federal rule "really regulates procedure":

> Thus, though a court, in measuring a Federal Rule against the standards contained in the Enabling Act and the Constitution, need not wholly blind itself to the degree to which the Rule makes the character and result of the federal litigation stray from the course it would follow in state courts, … it cannot be forgotten that the *Erie* rule, and the guidelines suggested in York, were created to serve another purpose altogether. To hold that a Federal Rule of Civil Procedure must cease to function whenever it alters the mode of enforcing state-created rights would be to disembowel either the Constitution's grant of power over federal procedure or Congress' attempt to exercise that power in the Enabling Act.

Hanna, 380 U.S. at 473-474.

[58] *Hanna*, 380 U.S. at 474.

modern cornerstones of our federalism, expressing policies that profoundly touch the allocation of judicial power between the state and federal systems."[59] He then opined,

> [T]he proper line of approach in determining whether to apply a state or a federal rule, whether "substantive" or "procedural," is to stay close to basic principles by inquiring if the choice of rule would substantially affect those primary decisions respecting human conduct which our constitutional system leaves to state regulation. If so, Erie and the Constitution require that the state rule prevail, even in the face of a conflicting federal rule.[60]

Justice Harlan's main critique of the line drawn by the majority in *Hanna* appears to be the ease with which federal rules could be upheld, "no matter how seriously it frustrated a State's regulation of the primary conduct and affairs of its citizens."[61]

Justice Ginsberg's dissent in *Shady Grove* echoed many of the themes expressed by Justice Harlan in *Hanna*, particularly the federalism issues at stake in the case.[62] Justice Ginsberg urged "respectful consideration" of both the Rules Enabling Act and the Rules of Decision Act so that the purposes of both are well served.[63] To that end, she would have read the federal rule at issue in *Shady Grove* narrowly so as to avoid a conflict with New York law prescribing class actions in certain cases.[64] Justice Ginsberg then would have applied an *Erie* analysis—given the lack of any federal statute or rule directly on point—to classify the New York law as substantive and applicable to the plaintiffs' case.

In his concurrence in *Shady Grove*, Justice Stevens also voiced federalism concerns, focusing on the "balance [] Congress struck between uniform rules of federal procedure and

[59] *Id*.
[60] *Id.* at 475.
[61] *Id.* at 476.
[62] *Shady Grove*, 559 U.S. at 438-39, 458.
[63] *Id.* at 443.
[64] *Id.* at 452.

respect for a State's construction of its own rights and remedies."[65] Unlike Justice Ginsberg, Justice Stevens found a direct conflict between the federal rule and the state law. This conflict required him to consider the plurality's reasoning and result: he ultimately disagreed with much of Justice Scalia's reasoning but agreed with the end result. Justice Stevens' primary concerns with the plurality's approach were its significant deference to federal rules if they are capable of being characterized as procedural and its failure to consider the second part of the Rules Enabling Act—i.e., whether the rule "abridges, enlarges, or modifies a state-created right or remedy."[66] In his analysis, Justice Stevens emphasized the need to focus on the state law at issue and whether that law "is procedural in the ordinary use of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created right."[67] If so, Justice Stevens would apply the state law and not the federal rule.[68] This is a very different approach than that of the plurality, which focused on whether the federal rule "really regulates procedure."[69]

An approach to the Rules Enabling Act that focuses on the purpose or effect of the state law itself—as opposed to the federal rule—may influence the analysis of Rule 4003(c). For example, as explained above, California has specifically allocated the burden of proof in exemption litigation by statute.[70] This codification may suggest that California perceives the burden of proof as a substantive part of the claim in exemption litigation. Indeed, as Justice

[65] *Id.* at 424-425.
[66] *Id.* at 422.
[67] *Id.* at 423.
[68] *Id.* at 423-24.
[69] *Id.* at 411 ("The concurrence contends that *Sibbach* did not rule out its approach, but that is not so. Recognizing the impracticability of a test that turns on the idiosyncrasies of state law, *Sibbach* adopted and applied a rule with a single criterion: whether the Federal Rule 'really regulates procedure.'") (citations omitted).
[70] *See* CAL. CODE CIV. P. § 703.580(b) ("the exemption claimant has the burden of proof").

Stevens suggested in *Shady Grove*, the burden of proof may be "so bound up" with the substantive state right "that it defines the scope of that substantive right."[71] Based on research to date, however, not every state codifies the burden of proof in the exemption context.[72] Accordingly, at least under the principles set forth in the Restatement (Second) of Conflict of Laws, the burden of proof in those states arguably is procedural.[73] This state-focused approach could lead to Rule 4003(c) being valid in some federal bankruptcy cases (including some in which the exemptions are governed by state law), but not in others.

E. Impact on Litigants' Substantive Rights

As emphasized by Justice Stevens in *Shady Grove*, the Rules Enabling Act has two components: federal rules must (i) govern the practice and procedure of the federal courts and (ii) "not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury."[74] Some court decisions (including, arguably, the plurality in *Shady Grove*) appear to collapse this two-part analysis into a single question concerning whether the federal rule "really regulates" procedure. Nevertheless, the Advisory Committee also should separately consider the second prong of the Rules Enabling Act statute in its analysis.

[71] *Shady Grove*, 559 U.S. at 420. *See also Byrd v. Blue Ridge Rural Electric Co-op*, 356 U.S. 525, 535 (1958) (holding that, in diversity cases, federal courts must apply the state rule if the rule is "bound up" with state-created rights).
[72] *See, e.g., Vinyl Tech Window Sys. V. Valley Lawn Maintenance Co*., 2011 WL 5299472 (Mich. Ct. App. Nov. 1, 2011) (referring to common law standard for burden of proof in garnishment context); *City of East Liverpool v. Buckeye Water Dist*., 972 N.E. 1090 (Ohio Ct. App. 2012) (same). See also M.C.L.A. § 600.5451 (setting forth exemptions that Michigan residents may claim in a federal bankruptcy case; does not address burden of proof); OH. CONSUMER L. § 20.9 (explaining that, although not addressed by statute, courts applying Ohio's exemption scheme have placed burden of proof on debtor).
[73] It should be noted that codification (or lack thereof) might not end the inquiry. A court may be required to further analyze state common law to discern if the state intends the burden of proof to be a substantive part of the claim. A broader inquiry arguably aligns with Justice Stevens' statement that federal rules cannot displace "a state law that is procedural in the ordinary use of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created right." *Shady Grove*, 559 U.S. at 423.
[74] *See* 28 U.S.C. § 2075.

In doing so, it is helpful to consider the Supreme Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), in which the Court addressed the validity of a claimed exemption to which a debtor had no right under applicable law. The debtor in *Taylor* claimed as exempt the entirety of her proceeds from an employment discrimination lawsuit. The debtor was not entitled to such an exemption under either state or federal law. Nevertheless, the trustee failed to file a timely objection to the claimed exemption. The Supreme Court held that the trustee's objection was barred and that the claimed exemption was valid under the plain language of section 522(l) of the Bankruptcy Code.[75] *Taylor*, 503 U.S. at 643-644. As the Court explained, "Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." *Id.* at 644. Similarly, even if placing the burden of proof on the objecting party affects the outcome of the litigation in some instances, the burden of proof may still be considered procedural for purposes of the Rules Enabling Act. "The cardinal purpose of Congress in authorizing the development of a uniform and consistent system of rules governing federal practice and procedure suggests that Rules which incidentally affect litigants' substantive rights do not violate this provision if reasonably necessary to maintain the integrity of that system of rules." *Burlington Northern Railroad Co. v. Woods*, 480 U.S. 1, 5.

F. The Constitutional Analysis of the Rules Enabling Act

In addition to satisfying the Rules Enabling Act, *Hanna* instructs that "neither Congress nor the federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution." *Hanna*, 360 U.S. at 472. The Court described this

[75] Although some courts have declined to extend the "exemption by default" holding of *Taylor*, the Court's analysis is useful in considering the impact of permissible federal rules.

analysis as follows: "For the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts, which in turn includes a power to regulate matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either." *Id.* Based on the arguments set forth above concerning the procedural aspects of the burden of proof in the context of Rule 4003(c), this test is likely satisfied (and indeed appears to be a broader question than that posed under the Rules Enabling Act).

VI. Advisory Committee Consideration

Unfortunately, there does not appear to be a definitive answer to the question posed by Suggestion 15-BK-E. Chief Judge Klein's *Tallerico* decision (including its reliance on *Raleigh*) is well reasoned and likely articulates an accurate characterization of the burden of proof as substantive for choice of law purposes not involving a federal rule. The question posed is not, however, this kind of choice of law question. Rather, it raises a conflict between applicable state law in the context of a federal bankruptcy case and a federal bankruptcy rule. The Advisory Committee thus must, in the first instance, decide whether Rule 4003(c) is presumptively valid under the Supreme Court's jurisprudence on the Rules Enabling Act.

In making this determination, the Advisory Committee must assess whether Rule 4003(c) conflicts with applicable state law, is valid under the Rules Enabling Act, and is within Congress' authority to act under the Constitution. As explained above, the Advisory Committee can readily find evidence of a direct conflict between the federal rule and at least some applicable state law, as well as the requisite constitutional authority. The more challenging

analysis concerns whether Rule 4003(c) "really regulates procedure" in accordance with the Rules Enabling Act.

Although some uncertainty exists concerning the evaluation of federal rules under the Rules Enabling Act, the Supreme Court's existing standard under *Hanna* suggests that the Advisory Committee should focus on whether the federal rule itself is procedural in the context of the administration of federal litigation.[76] As explained above, Rule 4003(c) implements the process for claiming and litigating exemptions in federal bankruptcy cases in accordance with the parameters of section 522 of the Bankruptcy Code. Moreover, the burden of proof is capable of being characterized as procedural; many states consider it procedural for choice of law purposes. There are exceptions to those states' rules, however, and the Supreme Court's decision in *Raleigh* and similar cases explains why the burden of proof may constitute a substantive part of a litigant's claim in certain proceedings (notably, not involving a federal rule). Reasonable minds could and indeed have differed on this question. Nevertheless, on balance and under the *Hanna* test, that argument likely is not sufficient to rebut the presumption in favor of rules promulgated under the Rules Enabling Act.

Accordingly, the Advisory Committee would be justified in taking no action on this matter at this time.[77] Such a position (or a general deferral on the issue) may also be advisable because declaring the burden of proof as substantive for purposes of the Rules Enabling Act

[76] *See Hanna*, 380 U.S. 472-473 ("One of the shaping purposes of the Federal Rules is to bring about uniformity in the federal courts by getting away from local rules. This is especially true of matters which relate to the administration of legal proceedings, an area in which federal courts have traditionally exerted strong inherent power, completely aside from the powers Congress expressly conferred in the Rules.") (citations omitted).

[77] The surest resolution would be a statutory amendment that incorporated Rule 4003(c) into section 522. *Raleigh*, 530 U.S. at 21–22 (discussing Congress's ability to change state law entitlements in bankruptcy). Such a change would provide enhanced uniformity in exemption litigation in bankruptcy cases and further the fresh start policy.

likely has much broader implications than simply changing the burden of proof in exemption litigation under Rule 4003(c). Other federal rules may be affected. Such a sweeping change should not be recommended lightly or on disputable grounds.[78]

[78] If the Advisory Committee decides to explore a change to Rule 4003(c), a further memorandum can detail the alternatives available to the Committee and the impact of any potential change. For example, Suggestion 15-BK-E offers two suggestions: (i) amend Rule 4003(c) to carve out exemptions governed by state law; or (ii) eliminate Rule 4003(c) in its entirety because, even with respect to federal law exemptions, the substantive law should govern and the bankruptcy rules cannot conflict with such law. A less drastic change would be to add the following caveat to Rule 4003(c), "Unless federal or state law governing the exemptions provides otherwise." Again, any change to Rule 4003(c) may have broader implications and would warrant further study.

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TAB 5A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: CHAPTER 13 PLAN FORM AND RELATED RULES

DATE: MARCH 7, 2016

Since the Committee's fall meeting, the Subcommittee has gathered informal input from relevant constituencies on an opt-out proposal for chapter 13 plans—that is, rules that would require use of a national form for chapter 13 plans unless a district promulgated its own form that met the requirements specified in a new rule. Based on the Subcommittee's consideration of the feedback it received, **it recommends that the Committee ask the Standing Committee to publish for public comment this summer the proposed amendments to Rule 3015 and new Rule 3015.1 and that it provide for a shortened comment period that would permit an effective date for the chapter 13 plan form and related rules of December 1, 2017.**

To provide context for this recommendation, the memorandum provides a review of the history of the chapter-13-plan-form project, followed by a discussion of the informal comments that the Subcommittee received and the considerations that led to the recommendation.

Review of Past Deliberations

The Committee began considering the possibility of creating a chapter 13 plan Official Form at its spring 2011 meeting. At that meeting, the Committee discussed Suggestions 10-BK-G and 10-BK-M, which both proposed the promulgation of a national plan form, and the Committee approved the creation of a working group to pursue the suggestions. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the Committee made significant changes to the form in

response to comments it received, the revised form and rules were published again in August 2014.

At the spring 2015 Committee meeting, in response to comments that were submitted after republication, the Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory Official Form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but would allow districts to opt out of the use of the Official Form if certain conditions were met.

Following the spring 2015 meeting, the Forms Subcommittee and the Consumer Subcommittee worked together to: (i) study and refine an opt-out proposal, (ii) obtain further input from a broad spectrum of the bankruptcy community, and (iii) consider the detailed substantive comments submitted on the republished Official Form and related rules. The Subcommittees concluded that an opt-out proposal could be implemented by further amending Rule 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case). As published in 2014, Rule 3015 required the use of the Official Form for a chapter 13 plan and declared ineffective any nonstandard provisions that were not placed in the section specified for such provisions or that were not identified as the Official Form required.

To allow for an opt-out, the Subcommittees revised Rule 3015(c)(1) to permit the use of either the Official Form or a Local Form meeting the requirements of proposed new Rule 3015.1.

During the summer of 2015, the Subcommittees extensively reviewed all 138 comments submitted after republication of the proposed plan form and the related rules. Based on this review, the Subcommittees proposed a number of technical changes to the plan form and to Rules 3002, 3007, 3015, and the Committee Note to Rule 7001. No additional changes were proposed for Rules 2002, 3012, 4003, 5009, and 9009.

The Subcommittees also considered the concerns expressed by the National Association of Consumer Bankruptcy Attorneys ("NACBA") and some members of Congress regarding the publication process relating to the proposed plan form and rules. They discussed and identified ways to continue productive discussions regarding the opt-out proposal with various bankruptcy constituencies, including NACBA, the National Association of Chapter 13 Trustees, and the National Conference of Bankruptcy Judges ("NCBJ").

At last fall's meeting, the Committee gave approval to proposed Official Form 113 and the related amendments to Rules 2002, 3002, 3007,[1] 3012, 4003, 5009, 7001, and 9009, but it voted to defer submitting those items to the Standing Committee. This deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

[1] The Committee approved the amendments to Rule 3007 subject to further review by the Subcommittee on Business Issues. As discussed at item 3(A) of the consent agenda, the Business Subcommittee recommends that Rule 3007 be withdrawn from the chapter-13-plan-form package and be given further consideration as part of that subcommittee's noticing project.

Informal Feedback on the Opt-Out Proposal

Judge Dow reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether there is any need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference ("NBC"), NCBJ, NACBA, the American Bankruptcy Institute's Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. Unfortunately, the bulk of the comments received were directed at the plan form itself, rather than on the opt-out proposal. Three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express general support for allowing districts to opt out of a national plan form, although for some of them it was a second choice, as they stated a preference either for only a national form or for no national form at all. Only the NCBJ provided any specific comments on the content of Rule 3015.

The response of NACBA was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that "adoption of the 'compromise' proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy." NCBJ also advised that the opt-out proposal be published for public comment.

The Subcommittee's Recommendation

During a conference call on January 15, the Subcommittee reviewed the informal comments and discussed the possible options before the Committee. Specifically, the

Subcommittee considered whether any further publication should be sought and, if so, what should be republished and on what time schedule.

The Subcommittee was unanimous in its conclusion that the amendments to Rule 3015 and proposed new Rule 3015.1 should be published for public comment. The opt-out concept was not included in the 2013 and 2014 publications, and, although it might be viewed as a lesser-included version of the proposal for a mandatory national form, it does represent a distinct change from the published proposals. Several members of the Subcommittee stated that they favor republication because of concern about the constituencies who do not feel that they have had a fair opportunity to express their comments on the opt-out proposal. A general desire was expressed to eliminate any possible procedural objections to the Committee's eventual recommendation.

The Subcommittee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Subcommittee believes that a strong case can be made for shortening the usual 6-month comment period so that an entire year can be eliminated from the period leading up to the effective date of the Committee's proposed rules and forms.

If the regular publication schedule were followed, Rules 3015 and 3015.1 would be published in August 2016, and comments would be received by sometime in February 2017. The Advisory Committee and the Standing Committee would have the opportunity to give

approval in spring 2017, followed by the Judicial Conference in September 2017. The Supreme Court would then be in line to promulgate the rules by May 1, 2018, with an effective date for the form and rules of December 1, 2018.

Alternatively, if Rules 3015 and 3015.1 could be published on a truncated schedule, they could be published in August 2016 with a 3-month deadline for submitting comments by sometime in November 2016.[2] The Advisory Committee could then vote on approval by special meeting or email in December 2016 and seek Standing Committee approval in January 2017. Approval of the Judicial Conference could be sought in March 2017. With advance notice to and permission of the Supreme Court, it could be asked to promulgate the rules by May 1, 2017, leading to an effective date for the form and rules of December 1, 2017.

Under either scenario, the rules and Official Form approved by the Committee last fall would continue to be held in abeyance until the Committee takes action on Rules 3015 and 3015.1. This would allow the entire chapter 13 plan package to be sent forward as a unit.

The proposed drafts of Rule 3015 and 3015.1 follow in the agenda materials. The only changes to them since the last meeting are the deletion of the last paragraph of the Committee Note to Rule 3015.1[3] and stylistic changes to both rules suggested by the Standing Committee's style consultants.

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[2] If the Standing Committees thinks that it might be confusing to have two different comment deadlines for the materials published in August, the Committee could propose an earlier publication date, such as July 15, for Rule 3015 and 3015.1.

[3] That paragraph previously stated: "Local Forms may, but need not, require that valuation and lien avoidance occur through the plan confirmation process." It was deleted as possibly misleading because Rule 3012 provides three different means for determining the amount of a secured claim (claim objection, motion, and plan confirmation).

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer's Debt Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~ FORM OF CHAPTER

13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) NOTICE ~~AND COPIES~~. If the plan ~~The plan or a summary of the plan shall be~~ is not included with the ~~each~~ notice of the hearing on confirmation mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court. ~~If required by the court, the debtor shall furnish a sufficient~~

~~number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under ~~pursuant to~~ subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, ~~before confirmation of the plan~~ at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in

good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed;

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

~~(g)~~(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under ~~pursuant to~~ § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court

may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

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Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no

nonstandard provision other than those set out in the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the "hanging paragraph" of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard

provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

TAB 5B

SUPPLEMENTAL MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: CHANGE OF ADDRESS FORM

DATE: MARCH 3, 2016

Suggestion 15-BK-D, submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of the National Association of Chapter 13 Trustees ("NACTT"), requests the adoption of a national form to facilitate notice of a change of address. Mr. Simon's letter includes a proposed form, instructions, and committee note. A committee formed by the NACTT developed these materials. As Mr. Simon explains, "It was the Committee's consensus that having a uniform method by which creditors and parties in interest can change their mailing address—for both payments and notices—would not only increase efficiency but also reduce costs."

The Advisory Committee considered Suggestion 15-BK-D on a preliminary basis at its Fall 2015 meeting. The Advisory Committee requested additional information regarding: (i) the local rules and practices of bankruptcy courts on change of address matters; and (ii) the impact—to the extent it could be determined—of unclaimed funds in bankruptcy cases resulting presumably from, among other things, incorrect mailing addresses. This supplemental memorandum addresses these two items and incorporates, as relevant, information from the Subcommittee's preliminary memorandum on Suggestion 15-BK-D, dated August 30, 2015. It also sets forth and explains the Subcommittee's recommendation that the Advisory Committee take no action on this matter at this time, except to refer it to other appropriate committees for review and consideration.

Overview of Noticing a Change of Address

Bankruptcy Rule 2002(g) sets forth appropriate noticing addresses for parties in federal bankruptcy cases. In general, the rule permits service upon a party at the address listed in such party's last filed request or, if no such request, in the debtor's list of creditors or schedule of liabilities, whichever is filed later.[1] In addition, sections 342(e) and (f) of the Bankruptcy Code allow an entity to request service at a particular address in a given case, or to "file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor." 11 U.S.C. § 342(e), (f). Although likely in a creditor's best interests, neither section 342 of the Bankruptcy Code nor the bankruptcy rules explicitly require a creditor or other party to update its noticing or payment address.

[1] Bankruptcy Rule 2002(g) provides similar treatment for equity security holders. Specifically, the rule provides in relevant part:

> (g) Addressing Notices.
>
> (1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision—
>
> (A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and
>
> (B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.
>
> (2) Except as provided in §342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

FED. R. BANKR. P. 2002(g).

Accordingly, creditors, equity security holders, or other parties may not receive notices in the bankruptcy case or distributions under any confirmed plan.

Under current practice, no uniform approach exists for noticing a change of address for parties in federal bankruptcy cases. Some courts have adopted local rules or forms to address this issue.[2] Nevertheless, creditors, equity security holders, and other parties who participate in cases in multiple jurisdictions are faced with uncertainty and inconsistency whenever this issue arises. Moreover, as noted in Mr. Simon's letter, the lack of process also impacts trustees trying to distribute funds under confirmed plans and other parties required to serve notices or other papers on parties in the case. Consequently, some standardization in noticing a change of address likely would increase certainty and efficiency in many cases.

One disadvantage to creating a national form or process is that some jurisdictions already have a process or form in place.[3] These jurisdictions may resist any change or fail to see the value in implementing the change. Accordingly, to assess Suggestion 15-BK-E fully, the Advisory Committee needs a more thorough understanding of current practice and the impact of a change of address form on the federal bankruptcy system. Each of these items is addressed in turn below.

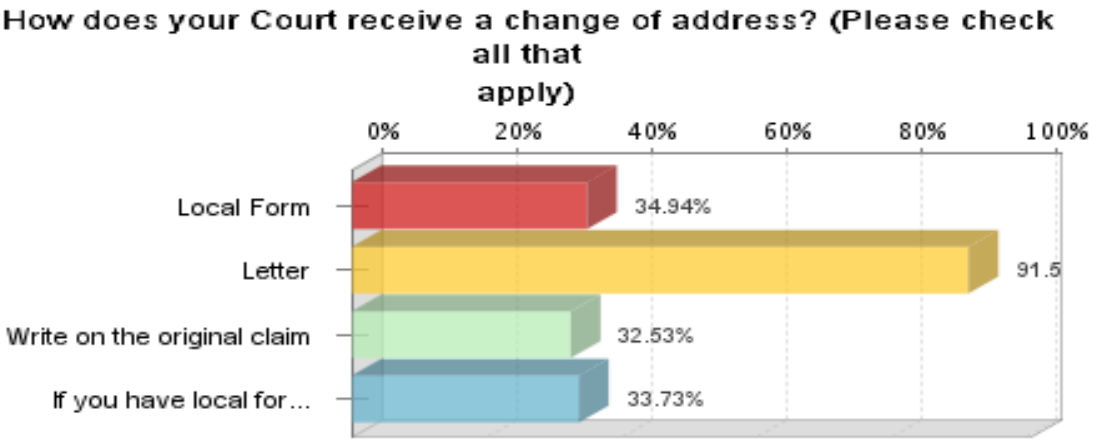
[2] Examples of the local forms used by the bankruptcy courts are set forth collectively at ***Appendix A***. A summary of courts' local rules and forms is attached at ***Appendix B***.

[3] For example, some courts provide separate forms for attorneys, creditors, and debtors. In addition, some courts may cross-reference change of address filings on the claims register, which likely creates efficiencies for chapter 13 trustees in the distribution process. *See* U.S. Bankruptcy Court for the District of Oregon, Change of Address Form and Procedure Modifications, Mar. 15, 2013 ("The Court has replaced LBF #101, Change of Address, with LBF #101C, Change of Creditor Address, and LBF #101D, Change of Debtor Address. Address changes for other parties may be submitted by submitting a signed request. Creditors who have filed a claim will no longer need to file an amended claim to update their payment address. Address changes for claimants will appear on the claims register."), available at http://www.orb.uscourts.gov/news/change-address-form-and-procedure-modifications.

Survey of Bankruptcy Courts' Local Rules and Practices

To facilitate a review of bankruptcy courts' local rules and practices regarding change of address matters, Jim Waldron, Clerk of Court for the U.S. Bankruptcy Court for the District of New Jersey, conducted an online survey of bankruptcy clerks. The survey targeted issues surrounding change of address matters in all bankruptcy cases and included 12 questions. Eighty-three clerks responded to the survey, but not every clerk answered every question. Accordingly, the response rate varies by question. Nevertheless, the survey provides an excellent and representative[4] overview of how bankruptcy courts handle change of address matters and highlights the variance in approach among the courts. The following summary highlights key aspects of the survey results.

Receipt of Change of Address. The survey asked respondents to identify how they receive information concerning a party's change in address.[5] Respondents could select more than one answer, and all 83 of the respondents participated in this question. The chart below shows the results:



[4] Bankruptcy clerks from each Circuit, including the District of Columbia, responded to the survey.
[5] A separate question on the survey asked respondents how they have seen parties attempt to change address information. The three primary responses were correspondence, change of address forms, and amended proofs of claim.

Process for Updating Address. The survey asked respondents to explain how they facilitate a change in a party's address after receiving the relevant information.[6] Respondents could select more than one answer, and all 83 of the respondents participated in this question. The vast majority of respondents dockets the change of address information (75 participants) and/or edits the creditor's information in the creditor matrix (78 participants). In addition, respondents noted that they update the information by editing "case participant" or "person data" in the case through the CM/ECF system. Several also indicated that, if the change of address relates to a creditor, they add a new entry to the creditor matrix rather than editing the old information for that creditor.

Event in CM/ECF. The survey asked respondents if their courts' CM/ECF system had an event for change of address matters. Eighty-one[7] of the respondents responded affirmatively to this question, but several nuances existed among the answers. Most of the respondents simply indicated that their courts' CM/ECF system has a change of address event. Others, however, provided more details, suggesting some variation among event designations. For example, a few respondents identified separate events for creditor versus debtor changes in address; one had separate events for general changes of address versus changes of address for proofs of claim purposes; some explained that the change of address is simply docketed by the case manager and then the creditor matrix is adjusted; and some noted different ways of handling internal (e.g., a mailing from the court is returned as undeliverable) versus external (e.g., a party submits its updated address information to the court) changes of address. One respondent specified its

[6] A separate question on the survey asked respondents how they handle changes of address in cases with claims agents. Most respondents indicated their courts did not use claims agents or did not have many cases that required a claims agent. In those courts having experience with claims agents, the courts either required the claims agent to (i) notify the court of changes in the creditor matrix, or (ii) check the case docket to identify changes of address to ensure the agent's matrix matched the information on the court's docket.

[7] One respondent answered no (changes are made through that court's CM/ECF editor), and one respondent answered "N/A."

court's options in the CM/ECF Menu, which appears to address most of the potential variances in a change of address matter: "Menu Items Utilities → Miscellaneous → Mailings → Users' Addresses Bankruptcy Events → Claim Actions Notice of Change of Address Bankruptcy Events → Notices Notice of Change of Address Notice of Override of Preferred Address 342(e) Bankruptcy Events → Other Notice of Change of Address."

Local Rule for Change of Address. The survey asked respondents if their courts had a local rule requiring the use of a form for change of address purposes. Only one respondent answered yes, but eight respondents provided links to their courts' relevant local rule. Most of these local rules describe a process for filing a change of address, but do not mandate use of a local form. Subsequent research in the *Bloomberg Bankruptcy Treatise* local rules database suggests that approximately 20 bankruptcy courts have local rules governing some kind of change of address matter,[8] approximately 30 have forms,[9] and at least four have a general or standing order discussing change of address procedures. A chart identifying these jurisdictions and summarizing their approaches to change of address matters is attached at ***Appendix B***.[10]

Changes Noted on Proof of Claim Form. The survey asked respondents how they handle changes of address written on a creditor's proof of claim form. Twenty-two respondents indicated that they make appropriate changes in the CM/ECF system. Eighteen respondents said they do not take action in the CM/ECF system based on such a filing. Other respondents handled

[8] Some rules address only the debtor filing a notice of change of address or, alternatively, speak to a similar duty for attorneys and pro se parties. Some rules do, however, mandate that creditors or parties in interest file a notice of a change of address. *See, e.g.*, Bankr. W.D.N.C., L.B.R. 2002-1(b) ("A creditor or a party in interest, other than a debtor, with a change of name and/or address, whether for receipt of payments and/or notices, shall file Local Form 12 ('Change of Address') or an amended proof of claim with the Clerk of Court in each case in which the change is to be noted….). In addition, one rule focuses only on changes in electronic noticing addresses.

[9] Although most of the local forms apply to all parties or the court provides separate local forms for each category of party (e.g., debtors and creditors), four provide a form only for the debtor.

[10] The information on this chart was gathered primarily from the Bloomberg Law Bankruptcy Treatise. *See* BLOOMBERG LAW: BANKRUPTCY TREATISE, pt. XIII (D. Michael Lynn et al. eds., 2014).

the situation differently. Some change the address for noticing purposes, but not payment purposes. Some change the address if the proof of claim is filed electronically, but add a new creditor if the proof of claim is filed in hard copy. Some just add a new creditor regardless of how the proof of claim is filed, and some treat this situation as an amended proof of claim. It is difficult to determine if and how addresses are updated in all relevant places (e.g., person data, creditor matrix, claims register, etc.).

Distinguishing Between Changes of Address and Claim Transfers. The survey asked respondents how they distinguish between an amended proof of claim that facilitates a change of address for the original creditor versus one that implements a transfer of a claim. Many respondents indicated that the distinction is based on the name of the creditor listed on the amended proof of claim; others said they review the filing to make an appropriate determination. Interestingly, several respondents suggested that this distinction is easily done based on the national form for claim transfers and the required filing fee. These aspects of claim transfers make monitoring the filings easier and also trigger a change in both the creditor matrix and claims register.

As indicated by the foregoing results, courts approach change of address matters in different ways, but every court must address this issue in both consumer and business cases. The results also suggest that a standard form and event entry in CM/ECF might facilitate more efficient and effective administration of these matters for both courts and parties.

Impact of Unclaimed Funds in Bankruptcy Cases

An incorrect mailing address creates at least two kinds of issues in bankruptcy cases: a noticing issue[11] and a distribution issue. The distribution issue, of course, relates primarily to

[11] A creditor's failure to update or correct its mailing address may create uncertainty in the case concerning the creditor's actual notice of matters connected to the case, such as plan confirmation and a

creditors in a case.[12] Specifically, in the context of a chapter 7, 12, or 13 case, the trustee may not be able to locate a creditor with an incorrect mailing address for payment purposes, and the funds otherwise deliverable to that creditor become "unclaimed funds" in the case.

Section 347 of the Bankruptcy Code addresses unclaimed funds. In chapters 7, 12, and 13, section 347(a) provides, "Ninety days after the final distribution under section 726, 1226, or 1326 of this title…, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28." Section 2041 of title 28, in turn, provides, "All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court." 28 U.S.C. § 2041.

The U.S. Trustee's handbooks for chapter 7 and chapter 13 trustees encourage trustees to try to locate creditors and provide guidance for trustees in the unclaimed funds process. For example, the Chapter 7 Trustee Handbook states, "In addition, the trustee must make a reasonable effort to locate creditors who do not cash their checks promptly or whose checks are returned undeliverable. 28 U.S.C. § 586. If these efforts fail to locate the creditor, the amounts represented by the checks are treated as unclaimed dividends and deposited with the Clerk of the Bankruptcy Court …." USDOJ HANDBOOK FOR CHAPTER 7 TRUSTEES, at page 4-33. The

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debtor's discharge. Although a court may determine that the creditor ultimately had adequate (reasonable) notice of matters pending in the case (e.g., from information received prior to the change of address), the uncertainty can create unnecessary costs and litigation in the case.

[12] Although equity holders may receive some kind of distribution in certain chapter 11 cases, those cases do not raise the same issues with respect to unclaimed funds as in the chapters 7, 12, and 13 contexts. Section 347(b) provides, "Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be." 11 U.S.C. § 347(b).

Chapter 13 Trustee Handbook similarly explains the mandate of section 347(a), "Section 347(a) of the Bankruptcy Code requires the standing trustee to stop payment on any check remaining unpaid ninety days after the final distribution and pay the unclaimed funds to the court."[13] USDOJ HANDBOOK FOR CHAPTER 13 STANDING TRUSTEES, at page 3-41. It then instructs, "In some jurisdictions, the court may allow or require standing trustees to reissue final disbursement checks. The standing trustee should consult with the United States Trustee before implementing such a procedure." *Id*. Moreover, Bankruptcy Rule 3011 provides, "The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code." FED. R. BANKR. P. 3011.

From a practical standpoint, a trustee typically pays unclaimed funds into the court registry in accordance with section 347(a). Those funds then stay in the court's registry for five years. Thereafter, the court transfers the unclaimed funds to the U.S. Treasury. Throughout this process, the funds stay earmarked for the creditor. There is no deadline for the creditor (or its heirs or successors) to retrieve the unclaimed funds. Accordingly, these funds can accumulate quickly and stay in the U.S. Treasury indefinitely. For example, the U.S. Bankruptcy Court for the Western District of Pennsylvania posts its list of unclaimed funds online.[14] The list includes cases dating back to 1984, and funds transferred to the court's registry from 2009-2016. A rough estimate of the aggregate unclaimed funds listed by just this one court exceeds $3 million.

[13] The U.S. Trustee's handbook for chapter 12 trustees follows the general form and content of the handbook for chapter 13 trustees on this issue. *See* USDOJ HANDBOOK FOR CHAPTER 12 STANDING TRUSTEES, at page 3-29.

[14] *See* Unclaimed Funds, Bankr. W.D. Pa., available at http://199.107.21.26/unclaimed.htm.

The Subcommittee's Deliberations and Recommendations

The Subcommittee reviewed Suggestion 15-BK-D, as well as the research and data set forth above, during its conference call on February 16, 2016. The Subcommittee appreciated the concerns raised by the NACTT through Suggestion 15-BK-D. Indeed, it discussed, among other things, the challenges faced by chapter 13 trustees, chapter 7 trustees, and others required to notice, or make distributions to, parties with inaccurate mailing addresses. It then turned to considering whether a national form would alleviate those issues in any meaningful way.

Several members of the Subcommittee questioned whether a national form would really encourage parties to submit change of address notices, particularly given that filing such a notice is in the party's best interest. For example, if a creditor is not currently providing updated information to the court, which the creditor likely knows is necessary to receive information about, and payments in, a bankruptcy case, why would a national form change the creditor's practices? The Subcommittee noted that some creditors and parties in interest may be unsophisticated and may not appreciate the need to, and benefits of, updating personal information in a bankruptcy case. Although members of the Subcommittee recognized this possibility, they did not believe that a national form (or a Director's Form) by itself would change this outcome. Indeed, several members focused on the Advisory Committee's inability to enforce any form or requirement that parties provide the court with updated address information in a timely manner.

The Subcommittee also considered the challenges faced by creditors appearing in multiple cases in multiple jurisdictions and the burden of having to notice any change of address according to different local rules or practices in those various jurisdictions. As discussed below, the members of the Subcommittee observed the different approaches adopted by bankruptcy courts to handle change of address matters. They also noted, however, the lack of any evidence

that these differing procedures pose problems for creditors. Indeed, the Advisory Committee has not received any suggestions (formal or informal) that indicate issues for creditors appearing in multiple jurisdictions with respect to changes in their address information.

In light of the foregoing, the Subcommittee generally agreed that, if a party wants to update address information in a bankruptcy case, the party could do so under existing practices and procedures in the bankruptcy courts. Although the survey evidenced variances in how bankruptcy courts approach change of address matters, the overwhelming majority of the clerks responding to the survey indicated the presence of a CM/ECF event for noticing a change of address. Both the survey and the experience of the Subcommittee members suggested that most courts accept and record a change of address regardless of the submission method used by the party. (For those courts requiring that parties follow certain procedures for noticing changes of address, those procedures are typically explained on the court's website or are otherwise publicly available to parties.) The Subcommittee also discussed the potential negative impact of mandating the use of a national form given the prevalence of local rules and practices, many of which are well established and familiar to the parties appearing in those jurisdictions. Based on the foregoing considerations, the Subcommittee questioned the utility of a national form.

In discussing these issues, the Subcommittee also analyzed the related issue of unclaimed funds. Members of the Subcommittee were mindful of the inefficiencies (and inconvenience) of unclaimed funds sitting in a court's registry or the U.S. Treasury, but they did not believe that the Advisory Committee could remedy this situation. The Subcommittee explored possible ways to address the unclaimed funds issue through education (e.g., how to claim funds, the need to provide current personal information to courts in litigation and bankruptcy cases, etc.), Congressional action (e.g., imposing a deadline to assert rights to unclaimed funds before the funds are transferred out of the U.S. Treasury and used for other purposes), or other measures.

Nevertheless, the Subcommittee determined that the Advisory Committee did not have a meaningful role to play in these kinds of mitigation efforts. That said, the Subcommittee agreed that if a national form (or a Director's Form) would assist in, or complement, such mitigation efforts, the Advisory Committee should reconsider the matter.

Accordingly, the Subcommittee recommends that the Advisory Committee take no action on Suggestion 15-BK-D at this time. The Subcommittee also recommends that the Advisory Committee refer the change of address and unclaimed funds issues to the Bankruptcy Clerks Advisory Group, the Committee on Court Administration and Case Management, or other committees that would be better suited to review and consider potential ways to mitigate the issues. In so doing, the Subcommittee would suggest that the Advisory Committee indicate its willingness to revisit a national form (or a Director's Form) for noticing a change of address in bankruptcy cases if such a measure would assist, or complement, other actions proposed or taken by those committees.

Attachments

Appendix A

Eastern District of Virginia: https://www.vaeb.uscourts.gov/wordpress/?wpfb_dl=242

Eastern District of Washington: http://www.waeb.uscourts.gov/sites/waeb/files/forms/LF1007-2%20Address%20Change%20Form_0.pdf

Eastern District of Wisconsin: https://www.wieb.uscourts.gov/index.php/forms14/links13

Eastern District of Texas:
http://www.txeb.uscourts.gov/local%20forms/change_of_address_form.pdf

District of New Jersey:
http://www.njb.uscourts.gov/sites/default/files/forms/Change%20of%20Address%202-1-16_0.pdf

Eastern District of California: http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-085.pdf?dt=173648328

District of Oregon: Creditor:
http://www.orb.uscourts.gov/sites/orb/files/documents/forms/101C.pdf; Debtor:
http://www.orb.uscourts.gov/sites/orb/files/documents/forms/101D.pdf

Northern District of Georgia:
http://www.ganb.uscourts.gov/sites/default/files/change%20of%20address%20form.pdf

Southern District of Iowa:
http://www.iasb.uscourts.gov/iasb_ftp/forms/LocalForms/NtcAddrChange.pdf

Northern District of Ohio: https://www.ohnb.uscourts.gov/sites/default/files/local-bankruptcy-forms/cleve-change-address-notif.pdf

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Appendix B

[Excel Spreadsheet Attached Separately]

District	Rule or Form
Central District of Illinois	"CDIL-LR 5.6 sets forth the rule that each attorney admitted to practice in the Central District of Illinois and pro se party given leave of court to proceed electronically must register for electronic filing and obtain a password. If a user comes to believe that the security of an existing password has been compromised and that a threat to the system exists, the user must change his or her password immediately. Additionally, if an attorney's or pro se party's e-mail address, mailing address, telephone number, or fax number changes after he or she registers for electronic filing, he or she must file notice of this change within 14 days and serve a copy of the notice on all other parties."
District of Arizona	Separate Forms for (i) Attorneys, (ii) Debtors, and (iii) Creditors
District of Colorado	"L.B.R. 9010-1(b)(1) sets forth the rule that an attorney who is a member in good standing in the United States District Court for the District of Colorado is qualified to practice in the court, subject to: (A) all attorneys must provide an address of record for all filings, and (B) all attorneys must file and serve a separate notice of change of address in each pending case or proceeding in which the attorney has previously entered an appearance."
District of Guam	GUB 3070-2f. Notice of Change of Address (Proof of Claim)
District of Hawaii	Separate Forms for (i) Attorneys and (ii) General
District of Kansas	"LBR 9011.4(c)(3) sets forth the rule that each attorney or pro se party notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record is deemed sufficient notice."
District of Massachusetts	Standing Order 2015-05 dated June 22, 2015, Regarding Adoption of New Official Local Form 18 Notice of Address Change: Payment and/or Notice Address – Supplement Relating to Existing Proof of Claim.
District of Minnesota	Debtor Change of Address Form
District of Nebraska	a creditor, the schedule of liabilities and Matrix must list such departments or agencies at the address indicated on Appendix “B” to the Local Rules. In the event of an address change, the following departments or agencies must notify the clerk of such change in address and make a specific request that the Appendix be changed:.... Neb. R. Bankr. P. 5005-1(B)(5) sets forth the rule that, if any of the information on the Attorney Registration Form changes (e.g., mailing address, e-mail address, etc.), the attorney must submit an amended Attorney Registration Form either via e-mail to Nebml_ecfaccess@neb.uscourts.gov or mailed/delivered to the United States Bankruptcy court, 460 Robert V. Denney Federal Building, 100
District of Nevada	Separate Forms for (i) Attorneys and (ii) Debtors and Creditors

District of New Jersey	Change of Address Form
District of New Mexico	"NM LBR 9011-1(a) sets forth the rule that all attorneys and pro se parties must ensure that all filed papers include their name, address, telephone number, and e-mail address below their signature line, and must promptly notify the clerk, in writing, of any changes to this information." Change of Address Form
District of North Dakota	Rule 5005-1 sets forth the rule that any document filed by an attorney must be filed electronically using the court's case management/electronic case files (ECF) system. The clerk is authorized to amend the ECF administrative procedures in keeping with the needs of the court. The ECF Administrative Procedures set for the following procedures for electronic filing: I. Service of Documents by Electronic Means The "Notice of Electronic Filing" (NEF) that is automatically generated by the court's ECF System constitutes service or notice of the filed document on filing users, except pursuant to Rule 7004. Except as otherwise noted, the court's transmittal of an NEF, will constitute proof of service upon the
District of Oregon	Separate Forms for Debtor and Creditor
District of South Carolina	Operating Order 08-05, Returned and Undeliverable Mail, Delegation of Re-Noticing, and Change of Address
District of the District of Columbia	"LBR 2002-2(d) sets forth the rule that an entity may file a request directing how notices under Rule 2002 must be addressed and requesting that the list under LBR 2002-2(a) or LBR 2002-2(b) be changed accordingly." Change of Address Form
District of Utah	"Bankr. D. Ut. LBR 4002-1(a) sets forth the rule that the debtor must file and serve on the U.S. trustee, and the trustee, if any, every change of the debtor's address until the case is closed or dismissed…. Bankr. D. Ut. LBR 9010-1(b) sets forth the rule that, in all cases and proceedings, attorneys and parties appearing without an attorney must notify the clerk's office of any change in address or telephone number...." Change of Address/Request for Notice Form.
District of Vermont	Form M - Debtor's Change of Address/Phone Number
Eastern District of California	Change of Address Form
Eastern District of North Carolina	General Order: Returned Mail and Change of Address- Amended 2012 May
Eastern District of Oklahoma	Separate Forms for Debtor and Creditor

Eastern District of Texas	Party Change of Address Form
Eastern District of Virginia	Change of Address Form
Eastern District of Washington	LF 1007-2 - Address Change Form
Eastern District of Wisconsin	Separate Forms for Debtor and Creditor
Middle District of Georgia	"M.D. Ga. LBR 4002-1(a) sets forth the rule that, whenever the debtor's mailing address changes while a bankruptcy case is pending, the debtor must notify the court, the trustee, and the debtor's attorney of record."
Middle District of Louisiana	"LBR 4002-1 sets forth the rule that the debtor must file with the clerk written notice of any changed mailing address until the case is closed."
Northern District of Florida	Debtor Change of Address Form
Northern District of Georgia	Change of Address Form
Northern District of Iowa	or indenture trustee as it was originally shown in the creditor list or schedules and as shown in the mailing matrix. The service address of a scheduled or listed creditor, equity security holder or indenture trustee is changed only pursuant to Rule 2002(g). L.R. 2090-1(c)(2) sets forth the rule that an attorney who has been admitted pro hac vice in any pending case or proceeding will be responsible for keeping the court informed of any changes in the attorney's address or telephone number(s). Notification of a change must be accomplished by filing in each pending case or proceeding a “Notice of Change of Address (or Telephone Number).” The notice must contain the attorney's new address or telephone number(s) and the effective date of
Northern District of Ohio	Change of Address Form
Northern District of Oklahoma	10-GO-07, Order Allowing Use of the BNC Undeliverable Notice to Change Address; 10-GO-03, Order Changing Address for chapter 13 Plan Payments

Northern District of West Virginia	"N.D.W.V. LBR 4002-2 sets forth the rule that, in addition to duties of debtor imposed by the Code and Bankruptcy Rules (See, inter alia, 11 U.S.C. § 343; 11 U.S.C. § 521; Bankruptcy Rules 1007 and 4002) debtor(s) and (his, her or their) counsel must notify the clerk of the bankruptcy court, the United States trustee, and, if applicable, the case trustee of any change in debtor(s)'s address within ten days of such change. Failure to notify these parties of a change in debtor(s)'s address may result in sanctions, including a dismissal of the petition."
Southern District of Florida	the "Clerk's Instructions for Preparing, Submitting and Obtaining Service Matrices." Such lists include a creditor list, an attorney list, and a party list. Verification that a particular party appears accurately on any service matrix, appearance list or claims register is the responsibility of the party providing notice and the party listed. The debtor or other responsible party is responsible for any and all omissions of parties on any service list maintained under CM/ECF, and such party must verify that particular parties appear accurately on any service matrix and must provide the clerk with supplemental matrices, or where applicable, notices of change of address and must correct any errors. The party providing service is responsible for
Southern District of Georgia	"LR 11.1 sets forth the rule that every pleading, motion, or other paper presented for filing must, pursuant to Federal Rule of Civil Procedure 11, be signed by at least one attorney of record in the attorney's individual name, and must contain counsel's name, complete address (including post office box or drawer number and street address), telephone number, and state bar number. Each attorney and pro se litigant has a continuing obligation to apprise the court of any address change. Lead counsel must be identified on the complaint and the responsive pleading of each party, and the clerk must be advised of any change in lead counsel." Debtor Change of Address Form
Southern District of Illinois	Rule 2002(g), or a creditor change of address) will be deemed a general entry of appearance in that case by the attorney filing the document. S.D. ILL. LBR 9010.B sets forth the rule that a corporation, partnership, trust or other business entity, other than a sole proprietorship, may appear and act without counsel in a case or proceeding before the court only for the purpose of attending the section 341 meeting, filing a request for notice and service of documents, filing a change of address, filing a proof of claim, and submitting a ballot. For all other purposes, such entity must appear and act only through an attorney."
Southern District of Indiana	orders and notices, including the notice of the commencement of the case and meeting of creditors and any order confirming a plan, dismissing a case, or discharging a debtor. The debtor must file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based on the debtor's receipt of returned mail or information received from the court's noticing agent. In addition, the debtor must serve the documents required by S.D. Ind. B-1009-1(b)(2). If the debtor is unable to determine a correct address for a creditor or party in interest, the debtor must file a Notice of Unavailable Address specifying the creditor's name and reporting that a correct address cannot be located. Upon the filing of
Southern District of Iowa	Change of Address Form
Southern District of West Virginia	or changes an address to the mailing matrix, the debtor must serve the added creditor or entity with the debtor's Statement of Social Security Number(s); Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines; schedule(s) listing the creditor or entity; and any other document affecting the rights of the creditor or entity. Bankr. S.D. W.Va. 1007–2(f) sets forth the rule that, when an amendment to a schedule adds a creditor or changes an address, the amendment to the mailing matrix must only reflect the additions or changes. Bankr. S.D. W.Va. 3001-1(c) sets forth the rule that a claimant who provides a mailing address must notify the clerk in writing of a change in the address."
Western District of Michigan	Debtor Change of Address Form
Western District of Missouri	"Rule 9010-1.A. sets forth the rule that an attorney, debtor, or other party must notify the clerk, opposing counsel and interested parties, including the trustee, in writing of a change of address and submit a list of all proceedings affected. Rule 9010-1.B. sets forth the rule that service to the old address of any item by the court or a party will be deemed effective, regardless of whether the attorney, debtor, or other party actually received the item, if a notice of change of address has not been provided to the court or made by the attorney."
Western District of North Carolina	"LBR 2002-1(b) sets forth the rule that a creditor or a party in interest, other than a debtor, with a change of name and/or address, whether for receipt of payments and/or notices, must file Local Form 12 ("Change of Address") or an amended proof of claim with the clerk of court in each case in which the change is to be noted. A change of name and/or address indicated by the filing of an amended proof of claim will not constitute a change in the claim amount, unless specifically noted. A creditor may file a change of address on the court's website." Change of Address Form
Western District of Tennessee	Separate Forms for (i) Attorneys and (ii) Debtors and Creditors

Western District of Virginia	"Local Rule 1007-2(E) sets forth the rule that the attorney of record or pro se debtor(s) must notify the clerk in a separate letter of a change of mailing address for the debtor(s) or debtor's counsel."
Western District of Washington	Change of Address Form

TAB 6A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: PROPOSED REVISIONS TO FORMS 25A, B, C

DATE: MARCH 3, 2016

As part of the Advisory Committee's Forms Modernization Project that began in 2008, the Advisory Committee deferred consideration of certain forms relating to chapter 11 cases—specifically, Forms 25A, B, and C, and Form 26. The Advisory Committee referred those forms to the Subcommittee on Business Issues for review and consideration, which in turn appointed a working group to address these particular forms.[1] The Subcommittee discussed the working group's review of, and recommendations for, these forms during its conference calls on February 19 and 23, 2016. This memorandum sets forth the Subcommittee's recommendations on Forms 25A, B, and C.

The revised forms are renumbered as Official Forms 425A, 425B, and 425C. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, which must be filed with the court and served on the U.S. Trustee under section 1107(a) (which incorporates, among other things, section 704(a)(8)) of the Bankruptcy Code. The revised forms incorporate stylistic and formatting changes to conform to the general structure of the modernized forms. The Subcommittee believes that these changes make all three forms easier to read and use.

[1] The working group members are Judge Stuart Bernstein (Chair of the Subcommittee), Thomas Mayer, Ramona Elliott, and Michelle Harner (Prof. Harner's predecessor, Prof. Troy McKenzie, previously served on the working group).

In addition, in reviewing the forms, the Subcommittee identified several places where Official Forms 425A and 425B were inconsistent with the Bankruptcy Code or required additional information to explain fully the debtor's disclosure obligations. For example, Official Form 425A, the plan of reorganization, now provides for separate classification of priority claims that must be classified under the plan and non-priority general unsecured claims. It also clarifies treatment options for executory contracts and unexpired leases, and the timing and kinds of discharges available in the small business chapter 11 case. The Subcommittee made parallel changes to Official Form 425B, the disclosure statement, in each appropriate place. The Committee Notes to Official Forms 425A and 425B identify and explain these and the other substantive changes made and recommended by the Subcommittee. They also explicitly state that the plan of reorganization and the disclosure statement set forth in each form are sample documents and not required forms in small business cases.

Moreover, the Subcommittee's working group sought and received significant input from the Executive Office of the U.S. Trustee on Official Form 425C, which is the monthly operating report that small business debtors must file with the court and serve on the U.S. Trustee. As explained in the Committee Note to Official Form 425C, the form is rearranged to eliminate duplicative sections and further explain the kinds of information required by the form. It also clarifies that the person completing the form on behalf of the debtor must answer all questions, unless otherwise provided, and it provides a checkbox to indicate if the report is an amended filing.

The Subcommittee believes that Official Forms 425A, B, and C conform to the formatting and the underlying objectives of the Forms Modernization Project, including to make the forms more understandable and easier to use. The Subcommittee thus recommends that the Advisory Committee propose the publication of Official Forms 425A, B, and C for comment in

August 2016 (this would require approval by the Advisory Committee at its March 2016 meeting and by the Standing Committee at its June 2016 meeting).

Attachments

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Fill in this information to identify the case:

Debtor name _____

United States Bankruptcy Court for the:_____ District of _____ (State)

Case number: _____

Official Form 425A

Plan of Reorganization for Small Business Under Chapter 11 12/17

[Name of Proponent]'s Plan of Reorganization, Dated [Insert Date]

Article 1: Summary

This Plan of Reorganization (the *Plan*) under chapter 11 of the Bankruptcy Code (the *Code*) proposes to pay creditors of [insert the name of the Debtor] (the *Debtor*) from [Specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for:

- [ ] classes of priority claims;
- [ ] classes of secured claims;
- [ ] classes of non-priority unsecured clams; and
- [ ] classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately [ ] cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

Article 2: Classification of Claims and Interests

2.01	**Class 1**	All allowed claims entitled to priority under § 507(a) of the Code (except administrative expense claims under § 507(a)(2), ["gap" period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)). [Add classes of priority claims, if applicable]
2.02	**Class 2**	The claim of [_____], to the extent allowed as a secured claim under § 506 of the Code. [Add other classes of secured creditors, if any. *Note*: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]
2.03	**Class 3**	All non-priority unsecured claims allowed under § 502 of the Code. [Add other classes of unsecured claims, if any.]

2.04	**Class 4**	Equity interests of the Debtor. [If the Debtor is an individual, change this heading *to The interests of the individual Debtor in property of the estate*.]

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

3.01	**Unclassified claims**	Under section § 1123(a)(1), administrative expense claims, ["gap" period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.
3.02	**Administrative expense claims**	Each holder of an administrative expense claim allowed under § 503 of the Code, [and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
3.03	**Priority tax claims**	Each holder of a priority tax claim will be paid [Specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].
3.04	**Statutory fees**	All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the effective date of this Plan have been paid or will be paid on the effective date.
3.05	**Prospective quarterly fees**	All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code.

Article 4: Treatment of Claims and Interests Under the Plan

4.01 **Claims and interests shall be treated as follows under this Plan:**

Class	Impairment	Treatment
Class 1 - **Priority claims** excluding those in Article 3	❑ Impaired ❑ Unimpaired	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order. Except: _____."] [Add classes of priority claims if applicable]
Class 2 – **Secured claim** of [*Insert name of secured creditor*.]	❑ Impaired ❑ Unimpaired	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add classes of secured claims if applicable]
Class 3 – **Non-priority unsecured creditors**	❑ Impaired ❑ Unimpaired	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - **Equity security holders of the Debtor**	❑ Impaired ❑ Unimpaired	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

Article 5: Allowance and Disallowance of Claims

5.01	**Disputed claim**	A *disputed claim* is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.
5.02	**Delay of distribution on a disputed claim**	No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].
5.03	**Settlement of disputed claims**	The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Article 6: Provisions for Executory Contracts and Unexpired Leases

6.01 Assumed executory contracts and unexpired leases

(a) The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the effective date:

[List assumed, or if applicable assigned, executory contracts and unexpired leases.]

(b) Except for executory contracts and unexpired leases that have been assumed, and if applicable assigned, before the effective date or under section 6.01(a) of this Plan, or that are the subject of a pending motion to assume, and if applicable assign, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the effective date.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than _____ days after the date of the order confirming this Plan.

Article 7: Means for Implementation of the Plan

[Insert here provisions regarding how the plan will be implemented as required under § 1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized Debtor.]

Article 8: General Provisions

8.01 Definitions and rules of construction

The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions:

[Insert additional definitions if necessary].

8.02 Effective date

The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 Severability

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding effect

The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[**8.06 Controlling effect**

Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of _____ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[**8.07 Corporate governance**

[If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]

Article 9: Discharge

9.01 ❑ **Discharge if the Debtor is an individual and § 1141(d)(3) is not applicable.** Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

❑ **Discharge if the Debtor is a partnership and § 1141(d)(3) is not applicable.** On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

❑ **Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable.** On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:

(i) imposed by this Plan; or

(ii) to the extent provided in § 1141(d)(6).

❑ **No discharge if § 1141(d)(3) is applicable.** In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

By The Plan Proponent: _____

By Attorney for the Plan Proponent: _____

Committee Note

Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*, replaces Official Form 25A, *Plan of Reorganization in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. It is intended to provide an illustrative format, rather than a specific prescription for the form's language or content of a plan in any particular case.

In Article 1, *Summary*, a category is added for priority claims that are required to be classified and provided for under the plan, and the category for "unsecured claims" is revised to provide for only "non-priority unsecured claims." Also, the value that the proponent estimates to be distributed to unsecured claims is revised to clarify that the estimate is limited to non-priority claims. The instruction to identify and briefly summarize priority and administrative claims that will not be paid on the effective date of the plan, to the extent permitted by the Bankruptcy Code, is eliminated because it is duplicative of the information requested in Articles 3 and 4.

In Article 2, *Classification of Claims and Interests*, section 2.01 is revised to clarify that the priority of claims is determined under section 507(a) of the Bankruptcy Code and to provide for the classification of priority claims where necessary and appropriate. *See* 11 U.S.C. § 1129(a)(9)(B). Section 2.03 is revised to clarify that Class 3 "unsecured claims" are limited to "non-priority unsecured claims."

In Article 3, *Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees*, the title and categories of claims have been revised to include all unclassified administrative and priority claims and all fees payable under 28 U.S.C. § 1930 for

which the Bankruptcy Code specifies the treatment under the plan. *See* 11 U.S.C. § 1129(a)(9), (12). In the title, the reference to "United States Trustee fees" is changed to "Quarterly and Court Fees" to include all of the fees payable under 28 U.S.C. § 1930. Also, section 3.04 is revised to include all statutory fees under 28 U.S.C. § 1930(a), and quarterly fees payable under 28 U.S.C. § 1930(a)(6) and (7) after the effective date of the plan are moved to a new section 3.05.

Article 4, *Treatment of Claims and Interests Under the Plan*, is revised to conform to the changes made in sections 2.01 and 2.03 of the plan to classify priority claims, if applicable, and to distinguish the non-priority unsecured claims.

In Article 6, *Provisions for Executory Contracts and Unexpired Leases*, references to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable. Section 6.01 is revised to clarify that executory contracts and unexpired leases are assumed, and if applicable assigned, under section 6.01(a) and rejected under section 6.01(b) as of the effective date of the plan. Section 6.01(b) is revised to clarify that all executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Article 9, *Discharge*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

Fill in this information to identify the case:

Debtor name _____

United States Bankruptcy Court for the:_____ District of _____ (State)

Case number: _____

Official Form 425B

Disclosure Statement for Small Business Under Chapter 11

12/17

[Name of Proponent]'s Disclosure Statement, Dated [Insert Date]

Table of Contents. See instructions about how to modify the table of contents if you do not have all of the sections below.

[Insert when text is finalized]

I. Introduction

This is the disclosure statement (the *Disclosure Statement*) in the small business chapter 11 case of _____ (the *Debtor*). This Disclosure Statement provides information about the Debtor and the Plan filed on [insert date] (the *Plan*) to help you decide how to vote.

A copy of the Plan is attached as *Exhibit A*. **Your rights may be affected**. You should read the Plan and this Disclosure Statement carefully. You may wish to consult an attorney about your rights and your treatment under the Plan.

The proposed distributions under the Plan are discussed at pages __-__ of this Disclosure Statement. [General unsecured creditors are classified in Class ___, and will receive a distribution of ____ % of their allowed claims, to be distributed as follows _____.]

A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the *Court*) will consider when deciding whether to confirm the Plan,
- Why [the proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. A separate order has been entered setting the following information:

- Time and place of the hearing to [finally approve this disclosure statement and] confirm the plan,
- Deadline for voting to accept or reject the plan, and
- Deadline for objecting to the [**adequacy of disclosure and**] confirmation of the plan.

If you want additional information about the Plan or the voting procedure, you should contact [insert name and address of representative of plan proponent].

C. Disclaimer

The Court has [conditionally**] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.**

II. Background

A. Description and History of the Debtor's Business

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of _____. [Describe the Debtor's business].

B. Insiders of the Debtor

[Insert a detailed list of the names of Debtor's insiders as defined in § 101(31) of the United States Bankruptcy Code (the Code) and their relationship to the Debtor.

For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the 2 years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

C. Management of the Debtor During the Bankruptcy

List the name and position of all current officers, directors, managing members, or other persons in control (collectively the *Management*) who will not have a position post-confirmation that you list in III D 2.

Name	Position

D. Events Leading to Chapter 11 Filing

[Describe the events that led to the commencement of the Debtor's bankruptcy case.]

E. Significant Events During the Bankruptcy Case

[Describe significant events during the Debtor's bankruptcy case:

- Describe any asset sales outside the ordinary course of business, Debtor in Possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

F. Projected Recovery of Avoidable Transfers

☐ The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

☐ The Debtor estimates that up to $_____ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed

☐ The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. Disputed claims are treated in Article 5 of the Plan.

H. Current and Historical Financial Conditions

The identity and fair market value of the estate's assets are listed in *Exhibit B*. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in *Exhibit C*.

[The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in *Exhibit D*.]

[A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in *Exhibit D*.]

III. Summary of the Plan of Reorganization and Treatment of Claims and Equity Interests

A. What Is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. Therefore, the Plan Proponent has *not* placed the following claims in any class:

1. Administrative expenses, involuntary gap claims, and quarterly and Court fees

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 503(b) of the Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition, and compensation for services and reimbursement of expenses awarded by the court under § 330(a) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment. Involuntary gap claims allowed under § 502(f) of the Code are entitled to the same treatment as administrative expense claims. The Code also requires that fees owed under section 1930 of title 28, including quarterly and court fees, have been paid or will be paid on the effective date of the Plan.

The following chart lists the Debtor's estimated administrative expenses, and quarterly and court fees, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Administrative expenses		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Involuntary gap claims		Paid in full on the effective date of the Plan, unless the holder of a particular claim has agreed to different treatment
Statutory Court fees		Paid in full on the effective date of the Plan
Statutory quarterly fees		Paid in full on the effective date of the Plan
Total		

2. Priority tax claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim pursuant to 11 U.S.C. § 511, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (Name and type of tax)	**Estimated Amount Owed**	**Date of Assessment**	**Treatment**		
	$		Payment interval		
			[Monthly] payment	$	
			Begin date		
			End date		
			Interest rate		%
			Total payout amount	$	
	$		Payment interval		
			[Monthly] payment	$	
			Begin date		
			End date		
			Interest rate		%
			Total payout amount	$	

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of secured claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class #	**Description**		**Insider?**	**Impairment?**	**Treatment**		
	Secured claim of: Name		❑ Yes ❑ No	❑ Impaired ❑ Unimpaired	[Monthly] payment	$	
	Collateral description				Payments begin		
	Allowed secured amount	$			Payments end		
	Priority of lien				[Balloon payment]		
	Principal owed				Interest rate		%
	Pre-pet. arrearage				Treatment of lien		
	Total claim	$			[Additional payment required to cure defaults]	$	
	Secured claim of: Name		❑ Yes ❑ No	❑ Impaired ❑ Unimpaired	[Monthly] payment	$	

Collateral description		Payment begin	
Allowed secured amount	$	Payments end	
Priority of lien		[Balloon payment]	
Principal owed		Interest rate	%
Pre-pet. arrearage		Treatment of lien	
Total claim	$	[Additional payment required to cure defaults]	$

2. Classes of priority unsecured claims

The Code requires that, with respect to a class of claims of a kind referred to in §§ 507(a)(1), (4), (5), (6), and (7), each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim, unless a particular claimant agrees to a different treatment or the class agrees to deferred cash payments.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment?	Treatment
	Priority unsecured claim pursuant to section [insert] Total amount of claims $	❑ Impaired ❑ Unimpaired	
	Priority unsecured claim pursuant to section [insert] Total amount of claims $	❑ Impaired ❑ Unimpaired	

3. Classes of general unsecured claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of § 1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of classes ___ through ___, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment?	Treatment

[1122(b) Convenience Class]	❑ Impaired ❑ Unimpaired	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]	
General unsecured class	❑ Impaired ❑ Unimpaired	[Monthly] payment	$
		Payments begin	
		Payments end	
		[Balloon payment]	$
		Interest rate from [date]	%
		Estimated percent of claim paid	%

4. Classes of equity interest holders

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (*LLC*), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the classes of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition Debtor had issued multiple classes of stock.]

Class #	Description	Impairment?	Treatment
	Equity interest holders	❑ Impaired ❑ Unimpaired	

D. Means of Implementing the Plan

1. Source of payments

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. Post-confirmation Management

The Post-Confirmation Management of the Debtor (including officers, directors, managing members, and other persons in control), and their compensation, shall be as follows:

Name	Position	Compensation

E. Risk Factors

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor's ability to make payments and other distributions required under the Plan.]

F. Executory Contracts and Unexpired Leases

The Plan in Article 6 lists all executory contracts and unexpired leases that the Debtor will assume, and if applicable assign, under the Plan. *Assumption* means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Article 6 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption, and if applicable the assignment, of your unexpired lease or executory contract under the Plan, the proposed cure of any defaults, the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article 6 or have not previously been assumed, and if applicable assigned, or are not the subject of a pending motion to assume, and if applicable assign, will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

[The deadline for filing a Proof of Claim based on a claim arising from the rejection of a lease or contract is _____.

Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]

G. Tax Consequences of Plan

Creditors and equity interest holders concerned with how the plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors.

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum:

(1) Tax consequences to the Debtor of the Plan;

(2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

IV. Confirmation Requirements and Procedures

To be confirmable, the Plan must meet the requirements listed in §1129 of the Code. These include the requirements that:

— the Plan must be proposed in good faith;

— if a class of claims is impaired under the Plan, at least one impaired class of claims must accept the Plan, without counting votes of insiders;

— the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and

— the Plan must be feasible.

These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both

(1) allowed or allowed for voting purposes and

(2) impaired.

In this case, the Plan Proponent believes that classes [_____] are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes [_____] are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. What is an allowed claim or an allowed equity interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either

(1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or

(2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was [_____].

[If applicable – The deadline for filing objections to claims is [_____].]

2. What is an impaired claim or impaired equity interest?

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered

impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is not entitled to vote

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the Plan [and to the adequacy of the Disclosure Statement].

4. Who can vote in more than one class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless:

(1) all impaired classes have voted to accept the Plan; or

(2) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and the Plan is eligible to be confirmed by "cram down" of the non-accepting classes, as discussed later in Section B.2.

1. Votes necessary for a class to accept the plan

A class of claims accepts the Plan if both of the following occur:

(1) the holders of more than ½ of the allowed claims in the class, who vote, cast their votes to accept the Plan, and

(2) the holders of at least ⅔ in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least ⅔ in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of non-accepting classes of secured claims, general unsecured claims, and interests

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan upon the request of the Plan proponent if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a *cram down* plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not *discriminate unfairly*, and is *fair and equitable* toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a *cram down* confirmation will affect your claim or equity

interest, as the variations on this general rule are numerous and complex.

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as *Exhibit E*.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. Ability to initially fund plan

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as *Exhibit F*.

2. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business.

The Plan Proponent has provided projected financial information. Those projections are listed in *Exhibit G*.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of $ _____.

The final Plan payment is expected to be paid on _____.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

V. Effect of Confirmation of Plan

A. Discharge of Debtor

❑	**Discharge if the Debtor is an individual and 11 U.S.C. § 1141(d)(3) is not applicable.** Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.
❑	**Discharge if the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable.** On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.
❑	**Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable.** On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt: (i) imposed by the Plan, or (ii) to the extent provided in 11 U.S.C. § 1141(d)(6).
❑	**No Discharge if § 1141(d)(3) is applicable.** In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or re-voting on the Plan.

[**If the Debtor is not an individual, add the following**:

"The Plan Proponent may also seek to modify the Plan at any time after confirmation only if

(1) the Plan has not been substantially consummated and

(2) the Court authorizes the proposed modifications after notice and a hearing.]

[**If the Debtor is an individual, add the following:**

"Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to

(1) increase or reduce the amount of payments under the Plan on claims of a particular class,

(2) extend or reduce the time period for such payments, or

(3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.]

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

VI. Other Plan Provisions

[Insert other provisions here, as necessary and appropriate.]

_____

_____

Proponent]

_____

[Signature of the Plan Proponent]

_____

[Signature of the Attorney for the Plan

Exhibits

Exhibit A: Copy of Proposed Plan of Reorganization

Exhibit B: Identity and Value of Material Assets of Debtor

Exhibit C: Prepetition Financial Statements

(to be taken from those filed with the court)

Exhibit D: [Most Recently Filed Postpetition Operating Report]
[Summary of Postpetition Operating Reports]

Exhibit E: Liquidation Analysis

Plan Proponent's Estimated Liquidation Value of Assets

Assets			
a.	Cash on hand		$
b.	Accounts receivable		$
c.	Inventory		$
d.	Office furniture and equipment		$
e.	Machinery and equipment		$
f.	Automobiles		$
g.	Building and land		$
h.	Customer list		$
i.	Investment property (such as stocks, bonds or other financial assets)		$
j.	Lawsuits or other claims against third-parties		$
K	Other intangibles (such as avoiding powers actions)		$
Total Assets at Liquidation Value			$
Less:	Secured creditors' recoveries	–	$
Less:	Chapter 7 trustee fees and expenses	–	$
Less:	Chapter 11 administrative expenses	–	$
Less:	Priority claims, excluding administrative expense claims	–	$
[Less:	Debtor's claimed exemptions]	–	$
(1)	Balance for unsecured claims		$
(2)	Total dollar amount of unsecured claims		$
Percentage of claims which unsecured creditors would receive or retain in a chapter 7 liquidation:			%
Percentage of claims which unsecured creditors will receive or retain under the Plan:			% [Divide (1) by (2)]

Exhibit F: Cash on hand on the effective date of the Plan

Cash on hand on effective date of plan			$
Less:	Amount of administrative expenses payable on effective date of the Plan	–	$
Less:	Amount of statutory costs and charges	–	$
Less:	Amount of cure payments for executory contracts	–	$
Less:	Other Plan payments due on effective date of the Plan	–	$
Balance after paying these amounts			$

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:	
Cash in Debtor's bank account now	$
Net earnings between now and effective date of the Plan [State the basis for such projections]	$
Borrowing [Separately state terms of repayment]	$
Capital contributions	$
Other	$
Total (This number should match "cash on hand" figure noted above)	$

Exhibit G: Projections of Cash Flow for Post-Confirmation Period

Committee Note

Official Form 425B, *Disclosure Statement for Small Business Under Chapter 11*, replaces Official Form 25B, *Disclosure Statement in Small Business Case Under Chapter 11*. It is revised as part of the Forms Modernization Project, making it easier to read, and includes formatting and stylistic changes throughout the form. Where possible, the form parallels how businesses commonly keep their financial records. It is intended to provide an illustrative format for disclosure, rather than a specific prescription for the form's language or content.

Part I, *Introduction*, is revised to clarify that the disclosure statement is being provided for purposes of voting on the plan. The instructions that the recipient discuss the plan and disclosure statement with an attorney are revised to clarify that, if the recipient has an attorney, the recipient is not required to consult with the attorney, but may wish to consult with an attorney regardless of whether it has one.

Part I.B., *Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing*, is revised to provide for the court's entry of a separate order setting time frames for hearings and deadlines, *see* Official Form 313, and to delete those dates from the form as redundant. Also, this part is revised to clarify that requests for additional information about the voting procedure, in addition to the plan, should be directed to the plan proponent's representative.

In Part I.C., *Disclaimer*, the instruction to provide the date by which an objection to final approval of the disclosure statement must be filed is eliminated as duplicative of the court's order required under Part I.B. Repetitive language indicating that the court's approval of the disclosure statement is not final is eliminated.

In Part II.C., *Management of the Debtor During the Bankruptcy*, the title is revised to eliminate the reference to the debtor's management before the bankruptcy, and the instruction is revised to limit the required disclosure to those current officers, directors, managing members, and other persons in control who will not retain a position after confirmation. The instruction to provide information regarding the debtor's pre-petition management is deleted because similar information is required in the *Statement of Financial Affairs of Non-Individuals Filing for Bankruptcy*, Official Form 207. The instruction to provide information regarding the debtor's post-confirmation management is incorporated in Part III.D.2, *Post-confirmation Management*, of the form.

In Part III.B.1, *Administrative expenses, involuntary gap claims, and quarterly and Court fees*, the title and form are revised to clarify that the debtor must provide for the treatment of all fees and expenses owed under 28 U.S.C. § 1930, including quarterly fees and court fees. *See* 11 U.S.C. § 1129(a)(12). Also, the title and form are revised to include involuntary "gap" period claims in an involuntary case under section 502(f) of the Bankruptcy Code. *See* 11 U.S.C. §§ 507(a)(3), 1129(a)(9)(A). The reference to the provision governing the allowance of administrative expenses is corrected and changed from section 507(a) to 503(b) of the Bankruptcy Code. The example is revised to include compensation for services and reimbursement of expenses awarded by the court under section 330(a) of the Bankruptcy Code. The requirement that any agreement to pay professional fees and expenses and other unclassified administrative expenses on a date other than the effective date be in writing is deleted. *See* 11 U.S.C. § 1129(a)(9). The list is revised to include a single category of administrative expenses allowed under section 503(b) of the Bankruptcy Code, deleting as redundant the specific categories for reclamation claims under section 503(b)(9) and approved professional fees and

expenses under section 503(b)(2), and to clarify that any holder of an allowed administrative expense claim may agree to payment other than in full on the effective date. *Id.*

Part III.B.2, *Priority tax claims*, is revised to include a reference to section 511 of the Bankruptcy Code governing the rate of interest on tax claims.

Part III.C.2, *Classes of priority unsecured claims*, is revised to comply with section 1129(a)(9)(B), including the addition that any particular claimant may agree to treatment other than cash payment in full on the effective date and to clarify that any class may agree to deferred cash payments. *See* 11 U.S.C. § 1129(a)(9)(B).

Part III.D.2, *Post-confirmation Management*, is revised to comply with section 1129(a)(5) of the Bankruptcy Code.

Part III.F., *Executory Contracts and Unexpired Leases*, is revised to incorporate changes to Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*. "Exhibit 5.1" is changed to "Article 6" of the plan. References to the assumption of executory contracts and unexpired leases are expanded to include assignment, if applicable, including the requirement that a party objecting to the assignment of an executory contract or unexpired lease under the plan must timely file and serve an objection to the plan. The form is revised to clarify that executory contracts and unexpired leases that have been previously assumed, and if applicable assigned, or are the subject of a pending motion to assume, and if applicable assign, as of plan confirmation are also excluded from presumed rejection under the plan.

In Part IV, *Confirmation Requirements and Procedures*, the introduction is revised to delete references to subsections (a) and (b) to clarify that a plan must satisfy all of the requirements of section 1129 of the Bankruptcy Code. Also, the form is revised to clarify that the requirement to obtain the acceptance of at least one impaired accepting class of claims,

excluding any acceptance by an insider, applies only if the plan proposes to impair at least one class of claims. *See* 11 U.S.C. § 1129(a)(10).

In Part IV.B.1, *Votes necessary for a class to accept the plan*, the standards for confirmation in the event the plan has impaired classes have been corrected. *See* 11 U.S.C. § 1129(a)(8)(A), (10) and (b).

The title to Part IV.B.2, *Treatment of non-accepting classes of secured claims, general unsecured claims, and interests*, is revised for clarity to exclude priority claimants. *See* 11 U.S.C. § 1129(b). Also, the requirement that the proponent must request confirmation pursuant to section 1129(b) of the Bankruptcy Code is added.

In Part IV.D.2, *Ability to make future plan payments and operate without further reorganization*, the requirement that the plan proponent show that the business will have sufficient cash flow to operate the business, in addition to making the required plan payments, is new. See 11 U.S.C. § 1129(a)(11).

In Part V.A., *Discharge of Debtor*, the third option is revised to delete the reference to Rule 4007(c) and to clarify that corporations will not be discharged of debts to the extent specified in section 1141(d)(6) of the Bankruptcy Code.

In the title to Exhibit G, *Projections of Cash Flow for Post-Confirmation Period*, the reference to "and Earnings" is deleted to ensure consistency given the disparate ways in which "earnings" can be interpreted.

Fill in this information to identify the case:

Debtor name _____

United States Bankruptcy Court for the:_____ District of _____ (State)

Case number: _____

❑ Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: _____ Date report filed: _____ MM / DD / YYYY

Line of business: _____ NAISC code: _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: _____

Original signature of responsible party _____

Printed name of responsible party _____

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

		Yes	No	N/A
	If you answer *No* to any of the questions in lines 1-9, attach an explanation and label it *Exhibit A*.			
1.	Did the business operate during the entire reporting period?	❑	❑	❑
2.	Do you plan to continue to operate the business next month?	❑	❑	❑
3.	Have you paid all of your bills on time?	❑	❑	❑
4.	Did you pay your employees on time?	❑	❑	❑
5.	Have you deposited all the receipts for your business into debtor in possession (DIP) accounts?	❑	❑	❑
6.	Have you timely filed your tax returns and paid all of your taxes?	❑	❑	❑
7.	Have you timely filed all other required government filings?	❑	❑	❑
8.	Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator?	❑	❑	❑
9.	Have you timely paid all of your insurance premiums?	❑	❑	❑
	If you answer *Yes* to any of the questions in lines 10-18, attach an explanation and label it *Exhibit B*.			
10.	Do you have any bank accounts open other than the DIP accounts?	❑	❑	❑
11.	Have you sold any assets other than inventory?	❑	❑	❑
12.	Have you sold or transferred any assets or provided services to anyone related to the DIP in any way?	❑	❑	❑
13.	Did any insurance company cancel your policy?	❑	❑	❑
14.	Did you have any unusual or significant unanticipated expenses?	❑	❑	❑
15.	Have you borrowed money from anyone or has anyone made any payments on your behalf?	❑	❑	❑
16.	Has anyone made an investment in your business?	❑	❑	❑
17.	Have you paid any bills you owed before you filed bankruptcy?	❑	❑	❑
18.	Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?	❑	❑	❑

2. Summary of Cash Activity for All Accounts

19. **Total opening balance of all accounts**

This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

$ _____

20. **Total cash receipts**

Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.

$ _____

Report the total from *Exhibit C* here.

21. **Total cash disbursements**

Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.

\- $ _____

Report the total from *Exhibit D* here.

22. **Net cash flow**

Subtract line 21 from line 20 and report the result here.
This amount may be different from what you may have calculated as *net profit*.

\+ $ _____

23. **Cash on hand at the end of the month**

Add line 22 + line 19. Report the result here.

$ _____

Report this figure as the *cash on hand at the beginning of the month* on your next operating report.

This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. **Total payables**

$ _____

(Exhibit E)

4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** $ _____

(Exhibit F)

5. Employees

26. What was the number of employees when the case was filed? _____

27. What is the number of employees as of the date of this monthly report? _____

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? $ _____

29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? $ _____

30. How much have you paid this month in other professional fees? $ _____

31. How much have you paid in total other professional fees since filing the case? $ _____

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	Column A **Projected** Copy lines 37-39 from the previous month's report.		Column B **Actual** Copy lines 21-23 of this report.		*Column C* **Difference** Subtract Column B from Column A.
32. **Cash receipts**	$ _____	−	$ _____	=	$ _____
33. **Cash disbursements**	$ _____	−	$ _____	=	$ _____
34. **Net cash flow**	$ _____	−	$ _____	=	$ _____

35. Total projected cash receipts for the next month: $ _____

36. Total projected cash disbursements for the next month: $ _____

37. Total projected net cash flow for the next month: $ _____

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

☐ 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).

- ❑ 39. Bank reconciliation reports for each account.
- ❑ 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- ❑ 41. Budget, projection, or forecast reports.
- ❑ 42. Project, job costing, or work-in-progress reports.

Committee Note

Official Form 425C, *Monthly Operating Report for Small Business Under Chapter 11*, replaces Official Form 25C, *Small Business Monthly Operating Report*. It is revised as part of the Forms Modernization Project, which was designed so that persons completing the forms would do so accurately and completely. To facilitate this, Official Form 425C is renumbered and includes formatting and stylistic changes throughout the form. The form requires basic financial information that the Internal Revenue Service recommends that businesses maintain.

The form is revised to add a checkbox to indicate if the report is an amended filing. It also clarifies that persons completing the form on behalf of the debtor should answer all questions for the period covered by the report, unless otherwise indicated. All instructions indicating that the U.S. Trustee may waive the attachments to the form are eliminated.

The form is reorganized. The previous sections for *Tax* and *Banking Information* are eliminated as redundant of information requested elsewhere within the form. The previous sections for *Income, Summary of Cash on Hand, Expenses*, and *Cash Profit* are revised and incorporated into Section 2, *Summary of Cash Activity for All Accounts*.

In Part 1, *Questionnaire,* a third checkbox column option, "N/A," has been added to indicate if the question is not applicable. New exhibits to be attached provide explanations for any negative responses to questions 1 through 9 (Exhibit A) and any affirmative answers to questions 10 through 18 (Exhibit B). The questions are reorganized and renumbered, and several are revised. Question 1 is revised to ask whether the business operated during the period. Question 8, regarding the payment of quarterly fees under 28 U.S.C. § 1930(a)(6), is revised to include payments to the bankruptcy administrator. Question 15 is expanded to include payments

made on the debtor's behalf. The question whether the debtor has paid anything to an attorney or other professionals is eliminated, as redundant of information disclosed in Part 6. A new question 17 is added inquiring whether the debtor has allowed any checks to clear the bank that were issued before the bankruptcy case.

Part 2, *Summary of Cash Activity for All Accounts*, clarifies and simplifies the reporting of the debtor's cash on hand during the period, and the letters of the attached exhibits are revised. References to "income," "expenses," and "cash profit" are eliminated. Line 19 clarifies that the cash on hand at the beginning of the month is the same as the cash on hand reported at the end of the previous month (or the commencement of the case if no prior report has been submitted). Net cash flow during the month, calculated in line 22, is equal to total cash receipts in line 20 (as itemized in Exhibit C) less total cash disbursements in line 21 (as itemized in Exhibit D). Net cash flow is added to the beginning balance to calculate the cash on hand at the end of the month in line 23. The form is revised to add explanations of the receipts and disbursements to be included in Exhibits C and D, as well as an instruction to clarify that bank statements should not be submitted in lieu of the exhibits.

In Part 3, *Unpaid Bills*, the exhibit letter is revised to *Exhibit E.*

In Part 4, *Money Owed to You*, the exhibit letter is revised to *Exhibit F.*

In Part 6, *Professional Fees*, the subheadings "*Bankruptcy Related*" and "*Non-Bankruptcy Related*" are eliminated.

Part 7, *Projections*, is revised to compare the debtor's actual cash receipts, cash disbursements, and net cash flow for the month to the projections in the previous month's report (or if the case is new, that the debtor reported at the initial debtor interview). *See* 11 U.S.C.

§ 308(b)(2) and (3). References to "income," "expenses," "cash profit," and the 180 day look-back period are eliminated.

Part 8, *Additional Information*, is revised to clarify which documents should be attached, if available and regardless of whether the debtor prepares them internally. These documents are: (1) redacted bank statements for each open account; (2) bank reconciliation reports for each account; (3) financial reports such as an income statement (profit & loss) or balance sheet; (4) budget, projection, or forecast reports; and (5) project, job casting, or work-in-progress reports.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: PROPOSED REVISIONS TO FORM 26

DATE: MARCH 3, 2016

As part of the Advisory Committee's Forms Modernization Project that began in 2008, the Advisory Committee deferred consideration of certain forms relating to chapter 11 cases—specifically, Forms 25A, B, and C, and Form 26. The Advisory Committee referred those forms to the Subcommittee on Business Issues for review and consideration, which in turn appointed a working group to address these particular forms.[1] The Subcommittee discussed the working group's review of, and recommendations for, these forms during its conference calls on February 19 and 23, 2016. This memorandum sets forth the Subcommittee's recommendations on Form 26.

As referenced in the Committee Note to revised Form 26 (renumbered as Official Form 426), Section 419(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") directed the Judicial Conference to propose rules and to develop official forms to implement its mandate that debtors in chapter 11 cases disclose certain information regarding entities in which the debtors hold a substantial or controlling interest. Specifically, Section 419(a) requires disclosure of information on the "value, operations, and profitability of any closely held corporation, partnership or of any other entity in which the debtor holds a substantial or controlling interest." Section 419(b) explains the section's purpose as "to assist

[1] The working group members are Judge Stuart Bernstein (Chair of the Subcommittee), Thomas Mayer, Ramona Elliott, and Michelle Harner (Prof. Harner's predecessor, Prof. Troy McKenzie, previously served on the working group).

parties in interest [in] taking steps to ensure that the debtor's interest in any [controlled entity] … is used for the payment of allowed claims against the debtor." The Judicial Conference, in turn, promulgated Bankruptcy Rule 2015.3 and Form 26.

In reviewing Form 26 in connection with the Forms Modernization Project, the Subcommittee determined that certain changes would help to clarify the information requested by the form in connection with Bankruptcy Rule 2015.3. These changes involve better defining the nondebtor entities for which a debtor must provide information, as well as modifying the exhibits that describe the kinds of information that a debtor must disclose. The Committee Note to Official Form 426 explains the scope of each exhibit and the justifications for the kinds of information requested by each exhibit.

As a general matter, the Subcommittee believes that the revised form furthers the objectives underlying Section 419 of BAPCPA and Bankruptcy Rule 2015.3. It limits the required disclosures to entities in which the debtor has a substantial or controlling interest, as guided by Bankruptcy Rule 2015.3(c). Bankruptcy Rule 2015.3(c), in turn, provides, "For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest." The revised form then seeks to identify and require disclosure of information concerning the value, operations, and profitability of each such entity that may impact creditors' ability to realize the full value of a debtor's interest in that entity.

The modified exhibits eliminate the requirement that the debtor provide a valuation estimate for the nondebtor entity. In lieu of a valuation, the modified exhibits focus on the

information required by existing Exhibit B (retitled as Exhibit A)—i.e., the nondebtor entity's most recent balance sheet, income statement, cash flow statement, and statement of changes in shareholders' or partners' equity (and a summary of the footnotes to those financial statements). The revised form does not change the information concerning the nondebtor entity's business description in current Exhibit C, except to require that information in retitled Exhibit B. The revised form then adds new Exhibits C, D, and E. These new exhibits focus on intercompany claims, tax allocations, and the payment of claims or administrative expenses that would otherwise have been payable by a debtor.

New Exhibits C, D, and E require the disclosure of information not currently requested by Form 26. These new disclosures target transfers of value among affiliated entities that may impact the value available to distribute to the debtor's creditors. Recognizing that both Section 419 of BAPCPA and Bankruptcy Rule 2015.3 focus on the debtor's interest in nondebtor affiliates, the new exhibits only require disclosure regarding transfers and allocations among the debtor and/or affiliates in which the debtor has a substantial or controlling interest, as defined by Bankruptcy Rule 2015.3(c). The Subcommittee discussed alternative parameters for these exhibits (e.g., transfers from a controlled nondebtor entity to any affiliate of that entity), but decided to limit the disclosures to the kinds of controlled nondebtor entities identified in the underlying legislation and rule.

To evaluate the appropriate disclosure parameters, the Subcommittee's working group also informally canvassed a small group of practitioners who complete this form for clients on a regular basis in chapter 11 cases. Most of these practitioners supported the elimination of current Exhibit A, noting the challenges in producing valuations for nondebtor entities, which often do not exist. Some practitioners expressed concerns, however, regarding the new exhibits and the

expanded scope of the required disclosures. The Subcommittee was sensitive to these concerns when crafting the scope of Exhibits C, D, and E in Official Form 426.

After much deliberation, the Subcommittee concluded that Official Form 426 is appropriately tailored to the purpose and scope of Section 419 of BAPCPA and Bankruptcy Rule 2015.3. The revised form also will assist debtors in completing, and courts and parties in interest in using, the form. The Subcommittee thus recommends that the Advisory Committee propose the publication of Official Form 426 for comment in August 2016 (this would require approval by the Advisory Committee at its March 2016 meeting and by the Standing Committee at its June 2016 meeting).

Attachments

Fill in this information to identify the case:

Debtor name _____

United States Bankruptcy Court for the:_____ District of _____ (State)

Case number: _____

Official Form 426

Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest

12/17

This is the *Periodic Report* as of _____ on the value, operations and profitability of those entities in which a Debtor holds, or two or more Debtors collectively hold, a substantial or controlling interest (a "Controlled Non-Debtor Entity"), as required by Bankruptcy Rule 2015.3. For purposes of this form, "Debtor" shall include the estate of such Debtor.

[Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Controlled Non-Debtor Entity	Interest of the Debtor	Tab #

This *Periodic Report* contains separate reports (*Entity Reports*) on the value, operations, and profitability of each Controlled Non-Debtor Entity.

Each *Entity Report* consists of five exhibits.

- *Exhibit A* contains the most recently available: balance sheet, statement of income (*loss*), statement of cash flows, and a statement of changes in shareholders' or partners' equity (*deficit*) for the period covered by the *Entity Report*, along with summarized footnotes.
- *Exhibit B* describes the Controlled Non-Debtor Entity's business operations.
- *Exhibit C* describes claims between the Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity.
- *Exhibit D* describes how federal, state or local taxes, and any tax attributes, refunds, or other benefits, have been allocated between or among the Controlled Non-Debtor Entity and any Debtor or any other Controlled Non-Debtor Entity and includes a copy of each tax sharing or tax allocation agreement to which the Controlled Non-Debtor Entity is a party with any other Controlled Non-Debtor Entity.
- *Exhibit E* describes any payment, by the Controlled Non-Debtor Entity, of any claims, administrative expenses or professional fees that have been or could be asserted against any Debtor, or the incurrence of any obligation to make such payments, together with the reason for the entity's payment thereof or incurrence of any obligation with respect thereto.

This *Periodic Report* must be signed by a representative of the trustee or debtor in possession.

The undersigned, having reviewed the *Entity Reports* for each Controlled Non-Debtor Entity, and being familiar with the Debtor's financial affairs, verifies under the penalty of perjury that to the best of his or her knowledge, (i) this *Periodic Report* and the attached *Entity Reports* are complete, accurate and truthful to the best of his or her knowledge, and (ii) the Debtor did not cause the creation of any entity with actual deliberate intent to evade the requirements of Bankruptcy Rule 2015.3

For non-individual Debtors:

✘ _____
Signature of Authorized Individual

_____
Printed name of Authorized Individual

Date _____
MM / DD / YYYY

For individual Debtors:

✘ _____
Signature of Debtor 1

_____
Printed name of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

_____
Printed name of Debtor 2

Date _____
MM / DD / YYYY

Exhibit A: Financial Statements for [Name of Controlled Non-Debtor Entity**]**

Exhibit A-1: Balance Sheet for [Name of Controlled Non-Debtor Entity] as of [date]

[Provide a balance sheet dated as of the end of the most recent 3-month period of the current fiscal year and as of the end of the preceding fiscal year.

Describe the source of this information.]

Exhibit A-2: Statement of Income (*Loss*) for [Name of Controlled Non-Debtor Entity] for period ending [date]

[Provide a statement of income (*loss*) for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Exhibit A-3: Statement of Cash Flows for [Name of Controlled Non-Debtor Entity**] for period ending [date]**

[Provide a statement of changes in cash position for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Exhibit A-4: Statement of Changes in Shareholders'/Partners' Equity (*Deficit*) for [Name of Controlled Non-Debtor Entity] for period ending [date]

[Provide a statement of changes in shareholders'/partners equity (*deficit*) for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent 3-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Describe the source of this information.]

Exhibit B: Description of Operations for [Name of Controlled Non-Debtor Entity]

[Describe the nature and extent of the Debtor's interest in the Controlled Non-Debtor Entity.

Describe the business conducted and intended to be conducted by the Controlled Non-Debtor Entity, focusing on the entity's dominant business segments.

Describe the source of this information.]

Exhibit C: Description of Intercompany Claims

[List and describe the Controlled Non-Debtor Entity's claims against any other Controlled Non-Debtor Entity, together with the basis for such claims and whether each claim is contingent, unliquidated or disputed.

Describe the source of this information.]

Exhibit D: Allocation of Tax Liabilities and Assets

[Describe how income, losses, tax payments, tax refunds or other tax attributes relating to federal, state or local taxes have been allocated between or among the Controlled Non-Debtor Entity and one or more other Controlled Non-Debtor Entities.

Include a copy of each tax sharing or tax allocation agreement to which the entity is a party with any other Controlled Non-Debtor Entity.

Describe the source of this information.]

Exhibit E: Description of Controlled Non-Debtor Entity's payments of Administrative Expenses or Professional Fees otherwise payable by a Debtor

[Describe any payment made, or obligations incurred (or claims purchased), by the Controlled Non-Debtor Entity in connection with any claims, administrative expenses or professional fees that have been or could be asserted against any Debtor.

Describe the source of this information.]

COMMITTEE NOTE

Official Form 426, *Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest*, is revised and renumbered as part of the Forms Modernization Project. It implements section 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), which requires a chapter 11 debtor to file periodic reports on the profitability of any entities in which the estate holds a substantial or controlling interest. The form is to be used when required by Rule 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.

In addition to formatting revisions, certain aspects of Official Form 426 are changed to make the form easier for the debtor to complete and to better identify the kinds of information that a debtor must disclose in accordance with section 419 of BAPCPA and Rule 2015.3.

Official Form 426 limits its application to entities in which the debtor has a substantial or controlling interest, which the rule defines as a "Controlled Non-Debtor Entity." The scope of this defined term is guided by subdivisions (a) and (c) of Rule 2015.3.

Official Form 426 eliminates the requirement to file a valuation of the Controlled Non-Debtor Entity. Exhibit A to Official Form 426 requires only periodic filings of the Controlled Non-Debtor Entity's most recently available balance sheet, statement of income (*loss*), statement of cash flows, and statement of changes in shareholders' or partners' equity (*deficit*), together with summarized footnotes for such financial statements. If any of these financial statements are not available, the debtor can seek relief under Rule 2015.3(d).

Exhibit B to Official Form 426 requires a description of the Controlled Non-Debtor Entity's business, which was required by Exhibit C of former Rule 26.

Exhibits C, D, and E to Official Form 426 are new. Exhibit C requires a description of claims between a Controlled Non-Debtor Entity and any other Controlled Non-Debtor Entity. Exhibit D requires disclosure of information relating to the allocation of taxable income, losses, and other attributes among Controlled Non-Debtor Entities. Exhibit E requires disclosure about a Controlled Non-Debtor Entity's payment of claims or administrative expenses that would otherwise have been payable by a debtor.

TAB 6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: REVISION OF PROPOSED AMENDMENT TO RULE 9033

DATE: MARCH 4, 2016

At the fall 2015 meeting, the Subcommittee recommended that the Advisory Committee seek publication of a proposed amendment to Rule 9033 (Proposed Findings of Fact and Conclusions of Law) to authorize a district court to treat a bankruptcy court judgment as proposed findings of fact and conclusions of law if the district court determined that the bankruptcy court lacked constitutional authority to enter a final judgment. This amendment was proposed in response to a suggestion by Prof. Alan Resnick (Suggestion 12-BK-H) and would add a new subdivision (e) to the rule. The proposal engendered considerable discussion at the meeting, and the Committee referred the proposal back to the Subcommittee for further consideration.

The Subcommittee considered its previously proposed amendments to Rule 9033 during its conference call on February 23. **It now recommends that the Committee approve for publication a simplified version of its prior proposal, which it suggests be proposed as new Rule 8018.l.**

The Fall Draft and Committee Members' Comments on It

As presented at the fall meeting, the proposed amendment to Rule 9033 read as follows. (The title reflects part of the so-called "*Stern* amendments" that are now pending before the Supreme Court.)

Rule 9033. ~~Review of~~ Proposed Findings of Fact and Conclusions of Law ~~in Non-Core Proceedings~~

* * * * *

(e) TREATMENT OF A JUDGMENT AS PROPOSED FINDINGS AND CONCLUSIONS. If an appeal is taken to the district court and the district court determines that the bankruptcy court did not have the power consistent with Article III of the Constitution to enter the judgment, order, or decree, the district court may treat the judgment as proposed findings of fact and conclusions of law. In that event, subdivisions (b), (c), and (d) of this rule shall apply, except that the district court shall set a time for serving and filing written objections under subdivision (b). Any party may elect to have its appellate brief treated as objections or responses to the proposed findings and conclusions.

Committee Note

Subdivision (e) is new. It is added to provide a procedure in appeals to a district court when the court determines that the bankruptcy court lacked constitutional authority to enter the final judgment, order, or decree appealed from. The Supreme Court held in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), that the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law. Subdivision (e) implements that authority and makes applicable the provisions of the rule governing objections, responses, and standard of review. It allows parties to either file (and respond to) objections to what will now be treated as the bankruptcy court's

> proposed findings and conclusions or to use their appellate briefs for that purpose.

Prior to the fall meeting, a member of the Committee made three suggestions about the proposed amendment. First, he suggested that subdivision (e) authorize the district court to grant extensions of time for serving and filing written objections, rather than leaving that authority with the bankruptcy court as Rule 9033(c) provides. Second, he suggested that the authorization for a party to have its appellate brief treated as objections or responses to the proposed findings and conclusions be qualified by adding, "unless the district court provides otherwise." He reasoned that district judges may sometimes want parties to indicate more specifically the findings and conclusions to which they object. Finally, he suggested a need for the bankruptcy rules to also specify what a bankruptcy appellate panel should do if it determines that the bankruptcy court lacked constitutional authority to enter a judgment that is before it on appeal.

During discussion of the proposed amendment at the fall meeting, two members of the Committee who are district judges stated that the provision in subdivision (e) should be limited to the first sentence: "If an appeal is taken to the district court and the district court determines that the bankruptcy court did not have the power consistent with Article III of the Constitution to enter the judgment, order, or decree, the district court may treat the judgment as proposed findings of fact and conclusions of law." They said that the additional procedural details are not necessary.

Another Committee member stated that he thought the new provision should appear in a Part VIII appellate rule, rather than in Rule 9033, because it would be more likely to be noticed there by appellate courts and the parties to the appeal.

Finally, the reporter to the Standing Committee suggested that the citation to the *Arkison* decision be removed from the Committee Note. He explained that including a case citation runs the risk that a later overruling of the decision will undermine the validity of the rule.

Revised Draft Based on the Comments

Based on its discussions, the Subcommittee recommends that the Committee seek publication for public comment of the following new rule:

Rule 8018.1. District Court Review of a Judgment that the Bankruptcy Court Lacked Constitutional Authority to Enter

If an appeal is taken to a district court and the district court determines that the bankruptcy court did not have the power under Article III of the Constitution to enter the judgment, order, or decree appealed from, the district court may treat the judgment, order, or decree as proposed findings of fact and conclusions of law.

Committee Note

This rule is new. It is added to prevent a district court from having to remand an appeal to the bankruptcy court for the entry of proposed findings of fact and conclusion of law whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. The Supreme Court held in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), that the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law, and this rule implements that authority. Upon making the determination to proceed in that manner, the district court may choose to allow the parties to file written objections to specific proposed findings and conclusions and to respond to another party's objections, *see* Rule 9033; treat the parties' briefs as

objections and responses; or prescribe other procedures for the review of the proposed findings of fact and conclusions of law.

The Subcommittee's Deliberations

The Subcommittee was persuaded by the district judges' argument that the rule does not need to spell out procedural details for the conduct of the proceeding once the judge determines that the bankruptcy court judgment should be treated as proposed findings of fact and conclusions of law. The complexity of cases addressed by this rule will vary, and the rule should allow flexibility for the conduct of each case. The district judge, in consultation with the parties, can decide in a given case whether the appellate briefs suffice to present the issues for which *de novo* review is sought or whether they should be supplemented with specific objections and responses. Having agreed upon that approach, the Subcommittee concluded that only the first sentence of the original draft—providing authorization for the district court to treat a bankruptcy court judgment as proposed findings and conclusions— is needed. That decision eliminated the need for the Subcommittee to consider whether additional procedural details should be included.

The Subcommittee decided not to propose a rule for a bankruptcy appellate panel ("BAP") that determines that the bankruptcy court lacked constitutional authority to enter the judgment that is before the panel on appeal. That situation raises an issue of waiver or forfeiture, which the Subcommittee thought a rule should not attempt to resolve. An appeal is heard by a BAP

only if all parties consent (by failing to elect to have the district court hear the appeal). If a party before a BAP argues that the bankruptcy court lacked authority to enter the judgment, that would raise the question whether a party who agreed to an appeal to a non-Article III court can raise a challenge to the entry of a judgment without its consent by a non-Article III bankruptcy judge. Without attempting to answer that question, the Subcommittee decided that, if the situation were to arise, a BAP would likely transfer the case to the appropriate district court, just as it does under Rule 8005(b) when an appellant appeals to a BAP and the appellee elects to have the appeal heard by the district court.[1]

The Subcommittee agreed with the suggestion that this rule is more likely to be found if it is located among the bankruptcy appellate rules and that it probably is best drafted as a new stand-alone rule rather than as an amendment to an existing Part VIII rule. There is not an obvious candidate for serving as the host to a rule addressing this topic. The Subcommittee proposes to locate it as new Rule 8018.1, so that it appears after the rules governing briefing and before the rule governing oral argument, which seems like the time that the issue is most likely to arise.

Finally, the Subcommittee decided that the citation to *Arkison* should be retained in the Committee Note. It indicates that the new procedure adopted by the rule has been authorized by a recent Supreme Court decision. If the Court should later overturn *Arkison*, a future Advisory Committee would be compelled to change the rule regardless of whether the citation appears in the note.

[1] Rule 8005(a) provides that when that situation arises, "the BAP clerk must transmit to the district clerk all documents related to the appeal and notify the bankruptcy clerk of the transmission."

TAB 6C

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PRELIMINARY MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: STATUS OF NOTICING PROJECT

DATE: MARCH 4, 2016

At its Fall 2015 meeting, the Advisory Committee approved a work plan to study noticing issues in federal bankruptcy cases. Specifically, the study focuses on two specific questions: Do the bankruptcy rules identify the correct and necessary parties to receive notices, pleadings, and other papers in bankruptcy cases? Should the bankruptcy rules be modified to permit or require electronic service of notices, pleadings, and other papers in certain circumstances? The work plan contemplated a thorough examination of the noticing and service provisions in the federal bankruptcy rules, and an informal survey of efforts by other rules committees and organizations on noticing issues. This preliminary memorandum provides: (i) a status report on the work plan; (ii) a summary of the information gathered, and the research performed, to date; and (iii) the Subcommittee's recommendations for this project going forward. As explained further below, the Subcommittee recommends that the Advisory Committee authorize it to review and evaluate the suggestions and comments that identify issues with accomplishing service on particular parties under the bankruptcy rules, and to monitor developments on electronic noticing and service issues for further consideration by the Advisory Committee at a future meeting.

Overview of Issues and Project

The bankruptcy rules govern, among other things, the noticing of parties in federal bankruptcy cases. These rules include the service of notices, pleadings, and other papers in bankruptcy cases, which often impact the substantive rights of potentially hundreds of parties. Noticing thus not only is important to ensure the service of justice in bankruptcy cases, but it also can be time-consuming, cumbersome, and expensive.

The Advisory Committee has received several formal and informal suggestions and comments (collectively, "Suggestions") regarding noticing issues in bankruptcy cases. A summary of the Suggestions is attached at ***Appendix A***. The Suggestions vary in approach and rule focus, but they generally convey concerns regarding the scope, means, cost, and/or effectiveness of bankruptcy noticing procedures. For example, Bankruptcy Rule 2001(h) permits a court to limit notice to "creditors that hold claims for which proofs of claim have been filed" in chapter 7 cases. The rule does not, however, reference other chapters of the Bankruptcy Code. Chief Judge Dales has suggested extending this rule to chapter 13 cases to mitigate the time and cost associated with notice to "all creditors" in such cases. Similarly, Bankruptcy Rule 2002(f)(7) addresses the noticing of an order confirming a plan under chapters 9, 11, and 12, but not under chapter 13. Mr. Loughney suggests that "it would be helpful to have a rule that specifically addresses this notice in chapter 13 cases in order that it be made clear who should receive it."[1]

Another noticing issue involves service on certain entities under Bankruptcy Rule 7004, specifically subsections (b)(3) and (h). Bankruptcy Rule 7004(b)(3) permits service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or

[1] *See* Suggestion 12-BK-B.

general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." Bankruptcy Rule 7004(h) requires service of process on an insured depository institution in a contested matter or adversary proceeding by certified mail addressed to an officer of the institution. Certain of the Suggestions assert that service under Bankruptcy Rule 7004(b)(3) rarely provides actual notice to the correct individual within the entity and that similar issues arise under Bankruptcy Rule 4003(d).[2] They also indicate that several obstacles exist to accomplishing service under Bankruptcy Rule 7004(h), including determining if an entity is a depository institution "as defined in section 3 of the Federal Deposit Insurance Act" and identifying the name and address of an officer of the institution.[3]

Moreover, the Administrative Office's Bankruptcy Judges Advisory Group (BJAG) has suggested that the Advisory Committee consider amending Bankruptcy Rule 9036 to mandate "electronic bankruptcy noticing for entities sent 100 or more court notices within a given month."[4] BJAG asserts that this amendment would enhance efficiency and produce significant monetary savings for the judiciary. The National Bankruptcy Conference has offered, among other things, a similar proposal concerning the electronic noticing of large creditors in bankruptcy cases.[5]

Although the concerns articulated in the Suggestions warrant the Advisory Committee's time and attention, there is a need to proceed cautiously here. The bankruptcy rules are an

[2] Bankruptcy Rule 4003(d) provides, "A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien." Bankruptcy Rule 9014(b), in turn, incorporates the service and noticing provisions of Bankruptcy Rule 7004.
[3] *See* Suggestion 14-BK-E.
[4] *See* Suggestion 15-BK-H.
[5] *See* Suggestion 14-BK-E.

integrated set of principles that have served the bankruptcy system well for many years. Courts and parties generally understand the rules, as well as their rights and obligations under the rules. Moreover, many courts and practitioners have structured their noticing practices to comply with the existing rules, and any changes to the parties to be served or the methods of service could require significant revisions to those practices. In addition, as explained below, the other Advisory Committees are evaluating potential changes to their respective rules concerning electronic filing and noticing. Accordingly, at least with respect to the electronic noticing component of this project, the Advisory Committee should consider and, to the extent possible, work to stay in step with the other federal rules committees.

Noticing Provisions of Bankruptcy Code

The bankruptcy rules contain approximately 145 rules addressing noticing or service issues, and many of those rules include multiple subparts with different requirements. The Advisory Committee thus would benefit from a more complete understanding of the bankruptcy noticing landscape before undertaking any meaningful discussions concerning noticing and service issues in bankruptcy cases, regardless of whether the focus is on who must receive notice or the mode for delivery of that notice. To assist in this endeavor, ***Appendix B*** includes a comprehensive chart that identifies, among other things: (i) the rule; (ii) the type of document; (iii) the party required to provide or serve the notice, pleading, or other document; (iv) the parties required to receive notice; (v) the approved methods of notice or service; and (vi) any related rules. As set forth in the chart, noticing in a bankruptcy case does not involve simply one party serving the opposing parties with the relevant document. Rather, most rules require the movant or responsible party to serve the document on multiple parties. In many contexts (e.g., Bankruptcy Rule 2002(a) notices), the clerk or some party as the court may direct must serve the

notice on the debtor, the trustee, all creditors, indenture trustees, any committees, the U.S. Trustee, and maybe equity security holders. Additionally, attorneys may file notices of appearance and requests for service in cases that enlarge the recipient pool. Even a cursory review of the chart underscores some of the points raised in the Suggestions regarding the burdens and costs of noticing requirements under the bankruptcy rules.

A different question concerns whether all of the parties identified by the bankruptcy rules as required recipients or who request service through a filing in the particular case actually need or should receive all such notices or documents. The rules must consider and satisfy due process concerns;[6] indeed, notice and an opportunity to be heard in a bankruptcy case is one of the strengths of the federal bankruptcy system. For example, for an individual or business debtor with multiple creditors and other parties asserting claims against the debtor's assets, bankruptcy provides a forum to notice these parties and then implement a path forward for the debtor that reduces (and/or discharges) its debt obligations. Nevertheless, not every party currently required by the rules to receive various notices and documents in the case has an interest in the particular matter. Parties also may lose their rights or interests in a case at some point prior to the case being closed (e.g., plan confirmation in the chapter 7 or 13 context; after the deadline for filing proofs of claim, if required in the case), and requiring such parties to continue to receive notices or documents may impose unnecessary costs or burdens on the estate or court.

Electronic Noticing Issues

As suggested above, the bankruptcy rules encapsulate extensive noticing and service requirements. Both the volume of documents and number of parties to be served contribute to the heft of the bankruptcy rules in this respect. Consequently, in addition to considering what

[6] For a general discussion of due process issues, see *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010); *Matthews v. Eldridge*, 424 U.S. 319 (1976).

and who must be served, the mode of noticing and service also is important. Technology and electronic filing systems may ease many of the burdens identified by the Suggestions. Nevertheless, electronic noticing and service pose potential risks that should not be overlooked. For example, the Advisory Committee should consider, among other things, the different kinds of parties involved in bankruptcy cases, the substantial number of pro se parties (including pro se debtors), and the varying degrees of significance attached to matters pending in a bankruptcy case in analyzing electronic noticing and service issues.

Developments in the Bankruptcy Courts

> Bankruptcy Rule 9036 (Noticing by Electronic Transmission) provides:
>
> Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

Fed. R. Bankr. P. 9036. Most courts have adopted local rules to facilitate both electronic filing and service.[7] In general, these rules require "registered participants" in the CM/ECF system to file all documents in the case electronically. They also typically provide that registering as a participant in the CM/ECF system constitutes a waiver of that party's right to receive notice by first-class mail and a consent to service by electronic means, except for service of process under Bankruptcy Rule 7004.[8] Some rules distinguish between "filing participants" and "limited

[7] This paragraph summarizes the approach of bankruptcy courts to electronic filing and service. A chart summarizing the approaches of various states to these matters is attached at ***Appendix C***. In addition, as the Subcommittee considers these issues, it may want to distinguish between electronic *filing* and electronic *noticing*. The policy analysis may differ depending on whether a court allows parties to file documents electronically or, rather, also permits other parties to serve them with notice by electronic means.

[8] In general, this memorandum uses "service" in the context of sending a pleading or document to a party as required by the bankruptcy rules. Most courts distinguish general service (or noticing) from service of process, which entails the service of a summons and complaint. Based on research to date, courts do not generally permit service of process by electronic means.

participants" with respect to whether registering constitutes a waiver and consent.[9] (In general, filing participants or registered participants are attorneys with full access to the system to file cases and pleadings, and limited participants are non-attorneys who are given limited access to file certain documents such as proofs of claims, reaffirmation agreements, and requests for notice.)[10] Moreover, the rules generally exempt unrepresented parties from the electronic filing requirements, as well as the related waiver and consent to electronic noticing and service provisions.

That said, the Administrative Office of the U.S. Courts (AOUSC) through its Bankruptcy Noticing Center (BNC) has initiated a program in the bankruptcy courts to encourage debtors (both represented and unrepresented) to sign up for electronic noticing from the court. The program is called "Debtor Electronic Bankruptcy Noticing" (DeBN). The AOUSC explains the program as follows:

> The DeBN program allows the BNC to transmit court notices and orders to debtors via email the same day they are filed in the courts. This reduces the delivery time by three or four days. A debtor wishing to receive electronic notice simply registers by completing a request form through the clerk's office of a participating court where their case is filed. The clerk's office creates the account through the BNC interface by entering the debtor's case number and email address.[11]

Based on anecdotal evidence (including conversations with court participants and information available online), some courts and debtors are using the program and finding value in it.

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[9] For example, in its General Order: Guidelines for Electronic Case Filing, the U.S. Bankruptcy Court for the Western District of Oklahoma permits both "Registered Participants" and "Limited Participants," but only imposes the waiver/consent provision concerning notice on Registered Participants. *See* General Order: Guidelines for Electronic Case Filing, Bankr. W.D. Okl., at pages 2, 8, available at http://www.okwb.uscourts.gov/sites/okwb/files/local_rules_ECF.pdf.

[10] *See, e.g., id.*

[11] *See* Improved Noticing for Debtors Reduces Costs, AOUSC, Feb. 19, 2015, available at http://www.uscourts.gov/news/2015/02/19/improved-noticing-debtors-reduces-court-costs. For an example of the program, see http://www.mdb.uscourts.gov/content/debtor-electronic-bankruptcy-noticing-debn.

Developments in Other Advisory Committees

As previously discussed with the Advisory Committee, the Standing Committee and other Advisory Committees have been evaluating electronic filing and noticing issues. Although the Standing Committee Subcommittee on these matters has suspended its work, the Reporters for the various Advisory Committees are continuing to work together to analyze potential ways to implement electronic filing and noticing requirements at the national level. These discussions are ongoing. At present, the Criminal Rules Committee is discussing ways to amend Criminal Rule 49 to incorporate electronic filing and noticing as appropriate for criminal cases. This amendment, if finalized and approved, would sever the current link between the criminal rules and the civil rules for serving and filing papers.

The Standing Committee has encouraged the Appellate, Bankruptcy, Civil, and Criminal Rules Committees to coordinate their efforts on electronic filing and noticing issues and to parallel at least the language of each other's rules to the extent possible. Accordingly, although the Advisory Committee should continue to study electronic noticing and service in the context of this project, it should perhaps wait to determine how the Criminal and Civil Rules Committees deal with these issues before considering any new rules or rule amendments.[12] The Advisory Committee could, however, consider some of the issues already identified by the collective Advisory Committees, as well as some of the Suggestions, in pursing its study. These issues include:

- Whether to (i) mandate or permit electronic filing and service; (ii) allow parties to seek an exception to the rule, if mandatory; and (iii) allow courts to vary the requirements by local rule. Based on most local bankruptcy rules, a consensus approach appears to require electronic filing and permit electronic noticing/service on parties registered in the CM/ECF system.

[12] The Appellate Rules Committee is also considering electronic filing and service issues, but is waiting to determine the approach of the other rules committees as well.

- Whether to distinguish between filing users and limited users in the CM/ECF system for purposes of any requirement to file electronically or for waiver and consent provisions.[13]

- Whether to bar pro se parties from using electronic filing and receiving electronic notices, or allow pro se parties to "opt in" to the system by signing up or court order. Alternatively, the Advisory Committee could reverse the current default for pro se parties and require them to "opt out" of required electronic filing and service. Such an opt-out approach, however, may raise policy issues and run counter to the current approach of most bankruptcy courts. As illustrated by the thoughtful work of Julie Wilson and Bridget Healy, attached at ***Appendix D***, bankruptcy courts take different approaches towards pro se debtors, but most do not permit pro se debtors to participate in the electronic filing system. The Wilson/Healy memo explains:

  > Very few bankruptcy courts, ten in total, permit electronic filing by pro se debtors. For the few that do, the provisions permitting such filing are usually located within the court's local rules or electronic filing procedures. Two of the courts that permit electronic filing by pro se debtors do so through the Electronic Self-Representation program (eSR), a program developed with the Administrative Office that provides access for pro se debtors to file case opening forms electronically. The program permits electronic filing for case opening forms only; later filings must be done in paper unless otherwise permitted by the court and these courts otherwise do not permit electronic filing by pro se debtors.[14]

The Subcommittee's Deliberations and Recommendations

The Subcommittee reviewed the research and data presented above during its conference call on February 19, 2016. In processing this information, the members of the Subcommittee recognized the breadth of some of the noticing and service requirements under the bankruptcy rules, and the challenges that could arise in attempting to accomplish such service, particularly in larger cases. Several members observed that electronic service would likely mitigate much of the time, cost, and other burdens associated with these kinds of service issues. The Subcommittee then discussed the role of electronic noticing and service in the context of providing actual notice to multiple parties in a more effective and lower cost manner. The members of the Subcommittee generally agreed that allowing efficiencies in the mode of service

[13] *See supra* notes 9 and 10 and accompanying text.
[14] *See* Memorandum to Rules Committees Reporters, dated September 2, 2015, at 3, attached at ***Appendix D***.

to resolve some of the concerns regarding the scope of noticing requirements was preferable over more global changes to the noticing and service requirements, which could raise due process issues in certain contexts and other unintended consequences.

That said, the Subcommittee also agreed that the Suggestions questioning the effectiveness of service or the scope of service under particular rules warranted individual consideration. Accordingly, the Subcommittee recommends that it review and evaluate the Suggestions relating to these particular issues and then provide a subsequent report to the Advisory Committee regarding that review and any potential related actions.

The Subcommittee also discussed the need to continue to monitor developments concerning electronic noticing and service. It discussed the issues being considered by the Criminal and Civil Rules Committees and the advantages to allowing those Committees to finalize their proposals before proceeding with a recommendation on electronic noticing and service to the Advisory Committee. The Subcommittee thus recommends that the Advisory Committee defer consideration of any specific proposals concerning electronic noticing and service issues under the bankruptcy rules until a future meeting.

If the Subcommittee's foregoing recommendations are adopted, the Subcommittee will provide the Advisory Committee with another status report at the Fall 2016 meeting.

Attachments

Appendix A

List of Formal and Informal Suggestions Relating to Noticing Issues

Submitting Party	No.	Summary of Suggestion or Comment
Judge Janice M. Karlin, on behalf of the Administrative Office's Bankruptcy Judges Advisory Group	15-BK-H	Proposing an amendment to Bankruptcy Rule 9036 that would mandate electronic noticing in certain circumstances.
Richard Levin, Chair, National Bankruptcy Conference	14-BK-E	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).
Chief Judge Scott Dales, U.S. Bankruptcy Court for the Western District of Michigan	12-BK-M	Proposing amendments to Bankruptcy Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed a proof of claim.
Matthew T. Loughney, Clerk of Court, U.S. Bankruptcy Court for the Middle District of Tennessee, on behalf of the Administrative Office's Bankruptcy Noticing Working Group	12-BK-B	Proposing amendment for noticing of an order confirming a chapter 13 plan.
Bankruptcy Clerks Advisory Group	12-BK-040	This Suggestion was submitted in response to proposed revisions to Rule 9027, and it requested the reference to "mail" in Rule 9027(e)(3) be changed to "transmit." This suggestion did not implicate the part of Rule 9027 being amendment and thus no action was taken.
Several Suggestions Submitted Separately by Judge Robert J. Kressel, the National Conference of Bankruptcy Judges, Judge S. Martin Teel, Jr., and the Bankruptcy Clerks Advisory Group	12-BK-005 12-BK-008 12-BK-026 12-BK-040	These Suggestions related to the proposed revisions to Rule 8003(c)(1), and they generally requested that the obligation to serve the notice of appeal rest with the appellant or be permitted by electronic means.
David Andersen, Esq.	11-BK-A	Addressing perceived issue of unnecessary and wasteful postpetition mailings. The Suggestion proposed to "[r]equire all parties in interest, other

		than the debtor, to 'opt in' to receive electronic notices within a time deadline after the initial notice of bankruptcy." The Minutes of the Advisory Committee's Spring 2011 note that this Suggestion was considered and referred to the CM/ECF/NextGen working group and BJAG.
Chief Judge Robert E. Nugent, U.S. Bankruptcy Court for the District of Kansas, on behalf of the National Conference of Bankruptcy Judges	BK-2014-0001-0062	Proposing amendments regarding service of entities under Bankruptcy Rule 7004(b) and, in turn, Bankruptcy Rules 4003(d) and 9014(b).
David Lander (former member of Advisory Committee)	Informal	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. (This currently is the practice with respect to adversary proceedings and perhaps contested matters governed by Bankruptcy Rule 7004.)
Jill A. Michaux (member of Advisory Committee)	Informal	Require CM/ECF electronic notice for all claimants; restrict notice in chapter 13 cases after proof of claim deadline expires to claimants only.
Thomas Moers Mayer (member of advisory committee)	Informal	Notice of Dismissal should be electronic only.

Appendix B

[Separate Attachment: Word Document Containing Chart of Bankruptcy Rules Analysis]

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Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
1001	Scope of Rules and Forms; Short Title									N / A												
1002	Commencement of Case	1002(b)	Petition	Petition	Clerk	U.S. trustee	Forthwith upon filing the petition		•		•										R. 5005	
1003	Involuntary Petition									N / A												
1004	Involuntary Petition Against a Partnership		Petition	Petition	- Petitioning partners - Other partners	Each general partner who is not a petitioner	Promptly upon filing the petition	•		•	•		•	•			• *As court directs*				R. 1010 R. 7004 F.R.C.P.4	
			Summons	Summons	Clerk	Each general partner who is not a petitioner	Promptly upon filing the petition	•		•	•		•	•			• *As court directs*				R. 1010 R. 7004 F.R.C.P.4	
1004.1	Petition for an Infant or Incompetent Person									N / A												
1004.2	Petition in Chapter 15 Cases	1004.2(b)	Motion	Motion challenging debtor's center of main interests	- U.S. trustee - Movant	- Debtor - All persons or bodies authorized to administer foreign proceedings of the debtor - All entities against whom provisional relief is being sought under § 1519 of the Code - All parties to litigation pending in the U.S. in which the debtor was a party as of the time the petition was filed - Other entities as court may direct	Served no later than 7 days before hearing												•	R. 9006(d) R. 9013	
		1004.2(b)	Motion	Motion challenging debtor's center of main interests	Movant	U.S. trustee	Not specified		•		•										R. 5005	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
1005	Caption of Petition						N / A															
1006	Filing Fee		Motion	Motion to extend time to pay filing fee in installments	Movant	Other entities as court may direct	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
1007	Lists, Schedules, Statements, and Other Documents; Time Limits	1007(a)	Motion	Motion for the extension of time for the filing of lists	Movant	Affected parties	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		1007(a)	Notice	Notice of hearing on motion for the extension of time for the filing of lists	Not specified in rule	- Trustee - Creditors' Committee (11 USC 705) - Creditors' Committee (11 USC 1102) - Examiner - Other party as court directs	Not later than 7 days before specified hearing													• "Court shall designate"	R. 1007(c) R. 9006(d) R. 9007	
		1007(a)	Notice	Notice of hearing on motion for the extension of time for the filing of lists	Not specified in rule	U.S. trustee	Not later than 7 days before specified hearing		•		•									• "Court shall designate"	R. 1007(c) R. 5005 R. 9006(d) R. 9007	
		1007(b)	Statement	Statement of intention	Debtor (ch. 7)	- Trustee - Creditors named on statement	On or before the filing of the statement													•		
		1007(c)	Notice	Notice of extension	Not specified in rule	- Any committee - Trustee - Other party as court directs	Not specified in rule													• "Court shall designate"	R. 1007(c) R. 9007	
		1007(c)	Notice	Notice of extension	Not specified in rule	U.S. trustee	Not specified in rule		•		•										R. 1007(c) R. 5005 R. 9006(d)	
		1007(i)	Notice	Notice of hearing on disclosure of list of security	Not specified in rule	Affected parties	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

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				holders																		
		1007(j)	Motion	Motion for impounding lists	Movant	Other entities as court may direct	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		1007(l)	Documents	Every list, schedule, and statement filed pursuant R. 1007(a)(1), (a)(2), (b), (d), or (h)	Clerk	U.S. trustee	Forthwith upon filing of the list, schedule or statement		•		•										R. 5005	
1008	Verification of Petitions and Accompanying Papers	N / A																				
1009	Amendments of Voluntary Petitions, Lists, Schedules and Statements	1009(a)	Notice	Notice of amendment to voluntary petition, list, schedule, or statement	Debtor	- Trustee - Affected parties	Not specified in rule													• "Court shall designate"	R. 9007	
		1009(a)	Motion	Motion to require amendment to voluntary petition, list, schedule, or statement	Movant	Affected parties	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		1009(a)	Notice	Notice of hearing on motion to require amendment to voluntary petition, list, schedule, or statement	Not specified in rule	Affected parties	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		1009(a)	Notice	Notice of amendments	Clerk	Entities designated by court	When ordered by the court upon motion of a party in interest and after notice and hearing													• "Court shall designate"	R. 9007	
		1009(b)	Notice	Notice of amendment to statement	Debtor	- Trustee - Affected parties	Not specified in rule													• "Court shall designate"	R. 9007	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#.

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				of intention																		
		1009(c)	Notice	Notice of amendment to social security number	Debtor	All entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).	Not specified in rule													• "Court shall designate"	R. 9007	
		1009(d)	Documents	Copy of all amendments under R. 1009	Clerk	U.S. trustee	Promptly upon filing or submission of an amendment		•		•										R. 5005	
1010	Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding	1010(a)	Summons/ Petition	Summons and petition for involuntary petition	Petitioner	Debtor	Within 7 days after issuance of summons	•		•	•		•	•			• *As court directs*		• Mailing to last known address as court directs		R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		1010(a)	Summons / Petition	Summons / Petition for recognition of a foreign non-main proceeding	Petitioner	- Debtor - Any entity against whom provisional relief is sought under 11 USC 1519 - Other party as court may direct	Within 7 days after issuance of summons	•		•	•		•	•			• *As court directs*		• Mailing to last known address as court directs		R. 7004 F.R.C.P.4	
1011	Responsive Pleading or Motion in Involuntary and Cross-Border Cases	1011(b)	Motion	Motion or responsive pleading contesting involuntary petition	Debtor	Affected parties	Within 21 days after service of the summons	•	•	•	•	•			• "written consent required"	•					R. 1011(a) R. 9006(d) R. 9014 F.R.C.P.5 F.R.C.P 12	
		1011(b)	Motion	Motion or responsive pleading contesting petition for recognition of a foreign proceeding	Movant	Affected parties	Within 21 days after service of the summons	•	•	•	•	•			• "written consent required"	•					R. 1011(a) R. 9006(d) R. 9014 F.R.C.P.5 F.R.C.P 12	
		1011(b)	Motion	Motion or responsive pleading contesting involuntary petition against a partnership	- Non-petitioning general partner - Person alleged to be a general partner but denies allegation	Affected parties	Within 21 days after service of the summons	•	•	•	•	•			• "written consent required"	•					R. 1011(a) R. 9006(d) R. 9014 F.R.C.P.5 F.R.C.P 12	
1014	Dismissal and	1014(a)	Motion	Motion to	Movant	- Petitioners	Not later than 7													•	R. 9006(d)	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

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	Change of Venue			transfer case to another district		- Entities as court directs	days before specified hearing														R. 9013	
		1014(a)	Motion	Motion to transfer case to another district	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005	
		1014(a)	Notice	Notice of hearing on motion to transfer case to another district	- Movant - Court (*sua sponte*)	- Petitioners - Entities as court directs	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		1014(a)	Notice	Notice of hearing on motion to transfer case to another district	- Movant - Court (*sua sponte*)	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9007	
		1014(b)	Motion	Motion to determine district(s) in which cases should proceed	Movant	- Petitioners - Entities as court directs	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		1014(b)	Motion	Motion to determine district(s) in which cases should proceed	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005	
1017	Dismissal or Conversion of Case; Suspension	1017(a)	Motion	Motion to voluntary dismiss or to dismiss for want of prosecution or other cause	Movant	Affected parties	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1017(f) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		1017(a)	Notice	Notice of hearing on voluntary dismissal or dismissal for want of prosecution	Clerk	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days		• (U.S. trustee)		•										R. 2002 R. 5005 R. 9007	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
				or other cause		- U.S. trustee (2002(k))																
		1017(b)	Notice	Notice of hearing on dismissal for failure to pay filing fee	Not specified in rule	- Debtor - Trustee	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		1017(c)	Notice	Notice of hearing to dismiss under 11 USC 707(a)(3) or 1307(c)(9)	U.S. trustee	- Debtor - Trustee - Entities as court directs	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		1017(d)	Notice	Notice of hearing to dismiss or suspend case under 11 USC 305	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	21 days		• (U.S. trustee)		•										R. 2002(a) R. 5005 R. 9007	
		1017(e)	Motion	Motion to dismiss under 11 USC 707(b)	Movant	Affected parties	Served not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1017(f) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		1017(e)	Notice	Notice on hearing on motion to dismiss under 11 USC 707(b)	Not specified	- Debtor - Trustee - U.S. trustee - Entity as court directs	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		1017(e)	Notice	Notice on hearing on court's own motion to dismiss under 11 USC 707(b)	Not specified	- Debtor - Affected parties	Not later than 60 days after the first date set for the meeting of creditors under 11 USC 341													• "Court shall designate"	R. 9006(d) R. 9007	
		1017(f)	Motion	Motion for conversion or dismissal under secs. 706(a), 1112(a), 1208(b), or 1307(b)	Movant	Affected parties	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013 R. 9034	

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		1017(f)	Notice	Notice of conversion of ch. 12 or 13 case	Clerk	U.S. trustee	Promptly upon filing of the conversion notice by the debtor		•		•										R. 5005 R. 9007 R. 9034	
1019	Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter	1019(1)	Motion	Motion for extension of time to file statement of intention	Movant	Affected parties	Served no later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		1019(1)	Notice	Notice of extension	Not specified	- Any committee - Trustee - Other party as court may direct	Immediately upon entry of order granting extension													• "Court shall designate"	R. 9007	
		1019(1)	Notice	Notice of extension	Not specified	U.S. trustee	Immediately upon entry of order granting extension		•		•										R. 5005 R. 9007	
		1019(5)	Report	Final report (ch. 11 or 12)	- Debtor in possession - Trustee	U.S. trustee	Not later than 30 days after conversion of case		•		•										R. 5005	
		1019(5)	Report	Final report (ch. 13)	- Debtor in possession - Trustee	U.S. trustee	Not later than 30 days after conversion of case		•		•										R. 5005	
		1019(5)	Schedules	Every schedule filed pursuant to R. 1019(5)	Clerk	U.S. trustee	Forthwith upon filing of the schedule		•		•										R. 5005	
		1019(6)	Notice	Notice of the time for filing a request for administrative expense and,	- Clerk - Some other person as court directs	Entities listed on the schedule	Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion													• "Court shall designate"	R. 9007	
		1019(6)	Notice	Notice of the time for filing	- Clerk - Some other	Entities listed on the	Upon the filing of the schedule of													• "Court shall designate"	R. 9007	

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				a claim under 11 USC 348(d)	person as court directs	schedule	unpaid debts incurred after commencement of the case and before conversion															
1020	Small Business Chapter 11 Reorganization Case	1020(b)	Objection	Objection to small business designation	- U.S. trustee - Movant	- Debtor - Debtor's attorney - U.S. trustee - Trustee - Creditors' committee or authorized agent - 20 largest unsecured creditors if there is no unsecured creditors' committee - Entities as court directs	Served no later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		1020(c)	Motion	Motion requesting determination committee has not provided effective oversight of the debtor	- U.S. trustee - Movant	Affected parties	Served no later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
1021	Health Care Business Case	1021(b)	Motion	Motion to determine whether debtor is a health care business	- U.S. trustee - Movant	- Debtor - Trustee - U.S. trustee - Creditors' committee or authorized agent - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11 cases)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	

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						- Other entities as court directs																
2001	Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case	2001(a)	Motion	Motion for appointment of interim trustee	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013 R. 9034	
		2001(a)	Notice	Notice of hearing on motion for interim trustee	Not specified	- Petitioning creditors - U.S. trustee - Other parties in interest as court may designate	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
2002	Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom	2002(a)(1)	Notice	Notice the meeting of creditors under § 341 or § 1104(b)	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days				•										R. 2002(h) R. 9007	
		2002(a)(2)	Notice	Notice of proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	21 days		• (U.S. trustee)		•									R. 2002(h) R. 2002(i) R. 6004(a) R. 9007	Under R. 2002(i), court may limit notice to U.S. trustee, committees, and creditors and equity holders who request service.
		2002(a)(3)	Notice	Notice of the hearing on approval of a compromise or settlement of a controversy other than	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee	21 days		• (U.S. trustee)		•									R. 2002(h) R. 2002(i) R. 9007 R. 9019	Under R. 2002(i), court may limit notice to U.S. trustee, committees, and creditors and equity holders who

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				approval of an agreement pursuant to R. 4001(d)		(2002(k))																request service.
		2002(a)(4)	Notice	Notice of hearing on the dismissal of the case or the conversion of the case to another chapter	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	21 days		• (U.S. trustee)		•										R. 2002(h) R. 9007	Notice and hearing not required if the hearing is under 11 USC 707(a)(3) or 11 USC 707(b) or is on dismissal of the case for failure to pay the filing fee.
		2002(a)(5)	Notice	Notice of the time fixed to accept or reject a proposed modification of a plan	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days				•										R. 2002(h) R. 9007	
		2002(a)(6)	Notice	Notice of hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days				•										R. 2002(h) R. 2002(i) R. 9007	Under R. 2002(i), court may limit notice to U.S. trustee, committees, and creditors and equity holders who request service.
		2002(a)(7)	Notice	Notice of the time fixed for filing proofs of claims pursuant to R. 3003(c)	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days				•										R. 2002(h) R. 9007	
		2002(a)(8)	Notice	Notice of the time fixed for filing objections and the hearing to	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee	21 days		• (U.S. trustee)		•										R. 2002(h) R. 9007	

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				consider confirmation of a chapter 12 plan		(2002(i)) - U.S. trustee (2002(k))																
		2002(b)	Notice	Notice of the time for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	28 days				•										R. 9007	
		2002(b)	Notice	Notice of the time for filing objections and the hearing to consider confirmation of a chs. 9, 11, or 13 plan	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	28 days				•										R. 9007	
		2002(d)	Notice	Notice of order for relief (ch. 11)	Clerk or some other person as court may direct	Equity security holders	Not later than 7 days before specified hearing												• "As directed by court"		R. 9006(d) R. 9007	
		2002(d)	Notice	Notice of any meeting of equity security holders held pursuant to 11 USC 341 (ch. 11)	Clerk or some other person as court may direct	Equity security holders	Not specified												• "As directed by court"		R. 9007	

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		2002(d)	Notice	Notice of the hearing on the proposed sale of all or substantially all of the debtor's assets (ch. 11)	Clerk or some other person as court may direct	Equity security holders	Not later than 7 days before specified hearing												• "As directed by court"		R. 9006(d) R. 9007	
		2002(d)	Notice	Notice the time fixed for filing objections to and the hearing to consider approval of a disclosure statement (ch. 11)	Clerk or some other person as court may direct	Equity security holders	Not specified												• "As directed by court"		R. 9007	
		2002(d)	Notice	Notice of the time fixed for filing objections to and the hearing to consider confirmation of a plan (ch. 11)	Clerk or some other person as court may direct	Equity security holders	As directed by court												• "As directed by court"		R. 9007	
		2002(d)	Notice	Notice of the time fixed to accept or reject a proposed modification of a plan (ch. 11)	Clerk or some other person as court may direct	Equity security holders	As directed by court												• "As directed by court"		R. 9007	
		2002(e)	Notice	Notice of no dividend in a ch. 7 liquidation case	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees - Committee (2002(i))	21 days				•										R. 2002(a)(1) R. 9007	Notice included in the notice for the meeting of creditors.
		2002(f)(1)	Notice	Notice of the	Clerk or some	- Debtor	Not specified		•		•										R. 9007	

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				order for relief	other person as court may direct	- All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))			(U.S. trustee)													
		2002(f)(2)	Notice	Notice of the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under 11 USC 305	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	Immediately upon the entry of the order		• (U.S. trustee)		•										R. 9007	
		2002(f)(3)	Notice	Notice of the time allowed for filing claims pursuant to R. 3002	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i))	Not specified				•										R. 9007	
		2002(f)(4)	Notice	Notice of the time fixed for filing a complaint objecting to the debtor's discharge pursuant to 11 USC 727 as provided in R. 4004	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	28 days		• (U.S. trustee)		•										R. 4004 R. 9007	
		2002(f)(5)	Notice	Notice the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to 11 USC 523 of the Code	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i))	Not less than 30 days before deadline				•										R. 9007	

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				as provided in R. 4007																		
		2002(f)(6)	Notice	Notice of the waiver, denial, or revocation of a discharge as provided in R. 4006	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	Promptly		• (U.S. trustee)		•										R. 9007	
		2002(f)(7)	Notice	Notice of the entry of an order confirming a chapter 9, 11, or 12 plan	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	Immediately upon entry of order		• (U.S. trustee)		•										R. 9007	
		2002(f)(8)	Report	A summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i)) - U.S. trustee (2002(k))	21 days		• (U.S. trustee)		•										R. 9007	
		2002(f)(9)	Notice	Notice under R. 5008 regarding the presumption of abuse	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i))	- 10 days after the date of the filing petition - As promptly as practicable if debtor later files statement indicating presumption of abuse				•										R. 5008 R. 9007 11 USC 342(d)	
		2002(f)(10)	Report	A statement under 11 USC 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i))	Not specified				•										R. 9007	

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				11 USC 707(b)																		
		2002(f)(11)	Notice	Notice of the time to request a delay in the entry of the discharge under 11 USC 1141(d)(5)©, 1228(f), and 1328(h)	Clerk or some other person as court may direct	- Debtor - All creditors - Indenture trustees - Committee (2002(i))	28 days				•										R. 9007	
		2002(f)(11)	Notice	Notice of the time fixed for accepting or rejecting a plan pursuant to R. 3017(c)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	- Creditors - Equity security holders - Committee (2002(i))	Not specified				•										R. 3017(d) R. 9007	
		2002(f)(11)	Notice	Notice of the time fixed for accepting or rejecting a plan pursuant to R. 3017(c)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	U.S. trustee (ch. 11)	Not specified		•		•										R. 3017(d) R. 5005(b) R. 9007	
		2002(h)	Notice	Notices to creditors whose claims are filed	Clerk or some other person as court may direct	May limit notice to creditors whose claims are filed in chapter 7	Not specified				•										R. 9007	In a chapter 7 case, the court may limit 21-day notices to creditors whose claims have been filed 90 days after the first date set for the meeting of creditors.
		2002(i)	Notice	Notices to creditors' committees	Clerk or some other person as court may direct	- Creditors' committees elected under 11 USC 705 or authorized agents - Creditors' committee appointed under 11	Varies				•										R. 9007	All notices required under R. 2002, and may limit notice in context of R. 2002(a)(2), (3), (6), as noted above.

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						USC 1102 or authorized agents																
		2002(i)	Notice	Notices to committees appointed under 11 USC 1114	Clerk or some other person as court may direct	- Committee appointed under 11 USC 1114	Varies				•										R. 2002(a) R. 2002(b) R. 2002(f) R. 9007	Committee appointed under 11 USC 1114 to receive notices under R. 2002(a)(1), (a)(5), (b), (f)(2), (f)(7), and other notices as the court may direct.
		2002(j)	Notice	Notices required to be mailed to creditors	Clerk or some other person as court may direct	Securities and Exchange Commission (in ch.11 cases)	Varies				•										R. 9007	Notices mailed SEC has filed either a notice of appearance in the case or a written request to receive notices.
		2002(j)	Notice	Notices required to be mailed to creditors	Clerk or some other person as court may direct	Commodity Futures Trading Commission	Varies				•										R. 9007	Notices mailed in a commodity brokers case.
		2002(j)	Notice	Notices required to be mailed to creditors	Clerk or some other person as court may direct	Internal Revenue Service (in ch. 11 cases)	Varies				•										R. 9007	
		2002(j)	Notice	Notices required to be mailed to creditors	Clerk or some other person as court may direct	- U.S. district attorney for the district where the case is pending - U.S. department, agency, or instrumentality owed the debt	Varies				•										R. 9007	Notices mailed of filings disclose federal debts other than for federal taxes.
		2002(j)	Notice	Notices required to be mailed to creditors	Clerk or some other person as court may direct	Secretary of the Treasury	Varies				•										R. 9007	Notices mailed if filings disclose a stock interest

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																						of the United States.
		2002(k)	Notice	Notice to the U.S. trustee	Clerk or some other person as court may direct	U.S. trustee[1]	21 or 28 days		•		•										R. 2002(a) R. 2002(b) R. 2002(f) R. 5005(b) R. 9007	Applies to notices under R. 2002(a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q), and all fee applications.
		2002(l)	Notice	Varies	Clerk or some other person as court may direct	General population											•				R. 9007	Court may order notice by publication if mail is impracticable.
		2002(o)	Notice	Notice of order for relief in consumer case	Clerk or some other person as court may direct	- Trustee - All creditors	21 days				•										R. 9007	Notice provided in a voluntary case commenced by an individual debtor whose debts are primarily consumer debts.
		2002(p)(2)	Notice	Notice to a creditor with a foreign address of time fixed for filing a proof of claim under R. 3002(c) or R. 3003(c)	Clerk or some other person as court may direct	Creditor with a foreign address	30 days				•										R. 9007	Under R. 2002(p)(1), court also may order that notice be supplemented or time for notice enlarged.
		2002(q)	Notice	Notice of hearing on petition for recognition of a foreign hearing	Clerk or some other person as court may direct	- Debtor - All persons or bodies authorized to administer foreign proceedings of the debtor - All entities against whom	21 days				•										R. 9007	

[1] Rule 2002(k) provides that notices identified in this subsection shall be transmitted to U.S. trustees within the time prescribed in subdivision (a) or (b) of this rule. Rule 2002(a) provides for a 21-day notice and Rule 2002(b) provides for 28-day notices. However, Rule 2002(k) requires several notices under Rule 2002(f). The rules for notices required for U.S. trustees under Rule 2002(f) do not provide a time for notice. Notice should be transmitted to U.S. trustee unless the case is a Chapter 9 proceeding or the U.S. trustee declines notice. Rule 5005 provides that transmittal to U.S. trustees includes mail or delivery to office of U.S. trustee.

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						provisional relief is being sought under 11 USC 1519 - All parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition - Other entities as court directs - U.S. trustee (2002(k))																	
		2002(q)	Notice	Notice of the court's intention to communicate with a foreign court or foreign representative	Clerk or some other person as court may direct	- Debtor - All persons or bodies authorized to administer foreign proceedings of the debtor - All entities against whom provisional relief is being sought under 11 USC 1519 - All parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition - Other entities as court directs - U.S. trustee (2002(k))	Not specified				•											

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2003	Meeting of Creditors or Equity Security Holders	2003(c)	Transcript	Certified copy of 341 meeting recording or transcript	U.S. trustee	Requesting entity	Upon request													•		
		2003(d)	Report	Report of disputed election	U.S. trustee	Parties in interest that have requested copy of report	Not specified				•											
		2003(d)	Motion	Motion for resolution of disputed election	Movant	Affected parties (not specified)	No later than 14 days after report filed													•	R. 9006(d) R. 9013	
		2003(e)	Statement	Statement specifying date and time to which meeting of creditors or equity security holders is adjourned	Presiding official (typically trustee)	Affected parties	No notice – service requirement															
		2003(g)	Notice	Notice of final meeting of creditors and summary of trustee's final in cases where net proceeds exceed $1,500	Clerk	Creditors	Upon the U.S. trustee calling a final meeting of creditors in a case in which the net proceeds realized exceed $1,500.				•									• "Court shall designate"	R. 9006(d) R. 9007	
2004	Examination	2004(a)	Motion	Motion for examination of the entity	Party in interest	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*			•	R. 9006(d) R. 9013	
		2004(c)	Subpoena	Subpoena for 2004 examination	- Clerk - Attorney authorized to practice in the issuing court	Subpoenaed party	Not specified	•													F.R.C.P.45	
2005	Apprehension and Removal of Debtor to Compel Attendance for	2005(a)	Motion	Motion to compel attendance for	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	

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	Examination			examination																		
2006	Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases	2006(e)	Statement	Verified list of proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy	Holder of two or more proxies	U.S. trustee	At any time before the voting commences at any meeting of creditors pursuant to 11 USC 341(a) or at any other time as the court may direct		•		•										R. 5005	
		2006(f)	Motion	Motion to enforce restrictions on solicitation or voting of proxy	- Movant - Court (*sua sponte*)	Affected parties (not specified)	Not later than 7 days before specified hearing												•	R. 9006(d) R. 9013	
		2006(f)	Notice	Notice of hearing on motion to enforce restrictions on solicitation or voting of proxy	- Movant - Court (*sua sponte*)	Affected parties (not specified)	Not later than 7 days before specified hearing												• "Court shall designate"	R. 9006(d) R. 9007	
2007	Review of Appointment of Creditors' Committee Organized Before Commencement of the Case	2007(a)	Motion	Motion to review appointment	Party in interest	Affected parties	Not later than 7 days before hearing												•	R. 9013 R. 9006(d)	Treated as a motion for a non-contested matter (unless disputed).
		2007(a)	Notice	Notice of hearing on motion to review appointment	Party in interest	Entities as court directs	Not later than 7 days before specified hearing												• "Court shall designate"	R. 9006(d) R. 9007	
		2007(a)	Notice	Notice of hearing on motion to review appointment	Party in interest	U.S. trustee	Not later than 7 days before specified hearing		•		•									R. 5005	
2007.1	Appointment of Trustee or Examiner in a Chapter 11	2007.1(a)	Motion	Motion to appoint a trustee or examiner under	Movant	Affected parties (not specified)	Not later than 7 days before hearing	•		•	•		•	•			• *As court directs*			R. 1017(f) R. 7004 R. 9006(d)	

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	Reorganization Case			11 USC 1104(a) or 11 USC 1104(c)																	R. 9014 F.R.C.P.4	
		2007.1(b)	Motion	Motion to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization	Movant	- U.S. trustee - Debtor in possession	No later than 30 days after the court orders appointment of a trustee		•		•										R. 5005 R. 9013 R. 9034 11 USC 1104(b)	
		2007.1(b)	Notice	Notice of meeting of creditors to elect trustee	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees	21 days				•										R. 2002	
		2007.1(b)	Report	Report of disputed election	U.S. trustee	- Any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report - Any committee appointed under 11 USC 1102	Not later than the date on which the report of the disputed election is filed				•											
		2007.1(c)	Application	Application to appoint a trustee or examiner under 11 USC 1104(d)	U.S. trustee	Court														•		
2007.2	Appointment of Patient Care Ombudsman in a Health Care Business Case	2007.2(a)	Motion	Motion that appointment of patient care ombudsman is not necessary	- U.S. trustee - Movant	- Debtor - Trustee - Creditors' committee or authorized - 20 largest unsecured creditors if	No later than 21 days after petition date or as ordered by court	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	

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						there is no unsecured creditors' committee (ch. 9 & 11 cases) - Other entities as court may direct																
		2007.2(a)	Motion	Motion that appointment of patient care ombudsman is not necessary	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9014	
		2007.2(b)	Motion	Motion for order to appoint ombudsman at a later time	- U.S. trustee - Party in interest	- Debtor - Trustee - Creditors' committee or authorized - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11 cases) - Other entities as court may direct	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		2007.2(b)	Motion	Motion for order to appoint ombudsman at a later time	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9014	
		2007.2(c)	Notice	Notice of appointment of patient care ombudsman	U.S. trustee	Filed with court	Promptly												• *Filed*			
		2007.2(d)	Motion	Motion to terminate appointment	- U.S. trustee - Movant	- Debtor - Trustee - Creditors'	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d)	

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				of ombudsman		committee or authorized - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11 cases) - Other entities as court may direct															R. 9014 F.R.C.P.4	
		2007.2(d)	Motion	Motion to terminate appointment of ombudsman	Party in interest	U.S. trustee	Not later than 7 days before specified hearing		•		•									R. 5005 R. 9006(d) R. 9014	
2008	Notice to Trustee of Selection		Notice	Notice to trustee of selection	U.S. trustee	Person selected as trustee	Immediately													• "Court shall designate"	R. 9007	
			Notice	Notice of acceptance of selection as trustee	- Person selected as trustee who has not filed a blanket bond	- Court - U.S. trustee	Within 7 days after receiving notice of selection												• In writing			
			Notice	Notice of rejection of office	Trustee selected	- Court - U.S. trustee	Within 7 days after receiving notice of selection												• In writing			
2011	Evidence of Debtor in Possession or Qualification of Trustee	2011(b)	Notice	Notice that person elected or appointed as trustee does not qualify within the time allotted by 11 USC 322(a)	Clerk	- Court - U.S. trustee	If a person elected or appointed does not quality within the time prescribed 11 USC 322(a)													• "Court shall designate"	R. 9007	
2012	Substitution of Trustee or Successor Trustee; Accounting	2012(b)	Report	Accounting of the prior administration of the estate	Successor trustee	U.S. trustee	Not specified		•		•										R. 5005	

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								Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	
2013	Public Record of Compensation Awarded to Trustees, Examiners, and Professionals	2013(b)	Report	Summary of record of compensation by individual or firm name	Clerk	U.S. trustee	Upon the preparation of the summary at the close of annual period		•		•										R. 5005	
2014	Employment of Professional Persons	2014(a)	Application	Application for order to employ professional persons	- Trustee - Creditors' committees	U.S. trustee	Not specified		•		•										R. 5005 R. 9034	
2015	Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status	2015(a)(1)	Report	Complete inventory of debtor's property (ch. 7, ch. 11 cases)	- Trustee - Debtor in possession	U.S. trustee	Within 30 days after qualifying as trustee or debtor in possession (in ch. 7 cases or ch. 11 cases if court directs)		•		•										R. 5005	
		2015(a)(4)	Notice	Notice of the case	- Trustee - Debtor in possession	Every entity known to be holding money or property subject to withdrawal or order of the debtor	As soon as possible													• "Court shall designate"	R. 9007	
		2015(a)(5)		Statement of disbursements and fees payable under 28 USC 1930(a)(6)	- Trustee - Debtor in possession	U.S. trustee	On or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 USC 1930(a)(6) (in ch. 11 case)		•		•										R. 5005	
		2015(a)(6)	Report	Small business monthly operating report	- Trustee - Debtor in possession	U.S. trustee	No later than 21 days after the last day of the calendar month following the month covered by the report		•		•										R. 5005	
		2015(b)	Report	Complete inventory of debtor's property (ch.	- Trustee - Debtor in possession	U.S. trustee	At time fixed by court (if court directs)		•		•										R. 5005	

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				12 cases)																		
		2015(c)	Report	Complete inventory of debtor's property (ch. 13 cases)	- Trustee - Debtor in possession	U.S. trustee	At time fixed by court (if court directs)		•		•										R. 5005	
		2015(d)	Notice	Notice required under 11 USC 1518	Foreign representative	Filed with court	Within 14 days after the date when the representative becomes aware of the subsequent information											• Filed				
		2015(e)	Report	Copies or summaries of annual reports or other reports	As court may direct	- Creditors - Equity security holders - Indenture trustees	Not specified				•											
		2015(e)	Report	Copies or summaries of annual reports or other reports	As court may direct	U.S. trustee	Not specified		•		•										R. 5005	
2015.1	Patient Care Ombudsman	2015.1(a)	Report	Report on the quality of patient care provided to patients of the debtor	Patient care ombudsman	- Debtor - Trustee - All patients - Creditors' committees (or authorized agents) - 20 largest creditors if no unsecured creditors' committee (ch. 9 or ch. 11 cases) - Other entities as court may direct	14 days before making report available to the court													•	R. 9006(d) R. 9013	
		2015.1(a)	Report	Report on the quality of patient care	Patient care ombudsman	Health care facility that is subject of the	14 days before making report available to the										• (Posted conspicuously at health				11 USC 333	

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				provided to patients of the debtor		report	court										care facility)					
		2015.1(a)	Report	Report on the quality of patient care provided to patients of the debtor	Patient care ombudsman	U.S. trustee	14 days before making report available to the court		•		•									R. 5005 11 USC 333	
		2015.1(b)	Motion	Motion to review confidential patient records	Patient care ombudsman	- Patient - Patient's designated contact	Not later than 14 days before hearing on the motion	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		2015.1(b)	Motion	Motion to review confidential patient records	Patient care ombudsman	U.S. trustee (subject to privacy laws)	No later than 14 days before hearing on the motion		•		•										R. 5005 R. 9006(d) R. 9014	
2015.2	Transfer of Patient in Health Care Business Case		Notice	Notice of transfer of patient in health care business case	Trustee	- Patient care ombudsman - Patient - Patient's designated contact	At least 14 days' notice												• "Court shall designate"		R. 9007	
2015.3	Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or	2015.3(b)	Report	Financial report on value, operations, and profitability of entities in which debtor holds a substantial or controlling interest (ch. 11 cases)	- Trustee - Debtor in possession	- U.S. trustee - Unsecured creditors' committee - Equity security holders committee - Party in interest that filed request for report	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		2015.3(c)	Motion	Motion to rebut presumption of substantial or controlling interest in an entity	- The entity - Any holder of an interest in the entity - U.S. trustee - Any party in interest	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
		2015.3(c)	Notice	Notice of hearing to	Not specified	Affected parties (not	Not later than 7 days before													• "Court shall	R. 9006(d) R. 9007	

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				rebut presumption of substantial or controlling interest in an entity		specified)	specified hearing													designate"		
		2015.3(d)	Notice	Notice of hearing to modify reporting requirement	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		2015.3(e)	Notice	Notice that the trustee or debtor in possession expects to file and serve financial information relating to the entity	- Trustee - Debtor in possession	Entity in which debtor holds a substantial or controlling interest	21 days before the first date set for the meeting of creditors												• *"Send"*		R. 9007	
		2015.3(e)	Motion	Motion to request protection of information pursuant to 11 USC 107	- Entity in which the estate has a substantial or controlling interest - Person holding an interest in that entity	- Trustee - Debtor in possession	After receiving notice of request for financial information													•	R. 9006(d) R. 9013	
2016	Compensation for Services Rendered and Reimbursement of Expenses	2016(a)	Application	Application for compensation for services rendered and reimbursement of expenses	Applicant	U.S. trustee	Not specified		•		•										R. 5005 R. 9034	
		2016(b)	Report	Disclosure of compensation paid or promised to attorney for debtor	Attorney for the debtor	U.S. trustee	14 days after order for relief or as court direct		•		•										R. 5005	
		2016(b)	Report	Supplemental statement for payments not	Attorney for the debtor	U.S. trustee	14 days after any payment or agreement not		•		•										R. 5005	

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				previously disclosed			previously disclosed															
		2016(c)	Declaration	Declaration disclosing compensation paid or promised to bankruptcy petition preparer	Bankruptcy petition preparer	Debtor	Before a petition is filed												• *"Deliver"*			
2017	Examination of Debtor's Transactions with Debtor's Attorney	2017(a)	Motion	Motion that payment or transfer to attorney is excessive before order of relief	- Movant - Court (sua sponte)	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		2017(a)	Notice	Notice of hearing on motion that payment or transfer to attorney is excessive before order of relief	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		2017(b)	Motion	Motion that payment or transfer to attorney is excessive after order of relief	- Debtor - U.S. trustee - Court (sua sponte)	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		2017(b)	Notice	Notice of hearing on motion that payment or transfer to attorney is excessive after order of relief	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
2018	Intervention; Right to Be Heard	2018(a)	Notice	Notice of hearing on motion to intervene by	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing												• *"As court directs"*		R. 9006(d) R. 9007	

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Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
				interested entity																		
2019	Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases	2019(e)	Motion	Motion on failure to comply with disclosure rules	- Movant - Court (sua sponte)	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*			•	R. 9006(d) R. 9013	
2020	Review of Acts by United States Trustee		Motion	Motion to contest any act or failure to act by the United States trustee	Movant	- U.S. trustee - Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
3001	Proof of Claim	3001(c)(2)	Notice	Notice of hearing for failure to comply with rules for submitting proof of claim	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3001(c)(3)	Request	Request to provide copy of writing securing claim for an open ended credit agreement	Party in interest	Holder of a claim based on an open-end or revolving consumer credit agreement	Not specified												• *Written*			
		3001(c)(3)	Document	Copy of writing securing claim for an open ended credit agreement	Holder of the claim	Parties requesting document	Within 30 days after request sent													•		
		3001(e)(2)	Notice	Notice of transfer of claim other than for security before proof filed	Clerk	Alleged transferor	Immediately upon the filing of the evidence of transfer				•											Objections to transfer must be filed within 21 days of notice.
		3001(e)(2)	Notice	Notice of hearing on	Not specified	Affected parties (not	At least 30 days prior to the				•								• *"Otherwise delivered"*		R. 3001(e)(5) R. 9007	

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				transfer of claim other than for security before proof filed		specified)	hearing															
		3001(e)(3)	Notice	Notice of transfer of claim for security before proof filed	Clerk	Other party	Immediately upon filing of a proof of claim				•											
		3001(e)(3)	Motion	Motion for transfer of claim for security before proof filed	Party in interest	Affected parties (not specified)	At least 30 days prior to the hearing				•								• *"Otherwise delivered"*		R. 3001(e)(5)	
		3001(e)(3)	Notice	Notice of hearing on transfer of claim for security before proof filed	Not specified	Affected parties (not specified)	At least 30 days prior to the hearing				•								• *"Otherwise delivered"*		R. 3001(e)(5) R. 9007	
		3001(e)(4)	Notice	Notice of transfer of claim for security after proof filed	Clerk	Transferor	Immediately upon the filing of the evidence of transfer				•											Objections to transfer must be filed within 21 days of notice.
		3001(e)(4)	Notice	Notice of hearing on objection to transfer of claim after proof filed	Not specified	Affected parties (not specified)	At least 30 days prior to the hearing				•								• *"Otherwise delivered"*		R. 3001(e)(5) R. 9007	
		3001(e)(4)	Motion	Motion on transfer of claim for security after proof filed if the transferor or transferee does not file an agreement regarding its relative rights	Party interest	Affected parties (not specified)	At least 30 days prior to the hearing				•								• *"Otherwise delivered"*		R. 3001(e)(5)	
		3001(e)(4)	Notice	Notice of hearing on motion on	Not specified	Affected parties (not specified)	At least 30 days prior to the hearing				•								• *"Otherwise delivered"*		R. 3001(e)(5) R. 9007	

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				transfer of claim for security after proof filed if the transferor or transferee does not file an agreement regarding its relative rights																		
3002	Filing Proof of Claim or Interest	3002(c)(1)	Motion	Motion to enlarge time for proof of claim filed by a governmental unit	Governmental unit	Affected parties (not specified)	Made before expiration of the period for filing a timely proof of claim													•	R. 9006(d) R. 9013	Treated as a motion for a non-contested matter (unless disputed).
		3002(c)(5)	Notice	Notice that payment of dividend appears possible after notice of insufficient assets given to creditors	Clerk	Creditors	90 days before date proof of claims must be filed				•										R. 2002 R. 9007	
		3002(c)(6)	Motion	Motion to extend time to file proof of claim for foreign creditors	Foreign creditor	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
3002.1	Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence	3002.1(b)	Notice	Notice of payment changes	Holder of the claim	- Debtor - Debtor's counsel - Trustee	No later than 21 days before a payment in the new amount is due													• "Court shall designate"	R. 9007	
		3002.1(c)	Notice	Notice of fees, expenses, and charges	Holder of the claim	- Debtor - Debtor's counsel - Trustee	Within 180 days after the date on which the fees, expenses, or charges are incurred													• "Court shall designate"	R. 9007	
		3002.1(e)	Motion	Motion to determine fees, expenses, or charges	- Debtor - Trustee	Affected parties (not specified)	Within one year after service of a notice of fees, expenses and charges, and not later than 7 days													•	R. 9006(d) R. 9013	

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							before specified hearing															
		3002.1(e)	Notice	Notice of hearing to determine fees, expenses, or charges	- Debtor - Trustee	Affected parties (not specified)	Within one year after service of a notice of fees, expenses and charges, and not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3002.1(f)	Notice	Notice of final cure payment	Trustee	- Holder of the claim - Debtor - Debtor's counsel	Within 30 days after debtor completes all payments under the plan												• "Court shall designate"		R. 9007	
		3002.1(f)	Notice	Notice of final cure payment (if trustee does not file and service notice)	Debtor	- Holder of the claim - Debtor - Debtor's counsel	Within 30 days after debtor completes all payments under the plan												• "Court shall designate"		R. 9007	
		3002.1(g)	Statement	Statement of response to notice of final cure payment	Holder of the claim	- Debtor - Debtor's counsel	Within 21 days after service of notice of final cure payment													•	R. 9006(d) R. 9013	
		3002.1(h)	Motion	Motion to determine final cure and payment	- Debtor - Trustee	Affected parties (not specified)	Within 21 days after service of statement													•	R. 9006(d) R. 9013	
		3002.1(h)	Notice	Notice of hearing to determine final cure and payment	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3002.1(i)	Notice	Notice of hearing on failure to notify	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
3003	Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases	3003(d)	Statement	Statement in support of entity being treated as record holder of security	Filer of statement	Other entity as court directs	Not specified													• "Filed"		
		3003(d)	Objection	Objection to	Party in interest	- Filer of														•		

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				statement in support of entity being treated as record holder of security		- Other entity as court directs														"Filed"		
3004	Filing of Claims by Debtor or Trustee		Notice	Notice to creditor of debtor or trustee filing proof of claim	Clerk	- Creditor - Debtor - Trustee	Forthwith upon filing of proof of claim													•	R. 9007	
3005	Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor	3005(b)	Notice	Notice of creditor's intention to act in the creditor's own behalf	Creditor	Affected parties														• "Filed"	R. 9007	
3006	Withdrawal of Claim; Effect on Acceptance or Rejection of Plan		Notice	Notice of hearing on creditor's withdrawal of claim	Creditor	- Trustee - Debtor in possession - Creditor's committee	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
3007	Objections to Claims	3007(a)	Objection	Objection to claim	Objector	- Claimant - Debtor or debtor in possession - Trustee	30 days prior to hearing	•		•	•		•	•			• *As court directs*			• *"Otherwise delivered"*	R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3007(a)	Notice	Notice of hearing on motion for objection to claim	Movant	- Claimant - Debtor or debtor in possession - Trustee	30 days prior to hearing				•									• *"Otherwise delivered"*	R. 9006(d) R. 9007	
3008	Reconsideration of Claims		Motion	Motion for reconsideration of an order allowing or disallowing a claim against the estate	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	Treated as a motion for a contested matter.
			Notice	Notice of hearing on motion for reconsideratio n of an order allowing or	Party in interest	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	

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				disallowing a claim against the estate																		
3009	Declaration and Payment of Dividends in a Chapter 7 Liquidation Case			Dividend Check	Chapter 7 trustee	Creditor whose claim has been allowed	As promptly as practicable				•											
3012	Valuation of Security		Motion	Motion for valuation of security	Party in interest	- Holder of the secured claim - Other entities as court may direct.	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
			Notice	Notice of hearing on motion for valuation of security	Movant	- Holder of the secured claim - Other entities as court may direct.	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
3013	Classification of Claims and Interests		Motion	Motion to determine classification of claims and interests	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	Treated as a motion for a non-contested matter (unless disputed).
			Notice	Notice of hearing to determine classification of claims	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
3015	Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case	3015(b)	Notice	Notice to extend time for filing chapter 13 plan	Debtor (not specified)	Affected parties (not specified)	Not specified in rule												• "As the court may direct"		R. 9007	
		3015(d)	Plan	Plan or summary of plan in chapter 12 proceeding	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors - Indenture trustees	21 days				•										R. 2002(a)(8)	Included with notice of plan confirmation hearing.
		3015(d)	Plan	Plan or	Clerk or some	- Debtor	28 days				•										R. 2002(b)	Included with

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				summary of plan in chapter 13 proceeding	other person as court may direct	- Trustee - All creditors - Indenture trustees																notice of plan confirmation hearing.
		3015(e)	Plan	Plan or summary of plan in chapter 12 or 13 proceeding	Debtor	U.S. trustee	Forthwith upon filing of a plan or modification of plan		•		•										R. 5005 R. 9034	
		3015(f)	Objection	Objection to confirmation of plan	Objector	- Debtor - Trustee - Other entity designated by the court	Before confirmation of plan and not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3015(f)	Objection	Objection to confirmation of plan	Movant	U.S. trustee	Before confirmation of plan and not later than 7 days before specified hearing		•		•										R. 5005 R. 7004 R. 9034	
		3015(g)	Notice	Notice of time for filing objection to plan modification after confirmation of plan	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors	21 days				•										R. 9007	Shall include copy or summary of proposed modification.
		3015(g)	Notice	Notice of hearing on objection to plan modification after confirmation of plan	Clerk or some other person as court may direct	- Debtor - Trustee - All creditors	21 days				•										R. 9006(d) R. 9007	Shall include copy or summary of proposed modification.
		3015(g)	Notice	Notice of time for filing objection to plan modification after confirmation of plan	Clerk or some other person as court may direct	U.S. trustee	21 days		•		•										R. 5005 R. 9034	Shall include copy or summary of proposed modification.
		3015(g)	Notice	Notice of hearing on objection to	Clerk or some other person as court may direct	U.S. trustee	21 days		•		•										R. 5005 R. 9006(d) R. 9004	Shall include copy or summary of

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				plan confirmation after confirmation of plan																		proposed modification.
		3015(g)	Objection	Objection to proposed modification of plan after plan confirmation	Movant	- Debtor - Trustee - All creditors	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3015(g)	Objection	Objection to proposed modification of plan after plan confirmation	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
3017	Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	3017(a)	Notice	Notice of hearing on disclosure statements and objections	Clerk	- Debtor - Creditors - Equity security holders - Other parties in interest	28 days				•										R. 2002 R. 9006(d) R. 9007	
		3017(a)	Notice	Notice of hearing on disclosure statements and objections in a chapter 11 case	Clerk	U.S. trustee	28 days		•		•										R. 5005 R. 9007	
		3017(a)	Plan and Disclosure Statement	Confirmation plan and disclosure statement accompanying notice of hearing on disclosure statements and objections	Clerk	- Debtor - Trustee - Creditors' committee - SEC - Other parties in interest that request in writing a copy of the statement or plan	28 days				•											
		3017(a)	Plan and Disclosure Statement	Confirmation plan and disclosure	Clerk	U.S. trustee	28 days		•		•										R. 5005 R. 9038	

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				statement accompanying notice of hearing on disclosure statements and objections																		
		3017(a)	Objection	Objection to the disclosure statement	Objector	- Debtor - Trustee - Creditors' committee - Any entity designated by court	At any time before the disclosure statement is approved or by an earlier date as the court may fix.	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3017(a)	Objection	Objection to the disclosure statement	Objector	U.S. trustee	At any time before the disclosure statement is approved or by an earlier date as the court may fix.		•		•										R. 5005 R. 9034	
		3017(c)	Notice	Notice of time fixed for accepting or rejecting plan	- Debtor in possession - Trustee - Proponent of plan - Clerk	- Creditors - Equity security holders (ch. 11)	On or before approval of disclosure statement													•	R. 9007	
		3017(c)	Notice	Notice of time fixed for accepting or rejecting plan	- Debtor in possession - Trustee - Proponent of plan - Clerk	- U.S. Trustee	On or before approval of disclosure statement		•		•										R. 5005 R. 9007 R. 9034	
		3017(d)(1)	Plan	Plan or a court-approved summary of the plan	- Debtor in possession - Trustee - Proponent of the plan - Clerk	- Creditors - Equity security holders	Upon approval of disclosure statement				•											
		3017(d)(1)	Plan	Plan or a court-approved summary of the plan (ch. 11 proceeding)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	U.S. trustee (ch. 11 proceeding)	Upon approval of disclosure statement		•		•										R. 5005 R. 9034	
		3017(d)(2)	Statement	Disclosure	- Debtor in	- Creditors	Upon approval of disclosure				•											

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				statement approved by the court	possession - Trustee - Proponent of the plan - Clerk	- Equity security holders	statement															
		3017(d)(2)	Statement	Disclosure statement approved by the court (ch. 11 proceeding)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	U.S. trustee (ch. 11 proceeding)	Upon approval of disclosure statement		•		•										R. 5005 R. 9034	
		3017(d)(3)	Notice	Notice of the time within which acceptances and rejections of the plan may be filed	- Debtor in possession - Trustee - Proponent of the plan - Clerk	- Creditors - Equity security holders	Upon approval of disclosure statement				•										R. 9007	
		3017(d)(3)	Notice	Notice of the time within which acceptances and rejections of the plan may be filed (ch. 11 proceeding)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	U.S. trustee (ch. 11 proceeding)	Upon approval of disclosure statement		•		•										R. 5005 R. 9007 R. 9034	
		3017(d)(4)	Other	Any other information as the court may direct	- Debtor in possession - Trustee - Proponent of the plan - Clerk	- Creditors - Equity security holders	Upon approval of disclosure statement				•											
		3017(d)(4)	Other	Any other information as the court may direct (ch. 11 proceeding)	- Debtor in possession - Trustee - Proponent of the plan - Clerk	U.S. trustee (ch. 11 proceeding)	Upon approval of disclosure statement		•		•										R. 5005 R. 9034	
		3017(d)	Notice	Notice of time fixed for filing objections	Clerk	- Creditors - Equity security holders	28 days				•										R. 2002(b) R. 9007	
		3017(d)	Notice	Notice of confirmation hearing	Clerk	- Creditors - Equity security holders	28 days				•										R. 2002(b) R. 9007	
		3017(d)	Ballot	Form of ballot conforming to	Clerk	- Creditors	28 days				•										R. 9007	

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				the appropriate official form		entitled to vote on plan - Equity security holders entitled to vote on plan																
		3017(d)	Notice	Notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained	Clerk	Members of the unimpaired class	28 days				•									• "Court shall designate"	R. 9007	
		3017(d)	Notice	Notice of the time fixed for filing objections to and the hearing on confirmation	Clerk	Members of the unimpaired class	28 days				•									• "Court shall designate"	R. 9007	
		3017(f)	Notice	Notice of time fixed for filing objections to injunctions	Designated by court	- Entity subject to injunction - Creditor - Equity security holder	28 days													•	R. 9007	
3017.1	Court Consideration of Disclosure Statement in a Small Business Case	3017.1(c)(1)	Notice	Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement	Clerk	- Debtor - Trustee - Creditors - Indenture trustees	28 days				•										R. 2002 R. 9007	
		3017.1(c)(2)	Objection	Objection to the disclosure statement	Objector	- Debtor - Trustee - Creditors' committee	At any time before final approval of the disclosure statement or by an earlier date as the	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	

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						- Other entity as designated by court	court may fix															
		3017.1(c)(2)	Objection	Objection to the disclosure statement	Objector	U.S. trustee	At any time before final approval of the disclosure statement or by an earlier date as the court may fix		•		•										R. 5005 R. 9034	
3018	Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	3018(a)	Notice	Notice of hearing for entity entitled to accept or reject plan	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3018(a)	Notice	Notice of hearing for creditor equity security holder to withdraw acceptance or rejection	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3018(a)	Notice	Notice of hearing to temporarily allow claim or interest notwithstanding objection	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3018(b)	Notice	Notice of hearing the plan was not transmitted to substantially all creditors and equity security holders of the same class	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3018(b)	Notice	Notice of hearing that an unreasonably short time was prescribed for such creditors and equity	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	

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				security holders to accept or reject the plan.																		
		3018(b)	Notice	Notice of hearing that the solicitation was not in compliance with § 1126(b) of the Code.	Not specified in rule	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
3019	Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	3019(a)	Notice	Notice of hearing on proposed modification of plan after plan has been accepted but before plan has been confirmed	Proponent of the modification	- Trustee - Any committee - Other entity as directed by court	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		3019(b)	Motion	Motion to modify plan after confirmation in individual debtor case	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3019(b)	Motion	Motion to modify plan after confirmation in individual debtor case	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9034	
		3019(b)	Notice	Notice of time to file objections to proposed plan modification in an individual debtor case	- Clerk - Other entity as court directs	- Debtor - Trustee - All creditors	21 days				•										R. 9007	
		3019(b)	Notice	Notice of time to file objections to proposed plan modification	- Clerk - Other entity as court directs	U.S. trustee	21 days		•		•										R. 5005 R. 9007 R. 9034	

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				in an individual debtor case																		
		3019(b)	Notice	Notice of hearing on objections to proposed plan modification in an individual debtor case	- Clerk - Other entity as court directs	- Debtor - Trustee - All creditors	21 days				•										R. 9007	
		3019(b)	Notice	Notice of hearing on objections to proposed plan modification in an individual debtor case	- Clerk - Other entity as court directs	U.S. trustee	21 days		•		•										R. 5005 R. 9006(d) R. 9007 R. 9034	Shall include copy of proposed modification.
		3019(b)	Objection	Objection to the proposed plan modification in an individual debtor case	Objector	- Debtor - Proponent of the modification - Trustee - Other entity as court directs	Not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 7004 R. 9006(d) R. 9014 F.R.C.P.5	
		3019(b)	Objection	Objection to the proposed plan modification in an individual debtor case	Objector	U.S. Trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9034	
3020	Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case	3020(b)(1)	Objection	Objection to confirmation of the plan	Objector	- Debtor - Trustee - Proponent of the plan - Any committee - Other entity as directed by court	As fixed by court	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		3020(b)(1)	Objection	Objection to confirmation of the plan	Objector	U.S. trustee (except in ch. 9 cases)	Within the time fixed for filing objections		•		•										R. 5005 R. 9034	

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		3020(b)(2)	Notice	Notice of hearing on plan confirmation	- Clerk - Another person as court directs	- Debtor - Trustee - Creditors - Indenture trustees	28 days				•										R.2002(b) R. 9006(d) R. 9007	
		3020(b)(2)	Notice	Notice of hearing on plan confirmation	- Clerk - Another person as court directs	U.S. trustee	28 days		•		•										R. 5005 R. 9006(d) R. 9007 R. 9034	
		3020(c)(2)	Notice	Notice of the entry of order of confirmation	Clerk	- Debtor - Trustee - Creditors - Equity security holders - Other party in interest - Any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code	Promptly upon entry of the order				•											
		3020(c)(2)	Notice	Notice of the entry of order of confirmation	Clerk	U.S. trustee	Promptly upon entry of the order		•		•										R. 5005 R. 9007 R. 9034	
3022	Final Decree in Chapter 11 Reorganization Case		Motion	Motion to close the case	- Party in interest - Court (sua sponte)	Affected parties (not specified)	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
			Decree	Case closing / final decree	Court	Affected parties	After an estate is fully administered													•		
4001	Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash	4001(a)	Motion	Motion for relief from automatic stay or motion to prohibit or condition the use, sale, or lease of property	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	

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						(ch. 9 & 11) - Other entities as court directs																
		4001(a)	Motion	Motion to prohibit or condition the use, sale, or lease of property	Movant	U.S. trustee	Not later than 7 days before specified hearing		•												R. 9006(d) R. 9034	
		4001(a)	Notice	Notice of relief from automatic stay or notice of prohibition or condition the use, sale, or lease of property	Party obtaining relief	- Trustee - Debtor - Debtor in possession	Immediately											•			R. 9007	
		4001(a)	Notice	Notice of prohibition or condition the use, sale, or lease of property	Party obtaining relief	U.S. trustee	Immediately		•		•										R. 5005 R. 9007 R. 9034	
		4001(a)	Order	Order granting relief from automatic stay or granting prohibition or condition the use, sale, or lease of property	Party obtaining relief	- Trustee - Debtor in possession	Forthwith				•								• *Otherwise transmit*			
		4001(a)	Order	Order granting prohibition or condition the use, sale, or lease of property	Party obtaining relief	U.S. trustee	Forthwith		•		•										R. 5005 R. 9034	
		4001(a)	Notice	Notice of objection to relief from	Adversely affected party	Party obtaining relief without notice	2 days													•	R. 9007	

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				automatic stay or prohibition or condition the use, sale, or lease of property																		
		4001(a)	Notice	Notice of objection prohibition or condition the use, sale, or lease of property	Adversely affected party	U.S. trustee	2 days		•		•										R. 5005 R. 9007 R. 9034	
		4001(a)	Motion	Motion for reinstatement of stay or reconsideration of order	Movant	- Party who obtained relief from stay - Trustee - Debtor in possession															R. 9006(d) R. 9013	
		4001(b)	Motion	Motion for authority to use cash collateral	Movant	- Any entity with an interest in the cash collateral - Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4001(b)	Motion	Motion for authority to use cash collateral	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4001(b)	Notice	Notice of hearing on motion for authority to use cash	Not specified	- Parties on whom service of the motion is required - Other entities	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	

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				collateral		as court directs																
		4001(b)	Notice	Notice of hearing on motion for authority to use cash collateral	Not specified	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9007 R. 9034	
		4001(c)	Motion	Motion for authority to obtain credit	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 R. 9034	
		4001(c)	Motion	Motion for authority to obtain credit	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4001(c)		Notice of hearing on motion for authority to obtain credit	Not specified	- Parties on whom service of the motion is required - Other entities as court directs	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		4001(c)		Notice of hearing on motion for authority to obtain credit	Not specified	U.S. trustee	Not later than 7 days before specified hearing		•		•									"	R. 5005 R. 9006(d) R. 9007 R. 9034	
		4001(d)	Motion	Motion to approve agreement relating to relief from the automatic stay	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors'	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	

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						committee (ch. 9 & 11) - Other entities as court directs																
		4001(d)	Motion	Motion to approve agreement relating prohibiting or conditioning the use, sale, or lease of property	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4001(d)	Motion	Motion to approve agreement relating prohibiting or conditioning the use, sale, or lease of property	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4001(d)	Motion	Motion to approve agreement providing adequate protection	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4001(d)	Motion	Motion to approve agreement for use of cash collateral	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4001(d)	Motion	Motion to approve	Movant	U.S. trustee	Not later than 7 days before		•		•										R. 5005 R. 9006(d)	

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				agreement for use of cash collateral			specified hearing														R. 9034	
		4001(d)	Motion	Motion to approve agreement for obtaining credit	Movant	- Creditor committees or authorized agents of creditor committees - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11) - Other entities as court directs	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4001(d)	Motion	Motion to approve agreement for obtaining credit	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4001(d)	Notice	Notice of time to file objections	Not specified	- Parties on whom service of the motion is required - Other entities as court directs	Not specified				•										R. 9007	
		4001(d)	Notice	Notice of time to file objections	Not specified	U.S. trustee	Not specified		•		•										R. 5005 R. 9007 R. 9034	
		4001(d)	Notice	Notice of hearing on motion	Court	- Objector - Movant - Parties on whom service is required - Other entities as court directs	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9007	
		4001(d)	Notice	Notice of hearing on motion	Court	U.S. trustee	Not later than 7 days before specified hearing		•		•									•	R. 5005 R. 9006(d) R. 9007 R. 9034	
		4001(d)	Objection	Objection to motion to approve agreement relating to relief from the automatic stay, prohibiting or	Objector	- Debtor - Trustee	Within 14 days of receiving notice of time to file objections	•	•	•	•	•			• "written consent required"	•					R. 9006(d) R. 9014 F.R.C.P.5	

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				conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit																		
		4001(d)	Objection	Objection to motion prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit	Objector	U.S. trustee	Within 14 days of receiving notice of time to file objections		•		•				``						R. 5005 R. 9006(d) R. 9034	
4003	Exemptions	4003(b)	Objection	Objection to a claim of exemption	Trustee	- Debtor - Debtor's attorney - Any person filing the list of exempt property - The attorney of any person filing the list of exempt property	Any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption.	•			•												
		4003(b)	Request	Request for extension of time to file objection to claim of exemptions	Filing party	Affected parties	Before time to object expires														• "Files"		
		4003(b)	Objection	Objection to a claim of exemption	Party in interest	- Trustee - Debtor - Debtor's attorney - Any person filing the list of exempt property - The attorney of any person filing the list of exempt property	Within 30 days after the meeting of creditors or any amendment to the list or schedule[2]	•			•												

[2] An objection to an exemption based on section 522(q) must be filed before the closing of the case.

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		4003(d)	Motion	Motion to avoid a lien or transfer of exempt property	Debtor	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4003(d)	Objection	Objection to motion to avoid lien or transfer of exempt property	Objector	Debtor	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
4004	Grant or Denial of Discharge	4004(a)	Complaint	Complaint objecting to discharge (ch. 7)	Complainant	Affected parties (not specified)	No later than 60 days after meeting creditors	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4	
		4004(a)	Complaint	Complaint objecting to discharge (ch. 7)	Complainant	U.S. trustee	No later than 60 days after meeting creditors		•		•										R. 5005 R. 9034	
		4004(a)	Motion	Motion under 11 USC § 727(a)(8), (a)(9) objecting to discharge (ch. 7)	Movant	Affected parties (not specified)	No later than 60 days after meeting of creditors	•		•	•		•	•			• *As court directs*				R. 4004(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4004(a)	Motion	Motion under 11 USC § 727(a)(8), (a)(9) objecting to discharge (ch. 7)	Movant	U.S. trustee	No later than 60 days after meeting of creditors		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(a)	Complaint	Complaint objecting to discharge (ch.11)	Complainant	Affected parties (not specified)	No later than hearing on confirmation	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4	
		4004(a)	Complaint	Complaint objecting to discharge (ch.11)	Complainant	U.S. trustee	No later than hearing on confirmation		•		•						• *As court directs*				R. 5005 R. 9034	
		4004(a)	Motion	Motion objecting to discharge under 11	Movant	Affected parties (not specified)	No later than 60 days after meeting of creditors	•		•	•		•	•			• *As court directs*				R. 4004(d) R. 7004 R. 9006(d) R. 9014	

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				USC 1328(f) (ch. 13)																	F.R.C.P.4	
		4004(a)	Motion	Motion objecting to discharge under 11 USC 1328(f) (ch. 13)	Movant	U.S. trustee	No later than 60 days after meeting of creditors		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(a)	Notice	Notice of time to object to discharge	Not specified	- U.S. trustee - Trustee - Trustee's attorney - All creditors	At least 28 days of time so fixed as provided in R. 2002(f) and (k)				•										R. 2002(f),(k) R. 9007	
		4004(b)	Motion	Motion to extend time to object to discharge before time has expired	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4004(b)	Motion	Motion to extend time to object to discharge before time has expired	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(b)	Motion	Motion to extend time to object to discharge after time has expired	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4004(b)	Motion	Motion to extend time to object to discharge after time has expired	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(b)	Notice	Notice of hearing on motion to extend time to object to discharge	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing													• "Court shall designate"	R. 9006(d) R. 9007	
		4004(b)	Notice	Notice of hearing on motion to	Not specified	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9007	

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				extend time to object to discharge																	R. 9034	
		4004(c)	Motion	Motion to defer entry of order granting discharge	Movant	Other entities as court may direct	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4004(c)	Motion	Motion to defer entry of order granting discharge	Movant	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(c)	Motion	Motion to defer entry of order granting discharge	Objecting party	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9034	
		4004(d)	Objection	Objection to discharge	Objector	Other entities as court may direct	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		4004(d)	Objection	Objection to discharge	Objector	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9034	
		4004(g)	Notice	Notice of discharge	Clerk	- Trustee - Trustee's attorney - All creditors	Promptly				•										R. 9007	
		4004(g)	Notice	Notice of discharge	Clerk	- Trustee - Trustee's attorney - All creditors	Promptly		•		•										R. 5005 R. 9007 R. 9034	
4006	Notice of No Discharge		Notice	Notice of no discharge	Clerk	All parties in interest	Promptly				•										R. 2002 R. 9007	
	Notice of No Discharge		Notice	Notice of no discharge	Clerk	U.S. trustee	Promptly		•		•										R. 2002 R. 5005 R. 9007 R. 9034	
4007	Determination of Dischargeability of a Debt	4007(a)	Complaint	Complaint to determine the dischargeability of a debt	- Debtor - Any creditor	Affected parties (not specified)	Within 7 days after summons is issued	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4	
		4007(c)	Notice	Notice of time to file complaint to determine the dischargeablity of a debt under	The court	All creditors	No less than 30 days before deadline to file complaint to determine dischargeability of a debt				•										R. 2002 R. 9007	

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				11 USC 523(c) (ch. 7, 11, 12, 13)																		
		4007(c)	Motion	Motion to extend time for filing complaint to determine dischargeability of a debt	Movant	Affected parties (not specified)	Not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 7005 R. 9006(d) R. 9013 F.R.C.P.5	
		4007(d)	Motion	Motion for discharge under 11 USC 1328(b)	Debtor	Affected parties (not specified)	Not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 7005 R. 9006(d) R. 9013 F.R.C.P.5	
		4007(d)	Notice	Notice of time to file complaint to determine the dischargeablity of a debt under 11 USC 523(b) (ch. 13)	The court	All creditors	No less than 30 days before deadline to file complaint to determine dischargeability of a debt				•										R. 2002 R. 9007	
		4007(d)	Motion	Motion to extend time for filing complaint to determine the dischargeablity of a debt under 11 USC 523(b) (ch. 13)	Party in interest	Affected parties (not specified)	Not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 7005 R. 9006(d) R. 9013 F.R.C.P.5	
		4007(d)	Notice	Notice of hearing on motion to extend time for filing complaint to determine the dischargeablity of a debt under 11 USC 523(b) (ch. 13)	Not specified	Affected parties (not specified)	Not later than 7 days before specified hearing				•										R. 2002 R. 9006(d) R. 9007	
5004	Disqualification		Various	Papers intended for U.S. trustee erroneously delivered elsewhere	Person or entity receiving erroneous documents	U.S. trustee			•		•									R. 5005	
5006	Certification of Copies of Papers		Record	Certified copy of record	Clerk	Requesting party	Upon payment of prescribed fee													•		
5008	Notice Regarding		Notice	Notice that	Clerk	Creditors	Within 10 days after				•										R. 2002	

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	Presumption of Abuse in Chapter 7 Cases of Individual Debtors			debtor has filed a statement indicating presumption of abuse			the date of the filing of the petition														
			Notice	Notice that debtor has not filed the statement indicating whether a presumption of abuse has arisen	Clerk	Creditors	Within 10 days after the date of the filing of the petition				•										R. 2002
			Notice	Notice that debtor has later filed a statement indicating presumption of abuse	Clerk	Creditors	Promptly as practicable				•										R. 2002
5009	Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt	5009(a)	Objection	Objection to trustee's final report and final account	- Objector - U.S. trustee	- Trustee - Entities as court directs	30 days after trustee has filed a final report and final account													• "Filed"	
		5009(b)	Notice	Notice of failure to file R. 1007(b)(7) statement	Clerk	Debtor	Promptly if the debtor does not file required statement within 45 days after the first date set for the meeting of creditors under 11 USC 341(a)													• "Court shall designate"	R. 9007
		5009(c)	Report	Final report describing the nature and results of the foreign representative's activities in the court	Foreign representative	U.S. trustee	When the purpose of the representative's appearance in the court is completed													•	
		5009(c)	Notice	Notice of filing final report describing the nature and results of the foreign representative's activities in the court	Foreign representative	- Debtor - All persons or bodies authorized to administer foreign proceedings of the debtor - All parties to litigation pending in the United States in which the debtor was a	When the purpose of the representative's appearance in the court is completed													• "Court shall designate"	R. 9007

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						party at the time of the filing of the petition - Other entities as the court may direct																
		5009(c)	Objection	Objection to final report in chapter 15 case	- Objector - U.S. trustee	Other entities as court may direct	Within 30 days after the certificate is filed													• "Filed"		
5010	Reopening Cases		Motion	Motion to reopen case	- Debtor - Other party in interest	Other entities as court may direct	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
5011	Withdrawal and Abstention from Hearing a Proceeding	5011(a)	Motion	Motion for withdrawal	Movant	Other entities as court may direct	Not later than 7 days before specified hearing														R. 9006(d) R. 9013	
		5011(b)	Motion	Motion for abstention	Movant	Parties to the proceeding	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
5012	Agreements Concerning Coordination of Proceedings in Chapter 15 Cases		Notice	Notice of hearing on motion to approve agreement under agreement under 11 U.S.C. 1527(4)	Movant	U.S. trustee	No later than 30 days before hearing on the motion		•		•										R. 5005 R. 5012	
			Motion	Motion for approval of an agreement under sec. 1527(4)	Movant	- Debtor - All persons or bodies authorized to administer foreign proceedings of debtor - All entities against whom provisional relief is being sought - All parties to	30 days													•	R. 9006(d) R. 9013	

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						litigation in U.S. to which debtor was a party - Entities as court directs																
			Motion	Motion for approval of an agreement under sec. 1527(4)	Movant	U.S. trustee	30 days		•		•										R. 5005	
			Notice	Notice of hearing on motion to approve agreement under agreement under 11 U.S.C. 1527(4)	Movant	- Debtor - All persons or bodies authorized to administer foreign proceedings of the debtor - All entities against whom provisional relief is being sought under § 1519 - All parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition - Other entities as the court may direct	No later than 30 days before hearing on the motion											•	R. 9006(d) R. 9007	
6001	Burden of Proof as to Validity of Postpetition Transfer																					
6002	Accounting by Prior Custodian of Property of the Estate	6002(a)	Report	Report and account of estate property	Prior custodian	U.S. trustee	Promptly		•		•										R. 5005	
		6002(b)	Notice	Notice of hearing on accounting of prior custodian of property of the estate	Court	Parties in interest	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9007	
6004	Use, Sale, or Lease of Property	6004(a)	Notice	Notice of proposed use, sale, or lease of	- Clerk - Another person as	- Debtor - Trustee - Creditors	21 days				•										R. 2002 R. 9007	

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				property, other than cash collateral, not in the ordinary course of business	authorized by court	- Indenture trustee's - Creditor's committee or authorized agents																
		6004(a)	Notice	Notice of proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business	- Clerk - Another person as authorized by court	U.S. trustee	21 days		•		•										R. 2002 R. 5005 R. 9007 R. 9034	
		6004(b)	Objection	Objection to a proposed use, sale, or lease of property	Objector	Party against whom relief is sought	No later than 7 days before date of proposed action	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		6004(b)	Objection	Objection to a proposed use, sale, or lease of property	Objector	U.S. trustee	No later than 7 days before date of proposed action		•		•										R. 2002 R. 5005 R. 9006(d) R. 9034	
		6004(c)	Motion	Motion for authority to sell property free and clear of liens or other interests	Movant	Parties who have liens or other interests in the property to be sold	No later than 7 days before time specified for hearing	•		•	•		•	•			• *As court directs*			•	R. 7004 R. 9006 R. 9014 F.R.C.P.4	
		6004(c)	Motion	Motion for authority to sell property free and clear of liens or other interests	Movant	U.S. trustee	No later than 7 days before time specified for hearing		•		•										R. 2002 R. 5005 R. 9006(d) R. 9034	
		6004(d)	Notice	Notice for sale of property under $2,500	Seller	- Creditors - Indenture trustees - Creditors' committees - U.S. trustee - Other persons as court may	When all of the nonexempt property of the estate has an aggregate gross value less than $2,500													• "Court shall designate"	R. 9007	

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						direct																
		6004(d)	Notice	Notice for sale of property under $2,500	Seller	U.S. trustee	When all of the nonexempt property of the estate has an aggregate gross value less than $2,500		•		•										R. 5005 R. 9007 R. 9034	
		6004(d)	Objection	Objection to notice for sale of property under $2,500	Objector	Affected parties (not specified)	Within 14 days of mailing of the notice	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006 R. 9014 F.R.C.P.4	
		6004(d)	Objection	Objection to notice for sale of property under $2,500	Objector	U.S. trustee	Within 14 days of mailing of the notice		•		•						• *As court directs*				R. 5005 R. 9007 R. 9034	
		6004(f)	Statement	Itemized statement of the property sold	Auctioneer (if property sold at auction)	- Trustee - Debtor in possession - Ch. 13 debtor	Not specified												• (*"furnish"*)			
		6004(f)	Statement	Itemized statement of the property sold	Auctioneer (if property sold at auction)	U.S. trustee	Not specified		•		•										R. 5005 R. 9034	
		6004(f)	Statement	Statement that property was not sold at auction	- Trustee - Debtor in possession - Ch. 13 debtor (if property sold at private sale)	U.S. trustee	Not specified		•		•										R. 5005 R. 9034	
		6004(g)	Notice	Notice of appointment of consumer privacy ombudsman	U.S. trustee	Unspecified	No later than 7 days before time specified for hearing												• "Filed"		R. 9007	
		6004(g)	Motion	Motion for sale of personally identifiable information	Movant	- Creditors' committee - 20 largest unsecured creditors if there is no unsecured creditors' committee (ch. 9 & 11 cases) - Other entities as directed by court	No later than 7 days before time specified for hearing	•		•	•		•	•			• *As court directs*				R. 1007(d) R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		6004(g)	Motion	Motion for	Movant	U.S. trustee	Not later than 7		•		•										R. 5005	

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				sale of personally identifiable information			days before specified hearing														R. 9006(d)	
6006	Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease	6006(c)	Motion	Motion to assume, reject, or assign an executory contract or unexpired lease	Movant	- Other party to the contract or lease - Other parties in interest as court may direct - U.S. trustee	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		6006(c)	Motion	Motion to require trustee to assume, reject, or assign an executory contract or unexpired lease	Movant	- Other party to the contract or lease - Other parties in interest as court may direct - U.S. trustee	Not later than 7 days before specified hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
6007	Abandonment or Disposition of Property	6007(a)	Notice	Notice of proposed abandonment or disposition of property	Trustee or debtor in possession	- U.S. trustee - Creditors - Indenture trustees - Creditors' committees	Not specified													• "Court shall designate"	R. 9007	
		6007(a)	Objection	Objection to notice of proposed abandonment or disposition of property	Objector	- Affected parties - Entities as court directs	Within 14 days of the mailing of the notice of proposed abandonment or disposition of property	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		6007(a)	Notice	Notice of hearing on objection to proposed abandonment or disposition of property	Court	Other entities as court may direct	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9007	
		6007(a)	Notice	Notice of hearing on objection to proposed	Court	U.S. trustee	Not later than 7 days before specified hearing		•		•										R. 5005 R. 9006(d) R. 9007	

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				abandonment or disposition of property																		
		6007(b)	Motion	Motion requiring trustee or debtor in possession to abandon property	Movant	- Trustee - Debtor in possession	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
6008	Redemption of Property from Lien or Sale		Motion	Motion to authorize the redemption of property from a lien or from a sale to enforce a lien	- Debtor - Trustee -Debtor in possession	- Secured creditor - Party in interest	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	
6011	Disposal of Patient Records in Health Care Business Case	6011(a)	Notice	Notice of disposal of patient records – by publication	Not specified	Affected parties (not specified)	Promptly										•				11 U.S.C. 351	
		6011(b)	Notice	Notice of disposal of patient records – by mail	Not specified	- Patients - Patient's designated contact - Attorney general of state where healthcare facility is located - Insurance carriers	During first 180 days following publication of notice				•										11 U.S.C. 351	
7003	Commencement of Adversary Proceeding		Complaint	Complaint	Complaining party	Affected parties (not specified)	Within 7 days after summons is issued	•		•	•		•	•			• *As court directs*				R. 7004(e) F.R.C.P.3	
7004	Process; Service of Summons, Complaint	7004(a)	Summons	Summons	- Clerk	Defendants	After filing the complaint	•		•	•		•	•			• *As court directs*				R. 7004(e) F.R.C.P.4	
		7004(h)(2)	Notice	Notice of an application to permit service on the institution by first class mail sent to an officer of the	Complaining party	Insured depository institution	Not specified													• "Court shall designate"	R. 9007	

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				institution designated by the institution																		
7005	Service and Filing of Pleadings and Other Papers		Order	Order stating service is required	Party in interest	Every party		•	•	•	•	•			• "written consent required"	•					F.R.C.P.5	
			Pleading	Pleading filed after the original complaint	Party in interest	Every party		•	•	•	•	•			• "written consent required"	•					F.R.C.P.5	
			Discover	Discovery paper	Party in interest	Every party		•	•	•	•	•			• "written consent required"	•					F.R.C.P.5	
			Motion	Written motion	Party in interest	Every party		•	•	•	•	•			• "written consent required"	•					F.R.C.P.5	
			Notice	Written notice	Party in interest	Every party		•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 R. 9007	
			Pleading	Pleading that asserts new claim against a party that failed to appear	Party in interest	Party that failed to appear		•		•	•		•	•			• *As court directs*				F.R.C.P.4 F.R.C.P.5	
7012	Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings	7012(a)	Answer	Answer	Defendant	Plaintiff	30 days after issuance of summons	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Answer	Answer to cross-claim	Party served with a pleading asserting a cross-claim	Plaintiff	21 days after service of cross-claim	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Answer	Answer by publication	Defendant	Plaintiff	The court shall prescribe										•					
		7012(a)	Answer	Answer to party in a foreign jurisdiction	Defendant	Plaintiff	The court shall prescribe	•			•								• F.R.C.P 4(f)		R. 7005 F.R.C.P. 5	
		7012(a)	Answer	Reply to counter-claim	Plaintiff	Party sending counter-claim	21 days after service of answer	•	•	•	•	•			• "written consent	•					R. 7005 F.R.C.P. 5	

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															required"							
		7012(a)	Answer	Answer provided by United States	United States	Plaintiff	35 days after issuance of summons	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Answer	Answer to a cross-claim	United States	Party sending cross-claim	35 days after service upon the U.S. attorney of the pleading in which the claim is asserted	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Answer	Reply to a counter-claim	United States	Party sending counter-claim	35 days after service upon the U.S. attorney of the pleading in which the claim is asserted	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Motion	Responsive pleading if court denies motion or postpones disposition	Movant	Affected parties (not specified)	14 days after notice of the court's action	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Motion	Responsive pleading to a motion for a more definite statement	Party from whom a more definite statement is requested	Party asking for a more definite statement	14 days after service of a more definite statement	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P. 5	
		7012(a)	Motion	Motion for a more definite statement	Party requesting more definite statement	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					R. 7005 F.R.C.P.5 F.R.C.P.6(c)	
7014	Third-Party Practice		Motion	Motion by third-party to file complaint more than 14 days after serving original answer	Third-party plaintiff	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P. 14	
			Motion	Motion to strike third-party claim	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P. 14	
7015	Amended and Supplemental Pleadings		Notice	Notice of relation back of amendments	Complainant	Defendant	120 days after complaint is filed													•	F.R.C.P.4(m) F.R.C.P.15(c) R. 9007	
			Notice	Notice to	Complainant	- U.S. attorney or designee	120 days after complaint is filed				•								• "Delivered"		F.R.C.P.15(c) R. 9007	

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				United States of relation back of amendments		- U.S. Attorney General - Officer - Agency																
			Motion	Motion for supplemental pleading	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.15(d)	
			Notice	Notice of motion for supplemental pleading	Movant	Affected parties (not specified)	Reasonable													•	F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.15(d) R. 9007	
7016	Pre-Trial Procedure; Formulating Issues		Motion	Motion for sanctions	- Movant - Court (sua sponte)	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.17(f)	
7021	Misjoinder and Non-Joinder of Parties		Motion	Motion to add or drop a party	- Movant - Court (sua sponte)	Affected parties (not specified)	At any time	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.21	
7023	Class Proceedings		Notice	Notice to class members	Not specified in rule	Class members	Not specified in rule												• "Best notice as practicable"		R. 9007	
			Motion	Motion for attorney fees and non-taxable costs	Movant	All parties	At a time the court sets	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.23(h)	
			Notice	Notice of motion for attorney fees and non-taxable costs	Movant	All parties	At a time the court sets	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.23(h) R. 9007	
			Motion	Motion for attorney fees and non-taxable costs	Movant	Class members	At a time the court sets												• "Directed in a reasonable manner"		F.R.C.P.23(h)	
			Notice	Notice of motion for attorney fees and non-taxable costs	Movant	Class members	At a time the court sets												• "Directed in a reasonable manner"		F.R.C.P.23(h) R. 9007	
7023.1	Derivative Actions		Notice	Notice of settlement, dismissal, compromise in a derivative action	Not specified in rule	- Shareholders - Members	Not specified in rule												• "As court orders"		F.R.C.P.23.1(c) R. 9007	
7023.2	Adversary Proceedings						N / A															

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	Relating to Unincorporated Associations																					
7024	Intervention		Motion	Motion to intervene	Movant	Affected parties (not specified)	Timely	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.24(a) F.R.C.P.24(c)	
7025	Substitution of Parties		Motion	Motion for substitution	- Any party - Decedent's successor or representative	Affected parties (not specified)	- 14 days before time specified for hearing - 90 days after service of statement noting parties death	•	•	•	•	•			• "written consent required"	•					R. 2012 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.25(a)	
			Notice	Notice of hearing on motion for substitution	- Any party - Decedent's successor or representative	Affected parties (not specified)	- 14 days before time specified for hearing - 90 days after service of statement noting parties death	•	•	•	•	•			• "written consent required"	•					R. 2012 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.25(a) R. 9007	
			Motion	Motion for substitution	- Any party - Decedent's successor or representative	Non-party	- 14 days before time specified for hearing - 90 days after service of statement noting parties death	•		•	•		•	•							R. 2012 F.R.C.P.4 F.R.C.P.25(a)	
			Notice	Notice of hearing on motion for substitution	- Any party - Decedent's successor or representative	Non-party	- 14 days before time specified for hearing - 90 days after service of statement noting parties death	•		•	•		•	•							R. 2012 F.R.C.P.4 F.R.C.P.6(c) F.R.C.P.25(a) R. 9007	
			Statement	Statement noting death	- Any party - Decedent's successor or representative	Affected parties (not specified)	Not specified	•	•	•	•	•			• "written consent required"	•					R. 2012 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.25(a)	
			Statement	Statement noting death	- Any party - Decedent's successor or representative	Non-party	Not specified	•		•	•		•	•							R. 2012 F.R.C.P.4 F.R.C.P.25(a)	
			Motion	Motion for transfer of interest	- Any party - Decedent's successor or representative	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					R. 2012 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.25(c)	
			Notice	Notice of hearing on	- Any party - Decedent's	Affected parties (not	14 days before time specified for	•	•	•	•	•			• "written consent	•					R. 2012 F.R.C.P.5	

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				motion for transfer of interest	successor or representative	specified)	hearing								required"						F.R.C.P.6(c) F.R.C.P.25(c) R. 9007	
			Motion	Motion for transfer of interest	- Any party - Decedent's successor or representative	Non-party	14 days before time specified for hearing	•		•	•		•	•							R. 2012 F.R.C.P.4 F.R.C.P.25(c)	
			Notice	Notice of hearing on motion for transfer of interest	- Any party - Decedent's successor or representative	Non-party	14 days before time specified for hearing	•		•	•		•	•							R. 2012 F.R.C.P.4 F.R.C.P.6(c) F.R.C.P.25(c) R. 9007	
7026	General Provisions Governing Discovery		Motion	Motion to compel discovery	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.26(b)	
			Motion	Motion for protective order	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.26(b) F.R.C.P.26(c)	
			Motion	Motion to limit frequency or extent of discovery	- Movant - Court (sua sponte)	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.26(b)	
			Motion	Motion on the timing and sequence of discovery	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.26(d)	
			Discovery	Discovery plan	Parties in interest	Court	14 days after conference of parties												• "Submit"		F.R.C.P.26(f)	
			Motion	Motion for sanction for improper certification	- Movant - Court (sua sponte)	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.26(g)	
7027	Depositions Before Adversary Proceedings or Pending Appeal		Motion	Petition for deposition to perpetuate testimony	Movant	Each expected adverse party	21 days before hearing date	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.27(a)	Use of word "serve" suggests rules for motions.
			Notice	Notice of hearing for deposition to perpetuate testimony	Movant	Each expected adverse party	21 days before hearing date	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.27(a) R. 9007	Use of word "serve" suggests rules for motions.
			Motion	Petition for deposition to perpetuate	Movant	Each expected adverse party	21 days before hearing date	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.27(b)	Use of word "serve" suggests rules for motions.

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				testimony pending appeal																		
			Notice	Notice of hearing for deposition to perpetuate testimony pending appeal	Movant	Each expected adverse party	21 days before hearing date	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.27(b) R. 9007	Use of word "serve" suggests rules for motions.
7030	Depositions Upon Oral Examination		Notice	Notice of oral questioning	Party asking questions	Every other party	Reasonable												• "written"		F.R.C.P.30(b) R. 9007	
			Notice	Notice of alternative method of recording testimony	Party asking questions	- Deponent - Other parties														•	F.R.C.P.30(b) R. 9007	
7031	Deposition Upon Written Questions		Discovery	Direct questions	Party asking questions	Every other party	Not specified	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.31(a)	Objection must be served in writing. Use of word "serve" suggests rules for motions.
			Notice	Notice of written questions	Party asking questions	Every other party	Not specified	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.31(a) R. 9007	Objection must be served in writing. Use of word "serve" suggests rules for motions.
			Discovery	Cross questions	Party asking questions	Every other party	14 days after being served with notice and direct questions	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.31(a)	Objection must be served in writing. Use of word "serve" suggests rules for motions.
			Discovery	Redirect questions	Party asking questions	Every other party	7 days after being served with cross questions	•	•	•	•	•			• "written consent required"	•					F.R.C.P.31(a)	Objection must be served in writing. Use of word "serve" suggests rules for motions.
			Discovery	Re-cross questions	Party asking questions	Every other party	7 days after being served with redirect questions	•	•	•	•	•			• "written consent required"	•					F.R.C.P.31(a)	Objection must be served in writing. Use of word "serve" suggests rules for motions.
7032	Use of Depositions in Adversary Proceedings		Motion	Motion to use deposition of an unavailable witness	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.32(a)	
			Notice	Notice of	Movant	Affected	14 days before	•	•	•	•	•			•	•					F.R.C.P.5	

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				hearing on motion to use deposition of unavailable witness		parties (not specified)	time specified for hearing								"written consent required"						F.R.C.P.6(c) F.R.C.P.32(a) R. 9007	
			Transcript	Transcript of deposition testimony	Party offering deposition testimony	- Affected parties (not specified) - Court	Not specified in rule												• "Must provide"		F.R.C.P.32(c)	
			Objection	Objection to error or irregularity in a deposition notice	Objector	Party giving notice	Promptly	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.32(d)	Objection must be served in writing. Use of word "serve" suggests rules for motions
			Objection	Objection to a written question	Objector	Party submitting the question	Within the time served for responsive questions	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.32(d)	Objection must be served in writing. Use of word "serve" suggests rules for motions
			Objection	Objection to a written question, re-cross question	Objector	Party submitting the question	7 days after being served	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.32(d)	Objection must be served in writing. Use of word "serve" suggests rules for motions
			Motion	Motion to suppress deposition due to how officer transcribed the testimony	Movant	Affected parties (not specified)	Promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.32(d)	Objection must be served in writing.
7033	Interrogatories to Parties		Discovery	Interrogatories	Requesting party	Affected parties (not specified)	Not specified	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.33(a)	Use of word "serve" suggests rules for motions.
			Discovery	Response to interrogatories	Responding party	Affected parties (not specified)	Not specified	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.33(a)	Use of word "serve" suggests rules for motions.
7034	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes		Discovery	Request to produce documents	Requesting party	Affected parties (not specified)	Not specified	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.34(a)	Use of word "serve" suggests rules for motions.
			Discovery	Response to request to produce documents	Responding party	Affected parties (not specified)	30 days after being served												• "In writing"		F.R.C.P.34(b)	
7035	Physical and		Motion	Motion to	Movant	- Other parties	14 days before	•	•	•	•	•			•	•					F.R.C.P.5	

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	Mental Examination of Persons			order examination		- The person to be examined	time specified for hearing								"written consent required"						F.R.C.P.6(c) F.R.C.P.35(a)	
			Notice	Notice of motion to order examination	Movant	- Other parties - The person to be examined	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.35(a) R. 9007	
			Report	Examiner's report	Party who requested examination	Party requesting examiner's report	On request												• "Deliver"		F.R.C.P.35(b)	
			Motion	Motion to order delivery of examiner's report	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.35(b)	
7036	Requests for Admission		Admission	Request for admission	Requesting party	Other party	Not specified in rule	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.36(a)	Use of word "serve" suggests rules for motions.
			Objection	Objection to request for admission	Objector	Other party	30 days after being served	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.36(a)	Use of word "serve" suggests rules for motions.
			Motion	Motion to determine sufficiency of an answer or objection	Movant	Other party	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.36(a)	
			Motion	Motion to amend or withdraw admission	Movant	Other party	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.36(b)	
7037	Failure to Make Discovery: Sanctions		Motion	Motion for order compelling disclosure or discovery	Movant	- Other parties - All affected parties	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.37(a)	
			Notice	Notice of motion compelling disclosure or discovery	Movant	- Other parties - All affected parties	Not specified in rule													•	F.R.C.P.37(a) R. 9007	
			Motion	Motion to compel disclosure	Movant	- Other parties - All affected parties	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.37(a)	
			Motion	Motion to compel a discovery	Movant	- Other parties - All affected parties	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.37(a)	

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				response																		
7041	Dismissal of Adversary Proceedings		Notice	Notice of complaint objecting to discharge	Plaintiff	- Trustee - Other person as directed by court	Not specified in rule													•	F.R.C.P.41	
			Notice	Notice of complaint objecting to discharge	Plaintiff	- U.S. trustee	Not specified in rule		•		•										R. 5005 F.R.C.P.41	
7052	Findings by the Court		Motion	Motion for amended or additional findings	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.52	
7054	Judgments; Costs		Motion	Motion for order for costs	Prevailing party	Affected parties	Not less than 7 days before specified hearing													•	R. 9006(d) R. 9013 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.54	
			Notice	Notice of order for costs other than attorney's fees	Clerk	Affected parties	14 days													•	R. 9007	
			Motion	Motion to review costs other than attorney's fees	Movant	Parties in interest	7 days after notice of order for costs other than attorney's fees													•	R. 9006(d) R. 9013 F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.54	
			Motion	Motion for attorney's fees	Movant	Parties in interest	14 days after entry of judgment	•	•	•	•	•			• "written consent required"	•				•	F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.54	
7055	Default		Notice	Notice of hearing on default judgment	Party seeking default judgment	- Party against whom a default judgment is sought who has appeared personally - Personal representative of party against whom a default judgment is sought who has appeared personally	7 days before hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.55(b) R. 9007	
7056	Summary		Motion	Motion for	Movant	Affected	14 days before	•	•	•	•	•			•	•					F.R.C.P.5	

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	Judgment			summary judgment		parties (not specified)	time specified for hearing								"written consent required"						F.R.C.P.6(c) F.R.C.P.56(a)	
			Notice	Notice of judgment independent of the motion	Court	Affected parties (not specified)	Give reasonable time to respond													•	F.R.C.P.56(f)	
			Notice	Notice of affidavit or declaration submitted in bad faith	Court	Affected parties (not specified)	Give reasonable time to respond													•	F.R.C.P.56(f) R. 9007	
7065	Injunctions		Motion	Motion for preliminary injunction	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.65	
			Notice	Notice of hearing on preliminary injunction	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.65(a) R. 9007	
7067	Deposit in Court		Notice	Notice of depositing property	Party depositing property	Every other party	Not specified													•	F.R.C.P.67(a) R. 9007	
7068	Offer of Judgment		Offer	Offer of judgment	Offering party	Opposing party	14 days before date set for trial	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.68(a)	
			Notice	Notice accepting offer	Opposing party	Offering party	Within 14 days after being served	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.68(a) R. 9007	
7087	Transfer of Adversary Proceeding		Motion	Motion to transfer an adversary proceeding to another district	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c)	
			Notice	Notice of hearing on motion to transfer an adversary proceeding to another district	Movant	Affected parties (not specified)	14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c)	
8001	Scope of Part VIII Rules; Definition of "BAP"; Method	8001																				Appears to require documents

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	of Transmission																					under Part VIII to be sent electronically
8003	Appeal as of Right--How Taken; Docketing the Appeal	8003(b)	Notice	Notice of appeal	Clerk	Clerk of district court or bankruptcy appellate panel	Promptly as soon as parties have filed answers or the time for filing answers has expired												• *Transmit*			
		8003(c)	Notice	Notice of appeal	Bankruptcy clerk	- Counsel of record for each party to the appeal, excluding appellant - U.S. trustee	File within 14 days after entry of judgment. Service by clerk not specified in rule.	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8002 R. 8011	
		8003(d)	Notice	Notice of appeal	Bankruptcy clerk	District or BAP clerk	Promptly								•						R. 8001	
8004	Appeal by Leave--How Taken; Docketing the Appeal	8004(a)	Notice	Notice of appeal	Appellant	Affected parties	Within 14 days after entry of judgment	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8002 R. 8003 R. 8011	
		8004(a)	Motion	Motion for leave to appeal	Movant	Affected parties	Within 14 days after entry of judgment	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8002 R. 8003 R. 8011	
		8004(b)	Motion	Response in opposition to motion for leave to appeal	Movant	Affected parties	Within 14 days after motion for leave to appeal is served	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8004(b)	Motion	Cross motion for leave to appeal	Movant	Affected parties	Within 14 days after motion for leave to appeal is served	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8004(c)	Notice	Notice of appeal	Bankruptcy clerk	District or BAP clerk	Promptly upon the filing of a notice of appeal								•						R. 8001	
8005	Election to Have an Appeal Heard by the District Court Instead of the BAP	8005(a)	Statement	Statement of election	Appellant	Affected parties	At the time of filing appeal	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011 28 USC 158(c)	
		8005(a)	Statement	Statement of election	Other party to appeal	Affected parties	Not later than 30 days after service of notice of the appeal	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011 28 USC 158(c)	

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		8005(b)	Documents	Documents relating to appeal (appellant's election)	Bankruptcy clerk	District clerk	Not specified in rule								•						R. 8001	
		8005(b)	Documents	Documents relating to appeal (election by party other than appellant)	BAP clerk	District clerk	Not specified in rule								•						R. 8001	
		8005(c)	Motion	Motion to determine validity of election	Movant	Affected parties	Within 14 days after statement of election is filed	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8006	Certifying a Direct Appeal to the Court of Appeals	8006(e)	Certification	Certification (*sua sponte*)	Clerk of the certifying court	- Parties to the appeal - U.S. trustee	Not specified in rule	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8003 R. 8011	
		8006(f)	Motion	Motion to request certification	Movant	- Parties to the appeal - U.S. trustee	Within 60 days after entry of the judgment	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8003 R. 8011	
		8006(f)	Motion	Response to motion for certification	Movant	Affected parties	Within 14 days after service motion to request certification	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8006(f)	Motion	Cross-request motion for certification	Movant	Affected parties	Within 14 days after the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8006(g)	Motion	Motion for permission to make a direct appeal to the court of appeals	Movant	Affected parties	Within 30 days after certification becomes effective	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8007	Stay Pending Appeal; Bonds; Suspension of Proceedings	8007(a)	Motion	Motion for stay of judgment	Movant	Affected parties	Before or at time of filing motion, but movant must give reasonable notice to all parties.	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8007(a)	Motion	Motion to approve supersedeas bond	Movant	Affected parties	Before or at time of filing motion, but movant must give reasonable notice to all parties.	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	

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		8007(a)	Motion	Motion for injunction while appeal is pending	Movant	Affected parties	Before or at time of filing motion, but movant must give reasonable notice to all parties.	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8007(a)	Motion	Motion for suspension or continuation of proceedings	Movant	Affected parties	Before or at time of filing motion, but movant must give reasonable notice to all parties.	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8008	Indicative Rulings	8008(b)	Notice	Notice that bankruptcy court states that it would grant the motion or that the motion raises a substantial issue	Movant	Clerk of court where appeal is pending	Promptly													● "Must notify"		
		8008(c)	Notice	Notice that bankruptcy court has decided the motion on remand	The parties	Clerk of the court where the appeal is pending	Promptly													● "Must notify"		
8009	Record on Appeal; Sealed Documents	8009(a)	Statement	Appellant's statement designating items to be included in the record on appeal and issues to be presented	Appellant	Appellee	Within 14 days after appellant's notice of appeal as of right becomes effective or an order granting leave to appeal is entered	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8009(a)	Statement	Appellee's statement designating additional items to be included in the record	Appellee	Appellant	Within 14 days after being served with appellant's statement	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8009(a)	Statement	Cross-appellant's statement designating additional items to be included in	Cross-appellant	Appellant	Within 14 days after being served with appellant's statement	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	

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				the record and issues to be presented																		
		8009(a)	Statement	Cross-appellee's statement designating additional items to be included in the record	Cross-appellee	Appellee	Within 14 days after being served with cross-appellant's statement	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8009(b)	Certificate	Certificate of appellant stating party is not ordering a transcript	Appellant or	Affected parties	Within 14 days after appellant's notice of appeal as of right becomes effective or an order granting leave to appeal is entered	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8009(b)	Certificate	Certificate of cross-appellant stating party is not ordering a transcript	Cross-appellant	Affected parties	Within 14 days after the appellant files a copy of the transcript or certificate of not ordering transcript	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8010	Completing and Transmitting the Record	8010(b)	Record	Record on appeal or notice that record on appeal is complete	Bankruptcy clerk	District or BAP clerk	When the record is complete								•					•	R. 8001 R. 8011	
		8010(b)	Notice	Notice that record on appeal is complete	District or BAP clerk	All parties to the appeal	Upon receiving record or notice that record is complete	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8010(c)	Record	Record on appeal for preliminary motion	Bankruptcy clerk	Clerk of any court where relief is sought	If a party moves for selected form of relief								•						R. 8001 R. 8011	
8011	Filing and Service; Signature	8011(b),(c)																				Rules for affecting service. For most documents, service required at time of filing.
8012	Corporate Disclosure Statement	8012(a)	Statement	Corporate disclosure statement	Any non-governmental corporate party	Affected parties	Before or at the time of filing its principal brief, or upon filing a motion, response, petition, or	• Un-represented litigant only			• Unrepre-sented litigant				•				• Unpresented litigant only. Third party		R. 8001 R. 8011	

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							answer in the district court or BAP, whichever occurs first.				only								commercial carrier.			
8013	Motions; Intervention	8013(a)	Motion	Motion to expedite appeal	Movant	Affected parties	Before or at the time of filing motion	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8013(a)	Affidavit	Affidavit supporting a motion	Movant	Affected parties	Before or at the time of filing motion	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8013(a)	Motion	Response to any motion	Party to the appeal	Affected parties	Within 7 days after service of the original motion	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8013(a)	Motion	Reply to response to any motion	Movant	Affected parties	Within 7 days after service of the response	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8013(d)	Motion	Emergency motion	Movant	Affected parties	Before or at the time of filing motion, but before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented parties in time for them to respond.	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8014	Briefs							N / A														
8015	Form and Length of Briefs; Form of Appendices and Other Papers							N / A														
8016	Cross-Appeals							N / A														
8017	Brief of an Amicus Curiae	8017(a)	Brief	Amicus curiae brief	- U.S. officer or agency - State	Affected parties	No later than 7 days after the principal brief of the party being supported is filed or, no later than 7 days after the appellant's principal brief is filed if neither party is supported	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8017(a)	Brief	Amicus curiae brief	Other amicus curiae	Affected parties	No later than 7 days after the principal brief of the party being	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial		R. 8001 R. 8011	

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							supported is filed or, no later than 7 days after the appellant's principal brief is filed if neither party is supported												carrier.			
		8017(a)	Notice	Notice of court's request of amicus curiae brief	District court or BAP (*sua sponte*)	All parties to an appeal	Not specified in rule	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8017(b)	Motion	Motion for leave to file amicus curiae brief	Other amicus curiae	Affected parties	No later than 7 days after the principal brief of the party being supported is filed or, no later than 7 days after the appellant's principal brief is filed if neither party is supported	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	Not required for U.S. or states
8018	Serving and Filing Briefs; Appendices	8018(a)	Brief	Appellant's principal brief	Appellant	Affected parties	Within 30 days after the docketing of notice that the record has been trans-mitted or is available electronically	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8018(a)	Brief	Appellee's brief	Appellee	Affected parties	Within 30 days after service of appellant's brief	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8018(a)	Brief	Appellant's reply brief	Appellant	Affected parties	Within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8018(b)	Brief	Appendix to appellant's principal brief	Appellant	Affected parties	Within 30 days after the docketing of notice that the record has been trans-mitted or is available electronically	● Un-represented litigant only			● Unrepre-sented litigant only				●				● Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8018(b)	Brief	Appendix to appellee's	Appellee	Affected parties	Within 30 days after service of	● Un-			● Unrepre-				●				● Unpresented		R. 8001 R. 8011	Appendix not required

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				brief			appellant's brief	represented litigant only			sented litigant only								litigant only. Third party commercial carrier.			
		8018(b)	Brief	Appendix for reply brief filed by appellant as cross-appellee	Appellant	Affected parties	Within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	Appendix not required
8019	Oral Argument	8019(a)	Statement	Statement why oral argument should or need not be permitted	Movant	Affected parties	Before or at time of filing statement	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8019(c)	Notice	Notice of date, time, place for oral argument	District court or BAP	Affected parties	Not specified in rule	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8019(c)	Motion	Motion to postpone argument	Movant	Affected parties	Before or at time of filing motion	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8019(c)	Motion	Motion to allow longer argument	Movant	Affected parties	Before or at time of filing motion	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8019(h)	Notice	Notice to counsel to reclaim exhibits	District clerk or BAP clerk	Counsel	Not specified in rule	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8020	Frivolous Appeal and Other Misconduct	8020(a)	Motion	Motion for frivolous appeal	Movant	Affected parties	Before or at time of filing motion	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8020(a)	Notice	Notice of frivolous appeal	District court or BAP	Affected parties	Not specified in rule	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
		8020(b)	Notice	Notice of other misconduct or failure to comply with court order	District court or BAP	- Attorney - Affected parties	Reasonable	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8021	Costs	8021(d)	Document	Itemized and	Party requesting	Affected	Within 14 days	•			•				•				•		R. 8001	

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				verified bill of costs	costs	parties	after entry of judgment on appeal	Un-represented litigant only			Unrepre-sented litigant only								Unpresented litigant only. Third party commercial carrier.		R. 8011	
		8021(d)	Motion	Motion objecting to itemized and verified bill of costs	Movant	Affected parties	Within 14 days after service of bill of costs	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8022	Motion for Rehearing	8022(a)	Motion	Motion for rehearing	Movant	Affected parties	Within 14 days after entry of judgment on appeal	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011 R. 8013	
8023	Voluntary Dismissal		Motion	Motion to dismiss appeal	Appellant	Affected parties	Before or at the time of filing motion	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8024	Clerk's Duties on Disposition of the Appeal	8024(b)	Notice	Notice of judgment on appeal	District clerk or BAP clerk	- Each party to the appeal - U.S. trustee - Bankruptcy clerk	Immediately upon entry of judgment	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8025	Stay of a District Court or BAP Judgment	8025(b)	Motion	Motion for stay pending appeal to the court of appeals	Movant	Affected parties	Before or at the time of filing motion	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8026	Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law	8026(b)	Notice	Notice required for imposition of sanctions where no controlling law	Not specified in rule	Affected parties	Not specified	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
8027	Notice of a Mediation Procedure		Notice	Notice of mediation procedure	Clerk	Affected parties	Promptly	• Un-represented litigant only			• Unrepre-sented litigant only				•				• Unpresented litigant only. Third party commercial carrier.		R. 8001 R. 8011	
9005.1	Constitutional Challenge to a Statute--Notice, Certification, and Intervention		Notice	Notice of challenge to federal or state statute	Party challenging federal or state statute	- U.S. Attorney General - State Attorney General	Promptly				•				•						F.R.C.P.5.1	
			Pleading	Pleading challenging federal or state statute	Party challenging federal or state statute	- U.S. Attorney General - State Attorney	Promptly				•				•						F.R.C.P.5.1	

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						General																
9006	Computing and Extending Time; Time for Motion Papers	9006(b)	Motion	Motion to enlarge time for taking action	Not specified	Affected parties	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	- Treated as motion for non-contested matter - Written motion required if filed after deadline
		9006(c)	Motion	Motion to reduce time for taking action	Not specified	Affected parties	Not later than 7 days before specified hearing													•	R. 9006(d) R. 9013	- Treated as motion for non-contested matter - Court may not reduce time for certain actions as indicated in rule
9007	General Authority to Regulate Notices																					Court determines rules for notices not specified in rules
9008	Service or Notice by Publication																					Court determines rules for notice by publication
9011	Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers	9011(c)	Motion	Motion for sanctions under R. 9011	Movant	Affected parties	Motion shall not be filed with court unless, within 21 days after service, the offense has not been corrected	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4	
9013	Motions: Form and Service																					Rules for serving motions generally
9014	Contested Matters																					Rules for serving motions and documents in contested matters
9015	Jury Trials	9015(a)	Demand	Demand for a jury trial	Party making demand	Affected parties	No later than 14 days after the	•	•	•	•	•			• "written	•					F.R.C.P.5 F.R.C.P.6(c)	

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							last pleading directed to the issue is served								consent required"						F.R.C.P.38	
		9015(a)	Demand	Demand for a jury trial	Party making demand	U.S. trustee	No later than 14 days after the last pleading directed to the issue is served		•		•										R. 5005 F.R.C.P.38	
		9015(c)	Motion	Renewed motion for judgment	Movant	Affected parties	Served no later than 14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.50	
		9015(c)	Motion	Motion for a new trial	Movant	Affected parties	Served no later than 14 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.6(c) F.R.C.P.50	
9016	Subpoena	9016(a)	Subpoena	Subpoena for production of documents, electronically stored information, or tangible things or the inspection of premises before trial	Party sending subpoena	Affected parties	Not specified	•													F.R.C.P.45	
		9016(a)	Notice	Notice of subpoena for production of documents, electronically stored information, or tangible things or the inspection of premises before trial	Party sending subpoena	Affected parties	Not specified	•													F.R.C.P.45 R. 9007	
		9016(a)	Subpoena	Subpoena commanding attendance	Party sending subpoena	Affected parties	Not specified	•													F.R.C.P.45	
		9016(d)	Objection	Objection to subpoena	Party receiving subpoena (Objector)	Affected parties	Before the earlier of the time specified for compliance or 14 days after the subpoena is served	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.45	
		9016(d)	Motion	Motion to	Movant	Affected	Timely, but no	•	•	•	•	•			• "written	•					F.R.C.P.5	

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				quash or modify a subpoena		parties	later than 14 days before time specified for hearing								consent required"						F.R.C.P.6(c) F.R.C.P.45	
9017	Evidence		Notice	Notice of party's intent to raise issue about a foreign country's law	Party raising the issue	Affected parties	Notice must be provided in pleading or written document. Time limits for pleadings or motions apply.														F.R.C.P.44.1 R. 9007	
9018	Secret, Confidential, Scandalous, or Defamatory Matter		Motion	Motion for confidentiality order	- Movant - Court *(sua sponte)*	Affected parties	Not later than 7 days before time specified for hearing (hearing not required)													•	R. 9006(d) R. 9013	
			Motion	Motion to vacate confidentiality order if order granted without notice	Movant	Affected parties	Not later than 14 days before time specified for hearing													•	R. 9006(d) R. 9013	
			Notice	Notice of hearing to vacate confidentiality order	Not specified	Affected parties	Not later than 14 days before time specified for hearing													• "Court shall designate"	R. 9006(d) R. 9007	
9019	Compromise and Arbitration	9019(a)	Motion	Motion for compromise and settlement	Trustee	Affected parties	Not later than 7 days before time specified for hearing													•	R. 9006(d) R. 9013	
		9019(a)	Notice	Notice of hearing on motion for compromise and settlement	Clerk or some other person as court directs	- Creditors - U.S. trustee - Debtor - Indenture trustees	21 days				•										R. 2002 R. 9006(d) R. 9007	
		9019(b)	Notice	Notice of hearing to fix a class or classes of controversies	Not specified	Affected parties	Not later than 7 days before time specified for hearing													• "As court may direct"	R. 9006(d) R. 9007	
9020	Contempt Proceedings		Motion	Motion for contempt	Movant (U.S. trustee or party in interest)	Affected parties	Not later than 7 days before time specified for hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
9022	Notice of Judgment or	9022(a)	Notice	Notice of judgment or	Clerk	Contesting parties and on	Immediately after entering order or	•	•	•	•	•			• "written consent	•					F.R.C.P.5 F.R.C.P.77	

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	Order			order of bankruptcy judge		other entities as the court directs.	judgment								"written consent required"							
		9022(a)	Notice	Notice of judgment or order of bankruptcy judge	Clerk	U.S. trustee	Forthwith		•		•										R. 5005 R. 9007	
			Notice	Notice of judgment or order of district judge	Clerk	Affected parties not in default for failure to appear	Immediately after entering order or judgment	•	•	•	•	•			• "written consent required"	•					F.R.C.P.5 F.R.C.P.77	
			Notice	Notice of judgment or order of district judge	Clerk	U.S. trustee	Forthwith		•		•										R. 5005	
9023	New Trials; Amendment of Judgments		Motion	Motion for a new trial	Movant	Affected parties	Served no later than 7 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					R. 9006(d) F.R.C.P.5 F.R.C.P. 59	
			Motion	Motion to amend or alter judgment	Movant	Affected parties	Served no later than 7 days before time specified for hearing	•	•	•	•	•			• "written consent required"	•					R. 9006(d) F.R.C.P.5 F.R.C.P. 59	
9024	Relief from Judgment or Order		Motion	Motion to reopen a case under the Title 11, USC	Movant	Affected parties	Served not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 9006(d) F.R.C.P.5 F.R.C.P. 60	
			Motion	Motion for reconsideration of an order allowing or disallowing a claim against the estate	Movant	Affected parties	Served not later than 7 days before specified hearing	•	•	•	•	•			• "written consent required"	•					R. 9006(d) F.R.C.P.5 F.R.C.P. 60	
			Complaint	Complaint to revoke a discharge in a chapter 7	Complainant	Affected parties	Served not later than 7 days after summons issued	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4 F.R.C.P. 60	
			Complaint	Complaint to revoke an	Complainant	Affected parties	Served not later than 7 days after	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4	

†Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
				order under 11 USC 1144			summons issued														F.R.C.P. 60	
			Complaint	Complaint to revoke an order under 11 USC 1230	Complainant	Affected parties	Served not later than 7 days after summons issued	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4 F.R.C.P. 60	
			Complaint	Complaint to revoke an order under 11 USC 1330	Complainant	Affected parties	Served not later than 7 days after summons issued	•		•	•		•	•			• *As court directs*				R. 7004 F.R.C.P.4 F.R.C.P. 60	
9027	Removal	9027(a)	Notice	Notice of removal in case initiated before commencement of bankruptcy proceedings	Movant	All parties to the removed claim or cause of action	Served promptly after filing the notice of removal													•	R. 9007	
		9027(a)	Notice	Notice of removal in case initiated after commencement of bankruptcy case	Movant	All parties to the removed claim or cause of action	Served promptly after filing the notice of removal													•	R. 9007	
		9027(d)	Motion	Motion for remand	Movant	Served on parties to the removed claim or cause of action	Not later than 7 days before time specified for hearing	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
		9027(g)	Pleading	Answer, defenses or objections	Defendant	Affected parties	Longest of: - Within 21 days of service of initial pleading - Within 21 days following the service of summons - Within seven days following the filing of the notice of removal	•	•	•	•	•			• "written consent required"	•					Rules of pt. 7 F.R.C.P.5	
9029	Local Bankruptcy Rules; Procedure When There is No Controlling Law	9029(b)	Notice	Notice of judge's personal rules regulating practice in absence of federal law, federal rules, Official Forms, local rules	Not specified	Affected parties	Parties must have actual notice of requirements													•	R. 9007	
9033	Review of	9033(a)	Judgment	Bankruptcy	Clerk	Affected	Forthwith				•											

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
	Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings			judge's findings of fact and conclusions of law in non-core proceedings		parties																
			Objection	Objection to proposed findings of facts and conclusions of law in non-core proceedings	Objector	Affected parties	Within 14 days after being served with a copy of the proposed findings of fact and conclusions of law	•		•	•		•	•			• *As court directs*				R. 7004 R. 9006(d) R. 9014 F.R.C.P.4	
			Motion	Motion responding to objections of proposed findings of facts and conclusions of law in non-core proceedings	Movant	Affected parties	Within 14 days after being served with objection	•	•	•	•	•			• "written consent required"	•					R. 9014 F.R.C.P.5	
		9033(c)	Motion	Motion for extension of time	Movant	Affected parties	- Before the time for filing objections has expired - 21 days after the expiration of the time for filing objections upon a showing of excusable neglect													•	R. 9013	
9034	Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee	9034(a)	Documents	Pleading, motion, objection, or similar paper relating to proposed use, sale, or lease of property of the estate other than in the ordinary course of business	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
			Documents	Pleading, motion, objection, or similar paper relating to approval of a compromise or settlement of a controversy	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to dismissal or conversion of a case to another chapter	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to employment of professional persons	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to application for compensation or reimbursement of expenses	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to appointment of a trustee or examiner in a chapter 11 reorganization case	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to approval of a disclosure statement	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion,	Party filing the documents	U.S. trustee	Within the time required for		•		•										R. 5005	

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Rule	Caption	Subs.	Doc. Type	Document Title	Sender	Recipient	Time for Service or Notice	Method of Service or Notice: Personal Delivery	Delivered to office	Left at person's dwelling	Mail	Left with clerk	Deliver to agent	Manner of Summons	Electronic	Other method (by consent)	Publication	Oral	Other	Not specified	Related Rule	Comments
				objection, or similar paper relating to confirmation of a plan			service of document															
			Documents	Pleading, motion, objection, or similar paper relating to objection to, or waiver or revocation of, the debtor's discharge	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
			Documents	Pleading, motion, objection, or similar paper relating to any other matter in which the U.S. trustee requests copies of documents	Party filing the documents	U.S. trustee	Within the time required for service of document		•		•										R. 5005	
9036	Notice by Electronic Transmission																					Rules allows parties to request notices electronically

† Information in chart does not reflect any court's local rules or standing orders, which may supplement the federal rules. A matter is deemed to be contested under Fed. R. Bankr. P. 9014 if Rule 9014 is referenced in either the text of the rule or the Advisory Committee Notes following the rule, and whenever the rule states the matter is initiated with an objection. For more information, see: Dave Baddley, *Are You Paying "Attention" When Serving Contested Matters Under Bankruptcy Rule 7004(b)(3)?,* Am. Bankr. Inst. J., March 2005, at 46, http://www.abi.org/abi-journal/are-you-paying-attention-when-serving-contested-matters-under-bankruptcy-rule-7004b3#2.

Appendix C

Chart Summarizing State Electronic Noticing Initiatives

CA	Electronic service may substitute for any document traditionally delivered by mail or fax once parties consent to electronic service or if ordered by a court or local rule.[15]
FL	Florida requires service by email "unless the parties otherwise stipulate or this rule provides otherwise."[16] Documents must be delivered through the official e-filing portal, or another state's supreme court-approved e-filing system.[17] E-filing is standardized and mandatory, with some exceptions.[18] Service on and by an attorney lacking email and internet access must proceed according to traditional means.[19]
HI	Service provided through the Judiciary Electronic Filing System or the Judiciary Information Management System constitutes official service when the recipient has already consented to e-service.[20] Note that the Hawaii state district courts started accepting e-filing for criminal cases on August 13, 2012.[21]
KS	"If a proceeding has been initiated under the Kansas Courts e-Filing system, a party consents in that proceeding to service by electronic means under K.S.A. 60-205(b)(2)(E), and amendments thereto after an attorney who is a registered Filing User has entered an appearance on behalf of the party. Under the Kansas Courts e-filing system, transmission of the 'Notice of Electronic Filing' to a registered attorney appearing as a case participant on behalf of a party constitutes service by electronic means."[22] KS mandated e-filing in appellate courts as of Nov. 2, 2015.[23] District courts are still in the process of adopting e-filing.[24]
KY	"Any certified eFiler may eFile into an action even if the original action was filed conventionally and if other parties to the action are not participating in the pilot project;

[15] CAL. CT. R. 2.251, http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_251.
[16] FLA. R. JUD. ADMIN. 2.516(b)(1), http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F854D695BA7136B085257316005E7DE7/$FILE/Judicial.pdf.
[17] *Id.*
[18] *Id.* at 2.516(a).
[19] *Id.* at 2.516(b)(1)(B).
[20] HAW. ELEC. FILING & SERV. R. 6.1, http://www.courts.state.hi.us/docs/court_rules/rules/hefsr.pdf.
[21] *Efiling*, HAW. ST. JUD., http://www.courts.state.hi.us/legal_references/efiling.html, (last visited March 1, 2016).
[22] Order No. 268, Technical Standards Governing Electronic Filing and Transmission of Court Documents 5 (Kan. Sup. Ct. Oct. 22, 2012), http://www.kscourts.org/kansas-courts/supreme-court/administrative-orders/Admin-order-268.pdf.
[23] *See* KAN. SUP. CT., ELECTRONIC FILING IN APPELLATE COURTS TO BE MANDATORY STARTING NOVEMBER 2 (2015), http://www.kscourts.org/Cases-and-Opinions/E-filing/AppellateExpansionFactSheet.pdf.
[24] *Kansas Courts Electronic Filing*, KAN. JUD. BRANCH, http://www.kscourts.org/Cases-and-Opinions/e-filing/default.asp (last visited March 1, 2016).

	however, service must be conventionally made for all parties not participating in the pilot project."[25] "Electronic service does not include service of process or summons to gain jurisdiction over persons or property, or service of subpoenas. Registration with the eFiling system constitutes consent to electronic service of all documents as defined in these rules in accordance with the Kentucky Rules of Procedure, other than service of process or summons and service of subpoenas, via the eFiling system."[26] "Upon the electronic filing of a document, the court's eFiling system will automatically generate and send a Notice of Electronic Filing (NEF) to all eFilers/parties associated with that case, along with a hyperlink to the electronic document. Transmission of the NEF with a hyperlink to the electronic document constitutes service of the filed document under CR 5. No other service on those parties is required."[27]
MA	MA allows counsels and self-representing litigants to register to receive all litigation communications by email.[28] This appears to differ from states that use a formalized hub or portal. MA does not allow all filings to be made electronically; briefs, for example, must be submitted in hard copy.[29]
MI	This rule applies to the Michigan Supreme Court and the Michigan Court of Appeals. "TrueFiling" can be used to initiate a new case or file a document in an open case.[30] E-filing is voluntary but eventually may be mandatory.[31] Registration on the TrueFiling system serves as consent to receive documents through the system.[32] "Service on nonregistered users must be accomplished in a manner allowed under the court rules, such as by first-class mail, hand delivery, or e-mail under MCR 2.107(C)(4)."[33]
MS	MS runs its e-filing service from the Mississippi Electronic Courts (MEC) website.[34] Filing any document generates a "Notice of Electronic Filing" that serves as notice to attorneys registered in the system.[35] The filing party needs to use conventional methods of service for parties "not designated or able to receive electronic notice."[36] Some documents need to be filed

[25] KY. EFILING R. 3(2), http://courts.ky.gov/courts/supreme/Rules_Procedures/201502.pdf.
[26] *Id.* at R. 5(10).
[27] *Id.* at R. 11(1).
[28] Order Approving Standing Order Governing Electronic Notification of Court Orders, Notices and Decisions in Lieu of Paper Notice (Mass. Sup. Jud. Ct. Apr. 20, 2011), http://www.mass.gov/courts/docs/appeals-court/enotification-standing-order.pdf.
[29] *Electronic Submissions*, MASS CT. SYS., http://www.mass.gov/courts/court-info/appealscourt/appeals-court-help-center/appeals-electronic-submissions.html, (last visited March 1, 2016).
[30] Order No. 2014-23, E-Filing System for the Michigan Supreme Court and the Michigan Court of Appeals 1 (Mich. Sup. Ct. Nov. 26, 2014), http://courts.mi.gov/Courts/MichiganSupremeCourt/Clerks/ClerksOfficeDocuments/e-filing%20docs/AO%202014-23%202014-11-26.pdf.
[31] *Id.*
[32] *Id.* at 2, § II(B).
[33] *Id.*
[34] *Mississippi Electronic Courts (MEC)*, STATE OF MISS. JUD., http://courts.ms.gov/mec/mec.html (last visited March 1, 2016).
[35] *Appellate E-Filing Administrative Procedures*, STATE OF MISS. JUD. 8, § 3(F)(1), https://courts.ms.gov/rules/msrulesofcourt/Appellate_Efiling_Procedures_w_Hyperlinks.pdf (last visited March 2, 2016).
[36] *Id.*, § 3(F)(2).

	in hard copy: "All documents, except for briefs, motions, responses, and compliance documents, shall be filed conventionally and not electronically."[37]
NE	NE's E-Filing System centralizes and systematizes the electronic filing of "pleadings, motions, and other papers…."[38] Registration with the system constitutes consent "to receive any Document, other than service of a summons or initial pleading, via the E-Filing system."[39] Through trial court "E-Notice," the court may transmit "notices, opinions, court entries, and any other dispositional order or information" to registered parties and counsels.[40] "Registration for trial E-Filing and Trial E-Service [and E-Notice] is mandatory for all attorneys making any filing or appearance in a county or district court, regardless if the filing is by paper or electronically."[41]
NY	NY's counties each have their own systems for mandatory vs. consensual e-filing.[42] In the NY Supreme Court, "[a] party may commence any action in the Supreme Court in any county … by electronically filing the initiating documents with the County Clerk through the NYSCEF [New York State Courts Electronic Filing] site."[43] After an action has commenced, electronic filing and service on a party is permissible only with the party's consent.[44] Some actions in the Supreme Court must be commenced electronically, such as matrimonial actions and election law proceedings.[45]
TN	In TN, "e-filing" refers to the "electronic transmission of documents in cases pending in the appellate courts."[46] "Pending" implies that e-filing cannot serve as initial service. E-filing is only for appellate courts,[47] and can only be used by attorneys registered in TN's system.[48] Receipt of an e-filed document automatically generates a notice sent to all participating users in a case.[49]

[37] *Id.* at 9, § 4(A)(2).
[38] NEB. CT. R. APP. PRAC. § 6-401(A), https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/rules/amendments/ElecFilingServNoticeAmds.pdf.
[39] § 6-401(C).
[40] § 6-401(E).
[41] § 6-403(B)-(C).
[42] Administrative Order AO/10/16, Appendix A: E-Filing Matters (N.Y. Sup. Ct. Aug. 31, 2015), https://iappscontent.courts.state.ny.us/NYSCEF/staging/legislation/AO.10.16.pdf.
[43] Administrative Order AO/145/15, Exhibit A 1-2, § 202.5-b(b)(1) (N.Y. Sup. Ct. Aug. 31, 2015), https://iappscontent.courts.state.ny.us/NYSCEF/staging/legislation/Rule202.5b.pdf.
[44] *Id.* at 2, 202.5-b(b)(2).
[45] Administrative Order AO/145/15, Exhibit B 10, § 202.5-bb(b)(1) (N.Y. Sup. Ct. Aug. 31, 2015), https://iappscontent.courts.state.ny.us/NYSCEF/staging/legislation/Rule202.5bb.pdf.
[46] TENN. SUP. CT. R. 46, § 1.01(e), https://www.tncourts.gov/rules/supreme-court/46.
[47] § 1.02.
[48] §§ 2.01-2.02.
[49] § 4.01.

TX	"Except in juvenile cases under Title 3 of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated."[50] Electronic filing must be done through the Office of Court Administration's filing manager.[51] "Attorneys in civil cases must electronically file documents. Attorneys in criminal cases must electronically file documents except for good cause…"[52] "The clerk may send notices, orders, or other communications about the case to the party electronically."[53] Documents must be filed electronically if the recipient party is registered with the electronic file system.[54]

Note – e-filing generally does not include "service" defined as the service of process or initial summons establishing jurisdiction over a person, because generally parties must first consent to and register with the state e-filing service.

[50] Order Adopting Texas Rule of Civil Procedure 21c and Amendments to Texas Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502; Texas Rules of Appellate Procedure 6, 9, and 48; and the Supreme Court Order Directing the Form of the Appellate Record 2, R. 21(f)(1) (Tex. Sup. Ct., Dec. 13, 2013), http://www.txcourts.gov/media/273991/order-13-9165.pdf.
[51] *Id.*, R. 21(f)(3).
[52] *Id.* at 11, R. 9.2(c)(1).
[53] *Id.* at 12, R. 9.2(c)(7).
[54] *Id.* at 16, R. 9.5(b)(1).

Appendix D

[Separate Attachment:
Wilson/Healy Memorandum, dated September 2, 2015, and Related Survey]

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MEMORANDUM

TO: Rules Committees Reporters

FROM: Julie Wilson
Bridget Healy

DATE: September 2, 2015

RE: Survey of Electronic Filing Provisions for Pro Se Litigants

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I. Introduction

This memorandum is in response to the request that the Rules Office conduct a survey of each federal district's local rules and procedures for provisions regarding electronic filing by pro se litigants; specifically, whether pro se litigants are permitted to file electronically via the CM/ECF filing system. The Rules Office researched the following three categories of pro se litigants: (1) non-incarcerated pro se litigants in the district courts; (2) incarcerated pro se litigants in the district courts; and (3) pro se debtors in the bankruptcy courts.

The accompanying spreadsheets contain information on all ninety-four federal judicial districts and bankruptcy courts. The spreadsheets indicate: (1) whether pro se litigants are permitted to file electronically; (2) where the provisions regarding electronic filing are located; and (3) any additional relevant notes.

II. Results of Survey

A. District Courts

1. Non-Incarcerated Pro Se Litigants

In the majority of districts, pro se litigants are expected (or required) to file paper documents. Thirty-nine districts categorically prohibit electronic filing; thirty-four districts have a default rule requiring paper filing, but do permit pro se litigants to file electronically after

seeking and obtaining permission from the court. Only sixteen districts allow pro se litigants who are not incarcerated to file electronically without having to first obtain permission from the court.

2. Incarcerated Pro Se Litigants

The default rule requiring paper filing is even more evident with regard to incarcerated pro se litigants. Among the federal districts, fifty-five categorically prohibit electronic filing by incarcerated pro se litigants. It is difficult to assess the number of districts that permit an incarcerated pro se litigant to use the CM/ECF system (or conceivably permit electronic filing by requesting leave of court). The difficulty is due to the fact that the provisions governing pro se litigants often do not distinguish between types of pro se litigants. In these instances, we assumed the rule for pro se litigants applied to all pro se litigants; however, we made note of the lack of clarity.

There are three districts that expressly permit electronic filing by incarcerated pro se litigants: the Central District of Illinois, the Southern District of Illinois, and the Eastern District of Washington. It is worth noting that, in these districts, electronically filed documents are filed by prison library staff and not the incarcerated litigant.

It is also worth noting that it was often difficult to find the answer to the question of whether pro se litigants (incarcerated or not) are permitted to file electronically. There is little uniformity among the federal districts with regard to the location of the provision governing pro se litigants. In some cases, even after looking at the local rules, standing orders, general orders, CM/ECF procedures, and pro se materials posted on the court's website, the answer was elusive. In such cases, we indicated that the answer was "unclear."

B. Bankruptcy Courts

Very few bankruptcy courts, ten in total, permit electronic filing by pro se debtors. For the few that do, the provisions permitting such filing are usually located within the court's local rules or electronic filing procedures. Two of the courts that permit electronic filing by pro se debtors do so through the Electronic Self-Representation program (eSR), a program developed with the Administrative Office that provides access for pro se debtors to file case opening forms electronically. The program permits electronic filing for case opening forms only; later filings must be done in paper unless otherwise permitted by the court and these courts otherwise do not permit electronic filing by pro se debtors.

The majority of bankruptcy courts do not permit electronic filing by pro se debtors. For a few of the courts (ten), it is unclear whether or not pro se debtors are permitted to file electronically, although the lack of any specific permission leads to the conclusion that it is not permitted.

Most local rules (usually a variant of Local Rule 5005) refer to the electronic filing procedures to provide greater detail about permitted electronic filers and the procedure for registration and filing. Usually the local rules do not specifically prohibit electronic filing by pro se debtors; instead, any specific prohibition is included in the electronic filing procedures.

In completing the review, it was often time consuming to determine whether pro se debtors were permitted to file electronically, given that it required reviewing both the local rules and electronic filing procedures, and the procedures were located in various places on court websites. Also, despite the fact that most bankruptcy courts have sections on their websites for pro se filers, specific guidance on whether or not a pro se debtor could file electronically was often not included in that section.

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Alabama Middle	Local Rule 5005-1 and CM/ECF procedures	http://www.almb.uscourts.gov/sites/almb/files/local_rules/120109%20Amended%20Local%20Rules.pdf	No	Beginning May 1, 2015, the court offers Debtor Electronic Bankruptcy Noticing (DeBN). With DeBN debtors receive court notices and orders by email in .pdf format the same day they are filed by the court, and there is no charge and	
Alabama Northern	Local Rule 5005-4	5005-4, http://www.alnb.uscourts.gov/sites/default/files/Local%20Rules%2010-1-13_0.pdf	No	The court offers debtors the opportunity to request receipt of orders and court-generated notices via email, instead of U.S. mail, through DeBN.	
Alabama Southern	Local Rule 5005-1	http://www.alsb.uscourts.gov/sites/alsb/files/local_rules/localrules.pdf	No		
Alaska	Local Rule 5005-4	LR 5005-4; http://www.akb.uscourts.gov/pdfs/2012_lbr.pdf	No		
Arizona	Local Rule 5005-2	http://www.azb.uscourts.gov/rule-5005-2	No	Pro se filers are specifically excepted from the electronic filing requirements.	
Arkansas Eastern & Western	Local Rule 5005-4	http://www.arb.uscourts.gov/orders-rules-opinions/rules/LR5005-4.pdf	No	Pro se filers are specifically excepted from the electronic filing requirements.	
California Central	Local Rule 5005-1	http://www.cacb.uscourts.gov/esr	Pro se filers can file electronically through the Electronic Self-Representation program.	Court offers Debtor Electronic Bankruptcy Noticing (DeBN). Pro se filers are excepted from mandatory requirements other than the eSR program.	

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
California Eastern	Local Rule 5005-1(d)	http://www.caeb.uscourts.gov/documents/Forms/LocalRules/15.Local_Rules.pdf	No		
California Northern	Local Rule 5005-1	http://www.canb.uscourts.gov/procedures/local-rules	No	The court offers Debtor Electronic Bankruptcy Noticing http://www.canb.uscourts.gov/faq/ebn	
California Southern	General Order 162-A	http://www.casb.uscourts.gov/pdf/GO162a.pdf	No		
Colorado	Local Rule 5005-4	http://www.cob.uscourts.gov/files/mrfa.pdf	No		
Connecticut	Standing Order No. 7	http://www.ctb.uscourts.gov/Doc/sorders/STorder7-1.pdf	No		
Delaware	Local Rule 5005-4	http://www.deb.uscourts.gov/sites/default/files/local_rules/LocalRules_2015.pdf	No	Debtors are not required to file electronically.	
District of Columbia	Administrative Order Relating to Electronic Case Filing	http://www.dcb.uscourts.gov/dcb/sites/www.dcb.uscourts.gov.dcb/files/AdmOrderSigned.pdf	No		
Florida Middle	Local Rule 5005-1	http://www.flmb.uscourts.gov/localrules/rules/5005-1.pdf	No	Debtors may sign up to receive electronic notice. http://www.flmb.uscourts.gov/filing_without_attorney/documents/pro_se_registration.pdf	
Florida Northern	Standing Order; Local Rule 5005-1	http://www.flnb.uscourts.gov/sites/default/files/standing_orders/so11.pdf	No	Debtors are not required to file electronically.	

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Florida Southern	Local Rule 5005-4	http://www.flsb.uscourts.gov/?page_id=2305#50054	No		
Georgia Middle	Local Rule 5005-4(b)	http://www.gamb.uscourts.gov/USCourts/sites/default/files/local_rules/Updated_Local_Rules.pdf	No		
Georgia Northern	Local Rules 5005-5; 5005-6	http://www.ganb.uscourts.gov/content/blr-5005-5-electronic-filing	No	See also: http://www.ganb.uscourts.gov/content/blr-5005-6-attorneys-trustees-and-examiners-required-file-documents-electronically	
Georgia Southern	General Order for Administrative Procedures	http://www.gasb.uscourts.gov/usbcGenOrders.htm#go_2010_1	No		
Hawaii	Local Rule 5005-2	http://www.hib.uscourts.gov/localrules/LBRs.pdf	No	The court permits Debtor Electronic Noticing through DeBN - http://www.hib.uscourts.gov/	
Idaho	ECF Procedures	http://www.id.uscourts.gov/announcements/ECFProcedures_Final.pdf	No		
Illinois Central	Standing Order	http://www.ilcb.uscourts.gov/sites/ilcb/files/3rd%20amd%20GO%20re%20ECF.pdf	Yes, with court approval. Limited to specific case.	Offers Debtor Electronic Bankruptcy Noticing through DeBN.	The Bankruptcy Court does not have separate local rules but instead refers to the District Court rules. The District Court rules permit pro se electronic filing (see District Court Local Rule
Illinois Northern	ECF Procedures and Local Rule 5005-2	http://www.ilnb.uscourts.gov/sites/default/files/Procedures_for_CMECF.pdf	No		
Illinois Southern	Electronic Filing Rules; Local Rule 5005-1	http://www.ilsb.uscourts.gov/sites/default/files/ElectronicFilingRulesDec2013.pdf; http://www.ilsb.uscourts.gov/sites/default/files/LocalRules-BkSoDistrict.pdf	No	There is a reference in the rules to pro se filers scanning their filings at the clerk's office.	
Indiana Northern	Standing Order	http://www.innb.uscourts.gov/pdfs/6thAmendedECFOrder.pdf	No		
Indiana Southern	Local Rule 5005-4 and Administrative Procedures	http://www.insb.uscourts.gov/AdminManual/Attorney/Admin_Policies_and_Procedures.htm	No		
Iowa Northern	Standing Order	http://www.ianb.uscourts.gov/publicweb/sites/default/files/standing-ordes/ExhibitOnetoStandingOrder1-Revised11-08.pdf	No		

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Iowa Southern	None.		Not clear but most likely no.	The court offers debtors the opportunity to request receipt of court notices and orders via email, instead of U.S. mail, through a program called DeBN.	The court abolished its local rules in 2003.
Kansas	Local Rule 5005-1; Administrative Manual(see http://www.ksb.uscourts.gov/images/local_rules/LOCALRULES.MARCH.2015CompleteFiled.pdf)	http://www.ksb.uscourts.gov/images/local_rules/2014_Local_Rules.pdf	Yes, with court approval. Limited to specific case.	If a pro se filer hires an attorney, he or she loses electronic filing privileges.	
Kentucky Eastern	Local Rule 5005-4; Administrative Procedures Manual	http://www.kyeb.uscourts.gov/sites/kyeb/files/June%202015%20APM%20with%20TOC%20Web%20Version.pdf	Yes, with court approval. Limited to specific case.	If a pro se filer hires an attorney, he or she loses electronic filing privileges.	
Kentucky Western	None.		No	http://www.kywb.uscourts.gov/fpweb/pro_se_faqs.htm#6	
Louisiana Eastern	Local Rule 5005-1; Administrative Manual	http://www.laeb.uscourts.gov/sites/laeb/files/AdminProcManual121213.pdf	Not clear but most likely no.		
Louisiana Middle	Administrative Procedures	http://www.lamb.uscourts.gov/sites/lamb/files/adminprocedures-2013-12.pdf	No		
Louisiana Western	Administrative Procedures	http://www.lawb.uscourts.gov/sites/lawb/files/court/Administrative_Procedures_Feb2011.pdf	No		
Maine	Administrative Procedures	http://www.meb.uscourts.gov/meb/pdf/Administrative%20Procedures_%203_2011.pdf	No		
Maryland	Administrative Procedures	http://www.mdb.uscourts.gov/content/training-and-registration	No	Offers Debtor Electronic Bankruptcy Noticing through DeBN.	
Massachusetts	CM/ECF FAQs	http://www.mab.uscourts.gov/mab/ecf-faqs	No		
Michigan Eastern	Administrative Procedures	http://www.mieb.uscourts.gov/sites/default/files/courtinfo/ECFAdminProc.pdf	No		
Michigan Western	Administrative Procedures	http://www.miwb.uscourts.gov/sites/miwb/files/local_rules/AdminProc.pdf	Not clear but most likely no.	There are conflicting statements in the Administrative Procedures. It may be that pro se filers are permitted but not required to use the electronic filing system.	
Minnesota	Website, under Electronic Filing tab	http://www.mnb.uscourts.gov/cmecf-case-managementelectronic-case-filing	No		
Mississippi Northern	Local Rule 5005-1	http://msnb-dev.jdc.ao.dcn/sites/msnb/files/Red_Line_Local_Rules_12-1-2014.pdf	No		
Mississippi Southern	Local Rule 5005-1	http://msnb-dev.jdc.ao.dcn/sites/msnb/files/Red_Line_Local_Rules_12-1-2014.pdf	No		

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Missouri Eastern	Procedures Manual; Local Rule 5005 (see http://www.moeb.uscourts.gov/pdfs/local_rules/2014/2014_Local_Rules.pdf)	http://www.moeb.uscourts.gov/pdfs/local_rules/2013/Procedures_Manual_2013.pdf	Not clear but most likely no.	The language in Local Rule 5005 reads:All documents filed by an attorney shall be filed electronically in accordance with the procedures for electronic case filing set forth in the Procedures Manual. If the deadline to file a document occurs, or a party must file an emergency motion while the Court's CM/ECF system is shut down, the attorney filer may file the document by paper following the procedures set forth in these Rules and the Procedures Manual for paper filing by unrepresented parties. The attorney filer may, in such an instance,	
Missouri Western	Local Rule 11002-1	http://www.mow.uscourts.gov/bankruptcy/rules/bk_rules.pdf	No		
Montana	Local Rules 5005-1; 5005-2	http://www.mtb.uscourts.gov/Reports/2009BKRulesFinal.pdf	No		
Nebraska	Local Rule 5005-1	https://www.neb.uscourts.gov/Robohelp_Manuals/Local_Rules/index.htm	No		
Nevada	Local Rule 5005	http://www.nvb.uscourts.gov/downloads/rules/local-rules-2012_12-17-12.pdf	No	Pro se filers are exempt from the mandatory electronic filing requirements.	
New Hampshire	Local Rule 5005-4	http://www.nhb.uscourts.gov/OrdersRulesForms/LocalRulesOrdersPDFs/2012%20LBRs%20IBRs%20AOs%20and%20LBFs%20-%20Clean.pdf	Not clear but most likely no.	Language from 5005-4: Attorneys admitted to the bar of this court (including those admitted pro hac vice), United States trustees and their assistants, trustees and others as the court deems appropriate, may register as Filing Users of the court's CM/ECF system upon: (A) completion of the court's training program, or (B) certification that the proposed Filing User has been trained in another court and is qualified to file pleadings in a federal court.	
New Jersey	Local Rule 5005-1	http://www.njb.uscourts.gov/sites/default/files/local_rules/Local_Rules_August_1_2015.pdf	Not clear but most likely no.		
New Mexico	Local Rule 5005-3	http://nmb.uscourts.gov/sites/default/files/local_rules/lr111514.pdf	Pro se filers can file electronically through the Electronic Self-Representation program.	The rule provides that: "except for proofs of claim and petitions filed using court-approved electronic filing procedures, all papers filed by unrepresented parties must be submitted to the clerk in paper unless the court, for good cause, authorizes an unrepresented party to submit papers for filing by alternate means." The District of New Mexico is participating in the eSR program that permits debtors to file case opening documents electronically.	

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
New York Eastern	Electronic Filing Procedures; Local Rule 5005-1 (see http://www.nyeb.uscourts.gov/usbc-edny-local-bankruptcy-rules#5005-1)	http://www.nyeb.uscourts.gov/sites/nyeb/files/general-ordes/ord_559.pdf	No		
New York Northern	Local Rule 5005-2; Electronic Filing Procedures (see http://www.nynb.uscourts.gov/sites/default/files/LBR_GenOrders/LBRs_2014.pdf#page=81)	http://www.nynb.uscourts.gov/sites/default/files/CMECF/AdminProc010112.pdf	No		
New York Southern	Administrative Procedures	http://www.nysb.uscourts.gov/sites/default/files/5005-2-procedures.pdf	Not clear but most likely no.		
New York Western	Administrative Procedures	http://www.nywb.uscourts.gov/sites/nywb/files/ECF_Administrative_Procedures_Oct_2010_update.pdf	No		
North Carolina Eastern	Local Rule 5005-1	http://www.nceb.uscourts.gov/sites/nceb/files/local-rules.pdf	No		
North Carolina Middle	Local Rule 5005-4(2)	http://www.ncmb.uscourts.gov/sites/default/files/local_rules/LR%20July%201%202014%20update%20final%20with%20TOC.pdf	Yes, with court approval and training. Limited to specific case.	If a pro se filer hires an attorney, he or she loses electronic filing privileges.	
North Carolina Western	None.		Not clear but most likely no.	The court offers Debtor Electronic Bankruptcy Noticing through DeBN.	
North Dakota	Administrative Procedures	http://www.ndb.uscourts.gov/CM-ECF%20Administrative%20Procedures/CM-ECF_Administrative_Procedures.htm	Not clear but most likely no.	See Administrative Procedures (in effective through Local Rule 5005-1)	
Ohio Northern	Administrative Procedures	https://www.ohnb.uscourts.gov/ecf/repository/administrative_procedures_manual.pdf	No		
Ohio Southern	Administrative Procedures	https://www.ohsb.uscourts.gov/New%20Local%20Rules/AdminProcs_Clean.pdf	No		
Oklahoma Eastern	Administrative Procedures	http://www.okeb.uscourts.gov/sites/default/files/AdmGuide10-01-09.pdf	No		
Oklahoma Northern	Local Rule 5005-1	http://www.oknb.uscourts.gov/sites/default/files/Local%20Rules.pdf	No		
Oklahoma Western	Local Rule 5005	http://www.okwb.uscourts.gov/sites/okwb/files/Local_Rules.pdf	No		
Oregon	Local Rules 5005-4	http://www.orb.uscourts.gov/sites/orb/files/documents/general/Local_Rules_clean.pdf	No		
Pennsylvania Eastern	Procedures for Electronic Filing	http://www.paeb.uscourts.gov/sites/paeb/files/general-ordes/StandingOrder1.pdf	Yes, with court approval and training. Limited to specific case.	If a pro se filer hires an attorney, he or she loses electronic filing privileges.	
Pennsylvania Middle	Local Rules	http://www.pamb.uscourts.gov/sites/default/files/LocalRulesandForms/USBC_PAMB_Local_Rules.pdf	No	Debtors can now request to receive court notices and orders from the Bankruptcy Noticing Center (BNC) by email rather than by U.S. mail via DeBN.	
Pennsylvania Western	Local Rule 5005-2	http://www.pawb.uscourts.gov/sites/default/files/lrules2013/LocalRule5005-2.pdf	Yes, with court approval and training. Limited to specific case.	If a pro se filer hires an attorney, he or she loses electronic filing privileges.	
Puerto Rico	Local Rule 5005-4	http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-5005-4.pdf	No	The rule states that pro se filers "may" conventionally file rather than an actual prohibition on electronic filing.	
Rhode Island	Local Rule 5005-4	http://www.rib.uscourts.gov/newhome/rulesinfo/html5/default.htm#5000/5005-4.htm%3FTocPath%3D5000%7C_____6	No		
South Carolina	Local Rule 5005-4, Order Regarding Electronic Filing and Participant's Guides	http://www.scb.uscourts.gov/pdf/oporder/opor13-03.pdf	No	Debtor electronic noticing is available through DeBN.	
South Dakota	Administrative Procedures	http://www.sdb.uscourts.gov/sites/sdb/files/Administrative%20Procedures.pdf	No		

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Tennessee Eastern	Administrative Procedures	http://www.tneb.uscourts.gov/sites/default/files/2008_admin_procedures.pdf	No		
Tennessee Middle	Administrative Procedures for Electronic Filing	http://www.tnmb.uscourts.gov/documents/ecf_procedures[1].pdf	Yes, with court approval. Limited to specific case.		
Tennessee Western	ECF Guidelines	http://www.tnwb.uscourts.gov/PDFs/ECF/ECF_guidelines.pdf	No	Debtor electronic noticing is available through DeBN. Also, pro se parties are permitted to access CM/ECF through computers at the Clerk's Office. See http://www.tnwb.uscourts.gov/PDFs/ECF/ecffaq.pdf	
Texas Eastern	Administrative Procedures	http://www.txeb.uscourts.gov/LBRs%2012_09/5005.pdf	No	The Eastern, Northern, Southern and Western District of Texas share the same Administrative Procedures for Electronic Filing. Any differences are noted in the text	
Texas Northern	Administrative Procedures	http://www.txnb.uscourts.gov/content/ecf-administrative-procedures	No	The Eastern, Northern, Southern and Western District of Texas share the same Administrative Procedures for Electronic Filing. Any differences are noted in the text	
Texas Southern	Administrative Procedures	http://www.txs.uscourts.gov/attorneys/cmecf/bankruptcy/adminproc.pdf	No	The Eastern, Northern, Southern and Western District of Texas share the same Administrative Procedures for Electronic Filing. Any differences are noted in the text	
Texas Western	Administrative Procedures	administrative_procedures_electronic_filing-2.pdf	No	The Eastern, Northern, Southern and Western District of Texas share the same Administrative Procedures for Electronic Filing. Any differences are noted in the text	
Utah	Local Rule 5005-2	https://www.utb.uscourts.gov/sites/default/files/news-attachments/2014localrules_clean.pdf	Not clear - see notes.	Offers Debtor Electronic Bankruptcy Noticing. Local rule permits "individuals" with the court's consent.	
Vermont	Local Rule 5005-3	http://www.vtb.uscourts.gov/sites/vtb/files/Local_Rules_2012.pdf	Yes, with court approval and training. Limited to specific case.		
Virginia Eastern	Local Rule 5005 and Electronic Filing Procedures	https://www.vaeb.uscourts.gov/wordpress/?wpfb_dl=546	No	The court offers debtors the opportunity, pursuant to Federal Rule of Bankruptcy Procedure 9036, to request delivery by email, rather than by U.S. mail, of court-generated notices and orders that have been filed by the court, through DeBN, a Bankruptcy Noticing Center (“BNC”) program.	
Virginia Western	Administrative Procedures	http://www.vawb.uscourts.gov/sites/default/files/adminpro08.pdf	No		
Washington Eastern	Local Rule 5005-3	http://www.waeb.uscourts.gov/sites/default/files/waeb/local_rules/Local_Rules_Complete_Set.pdf	No		
Washington Western	Local Rule 5005 and Administrative Procedures	http://www.wawb.uscourts.gov/read_file.php?file=3812&id=919	No		
West Virginia Northern	Local Rule 5005.4-02	http://www.wvnb.uscourts.gov/sites/wvnb/files/local_rules/N.D.W.V.%20LBR%205005-4.02.pdf	No		
West Virginia Southern	General Order re: Administrative Procedures for Electronic Filing	http://www.wvsb.uscourts.gov/sites/wvsb/files/general-ordes/genord08-07.pdf	No		

U.S. Bankruptcy Court	Local Rule/Order/Procedures Regarding Electronic Filing	Local Rule, Order or Procedures link (if available)	Pro se filers allowed to use electronic fiing system?	Notes	Notes2
Wisconsin Eastern	Administrative Procedures	http://www.wieb.uscourts.gov/index.php/orders-rules/1-local-rules/41-rules-a-procedures	No		
Wisconsin Western	Administrative Procedures	http://www.wiwb.uscourts.gov/pdf/admin_procedures.PDF	No		
Wyoming	Local Rule 5005-2	http://www.wyb.uscourts.gov/sites/default/files/pdf-files/local-rules-20120701.pdf	No	Due to original signature requirements per Rule 9011, the Court's electronic filing system is not available to pro se filers	

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: AMENDMENTS TO PART VIII RULES TO CONFORM TO PROPOSED AMENDMENTS TO FEDERAL RULES OF APPELLATE PROCEDURE

DATE: MARCH 7, 2016

At the fall 2015 Advisory Committee meeting, the Subcommittee recommended that amendments be proposed to the Part VIII bankruptcy rules (Bankruptcy Appeals) to conform to amendments to the Federal Rules of Bankruptcy Procedure ("FRAP") that are on track to go into effect on December 1, 2016. The Committee approved the Subcommittee's proposal to draft amendments to the affected Part VIII rules and to present them for consideration for publication at the spring 2016 meeting. Drafts of the proposed amendments and related forms follow this memorandum in the agenda materials.

Part I of this memorandum discusses the proposed FRAP amendments and the considerations that led the Subcommittee to recommend proposing parallel Part VIII amendments. It then discusses the proposed drafts, noting any deviations from the FRAP amendments. Part II of the memorandum discusses another set of FRAP amendments that will be published for public comment in August and the Subcommittee's recommendation that one of those amendments be included in a Part VIII rule for which publication is already being recommended. Finally, Part III concludes with a summary of the Subcommittee's recommendations.

I. The Pending FRAP Amendments and Proposed Part VIII Amendments

At its September 2015 meeting, the Judicial Conference gave final approval to six sets of proposed amendments to the Federal Rules of Appellate Procedure, four of which require consideration by the Committee.[1] The amendments relate to the following topics: (1) the inmate-filing provisions under Rules 4(c) and 25(a); (2) tolling motions under Rule 4(a)(4); (3) length limits for appellate filings; and (4) amicus briefs in connection with rehearing. If approved by the Supreme Court by May 1, 2016, they will go into effect on December 1, 2016, assuming that Congress takes no action to the contrary.

A. **Inmate-Filing Provisions**

1. *FRAP 4(c) and 25(a)*

FRAP 4 (Appeal as of Right—When Taken) and FRAP 25 (Filing and Service) contain special rules for inmates confined in an institution. These rules treat notices of appeal and other papers as timely filed by such inmates if the documents are deposited in the institution's internal mail system on or before the last day for filing and several other specified requirements are satisfied. The proposed amendments to these rules are intended to clarify certain issues that have produced conflicts in the case law. They would (1) make clear that prepayment of postage is required for an inmate to benefit from the inmate-filing provisions; (2) clarify that a document is timely filed if it is accompanied by evidence—a declaration, notarized statement, or other evidence such as postmark and date stamp—showing that the document was deposited on or before the due date and that postage was prepaid; and (3) clarify that if sufficient evidence does

[1] The amendment to Rule 26(c)'s "three-day rule" does not need to be considered because the Committee has already proposed and gained the Judicial Conference's final approval of a similar amendment to Rule 9006(f). And because the amendment to Rule 26(a)(4)(C) concerns a cross-reference to a rule governing appeals from the Tax Court, it is irrelevant to bankruptcy appeals.

not accompany the initial filing, the court of appeals has discretion to permit the later filing of a declaration or notarized statement to establish timely deposit.[2]

2. *Bankruptcy Rules 8002(c) and 8011(a)(2)(C)*

Bankruptcy Rules 8002(c) (Time for Filing Notice of Appeal) and 8011(a)(2)(C) (Filing and Service; Signature) include inmate-filing provisions that are identical to the existing FRAP provisions. Because these bankruptcy provisions are new and have only been in effect since December 1, 2014, there is not yet any case law applying them. However, because they were added to the bankruptcy rules in order to be consistent with FRAP, the Subcommittee recommends that they be similarly amended in order to maintain consistency.

The draft of amended Rule 8002 contains the inmate-filing provisions in subdivision (c)(1).[3] The language of these proposed amendments tracks the language of the pending amendments to FRAP 4(c)(1). The FRAP Committee Note points out that a new appellate form has been devised to provide a suggested form for the required inmate declaration. For bankruptcy appeals, the Subcommittee recommends that a similar Director's form be adopted for that purpose. A draft of proposed Director's Form 4170 (Inmate Filer's Declaration) follows in the agenda materials. As a Director's rather than official form, its use would not be mandatory, just as will be true for Appellate Form 7. The Subcommittee also recommends adopting the Appellate Rules Committee's addition to the notice of appeal form of a note to inmate filers

[2] A new Appellate Form 7 is proposed to provide a suggested form of declaration that would satisfy the amended rules. Appellate Forms 1and 5 (which are suggested forms of notice of appeal) would be revised to include a reference alerting inmate filers to the existence of Form 7.

[3] The draft of Rule 8002 in the agenda book consolidates three sets of amendments to that rule: those relating to inmate filing, an amendment to subdivision (b) regarding the timeliness of tolling motions, and an amendment to subdivision (a) that the Advisory Committee previously approved for publication.

alerting them to Director's Form 4170. That proposed amendment appears in Official Form 417A in the materials that follow.

The last paragraph of the Committee Note to Rule 8002 states that the provisions regarding inmate filing apply to direct appeals to a court of appeals, as well as to appeals to a district court or BAP. For that reason, the term "appellate court" is used on line 56 of the draft (rather than "district court or BAP"). It is necessary to include the court of appeals here because Rule 8006 (Certifying a Direct Appeal to the Court of Appeals) requires the timely filing of a notice of appeal, and timeliness is determined by this rule rather than a FRAP provision.

The draft of the amendments to Rule 8011(a)(2)(C) tracks the pending amendment to FRAP 25(a)(2)(C).

B. Timeliness of Tolling Motions

1. *FRAP 4(a)(4)*

FRAP 4(a)(4) (Appeal as of Right—When Taken) sets out a list of postjudgment motions that toll the time for filing an appeal. Under the current rule, the motion must be "timely file[d]" in order to have a tolling effect. The Appellate Rules Committee proposed an amendment to Rule 4(a)(4) to resolve a circuit split on the question whether a tolling motion filed outside the time period specified by the relevant rule, but nevertheless ruled on by the district court, is timely filed for purposes of Rule 4(a)(4). Adopting the majority view on this issue, the proposed amendment would add an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made. Although the district court has authority to rule on the listed postjudgment motions if it mistakenly extends the time for making the motion and no one objects, amended Rule 4(a)(4) would not allow such a motion to have a tolling effect for the purpose of determining the deadline for an appeal.

2. *Bankruptcy Rule 8002(b)*

Bankruptcy Rule 8002(b) (Time for Filing Notice of Appeal) is similar to existing FRAP 4(a)(4). It too requires that the postjudgment motion be timely filed. Although there appear to be no bankruptcy decisions that give a tolling effect to postjudgment motions that are filed after the specified deadline with the mistaken permission of the bankruptcy court, adhering to the proposed FRAP language would eliminate any suggestion that the bankruptcy rule is intended to permit a result that FRAP 4(a)(4) does not.

The draft of Rule 8002(b)(1) generally tracks the language of the proposed amendment to FRAP 4(a)(4)(A). Because, unlike in FRAP 4(a)(4)(A), another set of rules is not being referenced, the proposed bankruptcy rule amendment is more succinct.

C. Length Limits for Appellate Filings

1. *FRAP 5, 21, 27, 28.1, 32, 35, 40*

The most significant set of proposed FRAP amendments would revise the length limits for briefs and other filings. The proposal would amend Rules 5 (Appeal by Permission), 21 (Extraordinary Writs), 27 (Motions), 35 (En Banc Determination), and 40 (Petition for Panel Rehearing) to convert the existing page limits to word limits for documents prepared using a computer. For documents prepared without the aid of a computer, the proposed amendments would retain the page limits currently set out in those rules. The proposed amendments employ a conversion ratio of 260 words per page for Rules 5, 21, 27, 35, and 40. The current ratio is 280 words per page.

The amendments would also reduce the word limits of Rule 32 (Form of Briefs, Appendices, and Other Papers) for briefs to reflect the pre-1998 page limits multiplied by 260 words per page. The 14,000-word limit for a party's principal brief would become a 13,000-

word limit; the limit for a reply brief would change from 7,000 to 6,500 words. The proposals would correspondingly reduce the word limits set by Rule 28.1 for cross-appeals. Proposed Rule 32(f) would set out a uniform list of the items that can be excluded when computing a document's length. A new appendix would collect in one chart all the FRAP length limits.

Any court of appeals that wished to retain the existing limits, including 14,000 words for a principal brief, would be able to do so under the proposed amendments. The local variation provision of existing Rule 32(e) would be amended to highlight a court's authority (by order or local rule) to set length limits that exceed those in FRAP.

2. *Bankruptcy Rules 8013, 8015, 8016, 8022*

The FRAP length amendments would have a significant impact on the Part VIII rules. The bankruptcy rules were revised to create uniformity in brief length limits for the two levels of bankruptcy appeals. To retain consistency with this aspect of the proposed FRAP amendments, Rules 8013(f) (Motions), 8015(a)(7) and (f) (Form and Length of Briefs), 8016(d) (Cross-Appeals), and 8022(b) (Motion for Rehearing) require amendment, along with Official Form 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)). In addition, a new provision needs to be added to Rule 8015 to correspond to new FRAP 32(f) regarding the calculation of a document's length, and an appendix similar to the proposed FRAP appendix needs to be created.

The Subcommittee presents drafts of these bankruptcy rules that track the proposed amendments to the parallel FRAP provisions. No amendments have been drafted to parallel the proposed length limits in FRAP 5 (Appeal by Permission[4]), 21 (Writs of Mandamus and

[4] Unlike FRAP 5, Rule 8004—which governs bankruptcy appeals by leave—does not contain any length limits. The length of a motion seeking leave to appeal is governed by Rule 8013.

Prohibition, and Other Extraordinary Writs), and 35 (En Banc Determination) because there are no equivalent Part VIII rules.

A draft of proposed amendments to Official Form 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)) is included in the materials that follow in the agenda book. It conforms to the new amendments, which—in addition to decreasing page and word limits—require a certificate of compliance under additional rules.

The Subcommittee also has drafted a new appendix to Part VIII, similar to the proposed FRAP appendix, which assembles in one place all of the length limits of the appellate rules. The proposed draft of the Part VIII appendix is included along with the other drafts.

D. Amicus Filings in Connection with Rehearing

1. *FRAP 29*

The pending amendment to FRAP 29 (Brief of an Amicus Curiae) provides a default rule concerning the timing and length of amicus briefs filed in connection with petitions for panel rehearing or rehearing en banc. The rule currently does not address the topic; it is limited to amicus briefs filed in connection with the original hearing of an appeal. The proposed amendment would not require courts to accept amicus briefs regarding rehearing, but it would provide guidelines for such briefs that are permitted.

2. *Bankruptcy Rule 8017*

Rule 8017 governs amicus briefs, and it tracks the language of FRAP 29. The Subcommittee concluded that Rule 8017 should be amended because there is no reason to depart from the amended FRAP provision. The draft of this rule designates the existing rule as subdivision (a), governing amicus briefs during a court's initial consideration of a case on the merits. It adds a new subdivision (b), which governs amicus briefs during a district court's or

BAP's consideration of whether to grant rehearing. The latter subdivision can be overridden by a local rule or order in a case.

II. FRAP Amendments to be Published in 2016

At the January Standing Committee meeting, the Appellate Rules Committee presented three sets of amendments that were approved for publication for public comment in August. One set involves stays of issuance of the mandate; the second involves the filing of amicus briefs that would cause the disqualification of a judge; and the third involves the time for filing reply briefs in appeals and cross-appeals. The Subcommittee reviewed these proposed FRAP amendments and recommends that only Bankruptcy Rule 8017 be proposed for amendment in response to these additional FRAP amendments.

A. Stay of Mandate

The Appellate Committee proposes an amendment to FRAP 41(Mandate) to clarify that a court of appeals must enter an order if it wishes to stay the issuance of the mandate, to address the standard for stays of the mandate, and to restructure the rule to eliminate redundancy. Because there is no parallel bankruptcy appellate rule relating to mandates, the Subcommittee concluded that no action needs to be taken in response to the proposal of this set of amendments.

B. Amicus Briefs

The proposed amendment to FRAP 29(a) (Brief of Amicus Curiae) would authorize local rules prohibiting the filing of an amicus brief with the consent of the parties if the filing would result in the disqualification of a judge. Several circuits already have such rules, so the intent of the amendment is to provide authority for those rules notwithstanding Rule 29(a)'s general allowance of amicus briefs if all parties consent.

The Subcommittee proposes an amendment to Rule 8017 (Brief of an Amicus Curiae) that parallels the proposed amendment to FRAP 29 in order to maintain consistency between the two sets of rules. This proposed amendment is reflected in the draft of proposed Rule 8017(a)(2) that is included in these materials. It would be published along with the amendments discussed above that address amicus briefs regarding a request for rehearing.

C. Reply Briefs

The final set of FRAP amendments to be published this summer extends the time for filing reply briefs. FRAP 31 (Serving and Filing Briefs) and 28.1(Cross-Appeals) currently allow 14 days from service of the appellee's brief to file a reply brief. This time period will be effectively shortened in many cases when Rule 26(c) is amended in December 2016 to eliminate the 3-day rule when a time period is triggered by service that occurs electronically. The Appellate Rules Committee proposes to counteract the impact of that change by giving 21 days after service of the appellee's brief to file a reply brief. The committee's December 14, 2015 report to the Standing Committee noted that it "did not believe that extending the period for filing a reply brief would delay the completion of appellate litigation. . . . Given th[e] 3.6-month median time period [from the appellee' last brief to oral argument or submission on the briefs], . . . a four-day increase over the 17 days allowed under the current rules is not likely to have a discernible impact on the scheduling or submission of cases."

The current versions of Bankruptcy Rules 8018 (Serving and Filing Briefs; Appendices) and 8016 (Cross-Appeals) already depart from FRAP 31 and 28.1 regarding the time period for filing briefs in appeals and cross-appeals. The bankruptcy rules allow 30 days from the filing of the record in the appellate court for the appellant's initial brief to be filed, whereas the appellate rules allow 40 days. The Committee Note to Rule 8018 explains that the "shorter time period for

bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant more time to prepare its brief than the former rule provided." The bankruptcy rules allow the same 14 days for a reply brief that FRAP 31 and 28.1 currently allow.

The Subcommittee recommends that the proposed FRAP amendment not be proposed for Rules 8018 and 8016. The bankruptcy rules have traditionally provided a shorter briefing schedule than the appellate rules. That difference was diminished, but not eliminated, when the Part VIII rules were amended in 2014; a total of 32 days was added to the bankruptcy briefing schedule (a change from 14 to 30 days for both the appellant's and the appellee's briefs). Because no one raised concerns about insufficient briefing time when the amendment to Rule 9006 that eliminates the 3-day rule for electronic filings was published, there is no evidence that this change is needed for bankruptcy appeals.

III. Conclusion

In order to maintain consistency with the Federal Rules of Appellate Procedure, the Subcommittee recommends that the Committee seek publication for public comment of amendments to the following Part VIII rules: Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022. In addition, it recommends the publication of amendments to Official Forms 417A and 417C and a new appendix to the Part VIII rules that sets out all of the Part VIII document- length limits. Finally, it proposes a Director's form for an inmate filer's declaration, to be promulgated when the other rule and form amendments go into effect (likely December 2018).

AMENDMENTS TO CONFORM TO APPELLATE RULE AMENDMENTS

Rule 8002. Time for Filing Notice of Appeal

* * * * *

(a) IN GENERAL.

* * * * *

(5) *Entry Defined*.

(A) A judgment, order, or decree is entered for purposes of this Rule 8002(a):

(i) when it is entered in the docket under Rule 5003(a), or

(ii) if Rule 7058 applies and Rule 58(a) F.R. Civ. P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs:

• the judgment, order, or decree is set out in a separate document; or

• 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a).

(B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R. Civ. P. does not affect the validity of an appeal from that judgment, order, or decree.

* * * * *

(b) EFFECT OF A MOTION ON THE TIME TO APPEAL.

(1) *In General*. If a party ~~timely~~ files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

* * * * *

(c) APPEAL BY AN INMATE CONFINED IN AN INSTITUTION.

(1) *In General*. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate ~~confined in an institution~~ files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing~~. If the institution has a system designed for legal mail, the inmate must use that system. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.~~ and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(a)(i).

* * * * *

Committee Note

Clarifying amendments are made to subdivisions (a), (b), and (c) of the rule. They are modeled on parallel provisions of F.R. App. P. 4.

Paragraph (5) is added to subdivision (a) to clarify the effect of the separate-document requirement of F.R. Civ. P. 58(a) on the entry of a judgment, order, or decree for the

purpose of determining the time for filing a notice of appeal.

Rule 7058 adopts F.R. Civ. P. Rule 58 for adversary proceedings. If Rule 58(a) requires a judgment to be set out in a separate document, the time for filing a notice of appeal runs—subject to subdivisions (b) and (c)—from when the judgment is docketed and the judgment is set out in a separate document or, if no separate document is prepared, from 150 days from when the judgment is entered in the docket. The court's failure to comply with the separate-document requirement of Rule 58(a), however, does not affect the validity of an appeal.

Rule 58 does not apply in contested matters. Instead, under Rule 9021, a separate document is not required, and a judgment or order is effective when it is entered in the docket. The time for filing a notice of appeal under subdivision (a) therefore begins to run upon docket entry in contested matters, as well as in adversary proceedings for which Rule 58 does not require a separate document.

A clarifying amendment is made to subdivision (b)(1) to conform to a recent amendment to F.R. App. P. 4(a)(4)—from which Rule 8002(b)(1) is derived. Former Rule 8002(b)(1) provided that "[i]f a party timely files in the bankruptcy court" certain post-judgment motions, "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." Responding to a circuit split concerning the meaning of "timely" in F.R. App. P. 4(a)(4), the amendment adopts the majority approach and rejects the approach taken in *National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Bankruptcy Rules will not qualify as a motion that, under Rule 8002(b)(1), re-starts the appeal time—and that

fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Bankruptcy Rules, another party's consent or failure to object to the motion's lateness, or the court's disposition of the motion without explicit reliance on untimeliness.

Subdivision (c)(1) is revised to conform to F.R. App. P. 4(c)(1), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution's mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage "is being prepaid," not (as directed by the former rule) that first-class postage "has been prepaid." This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution's mail system. A new Director's Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase "exercises its discretion to permit"—rather than simply "permits"—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

Rule 8011. Filing and Service; Signature

(a) FILING.

* * * * *

(2) *Method and Timeliness.*

* * * * *

(C) *Inmate Filing*. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8011(a)(2)(C). A document filed by an inmate confined in an institution is timely if it is deposited in the institution's internal mail~~ing~~ system on or before the last day for filing~~. If the institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set~~

~~forth the date of deposit and state that first-class postage has been prepaid.~~ and:

(i) it is accompanied by:

- a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
- evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(ii) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8011(a)(2)(C)(i).

* * * * *

Committee Note

Subdivision (a)(2)(C) is revised to conform to F.R. App. P. 25(a)(2)(C), which was recently amended to streamline and clarify the operation of the inmate-filing rule. The rule requires the inmate to show timely deposit and prepayment of postage. It is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution's mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage "is being prepaid," not (as directed by the former rule) that first-class postage "has been prepaid." This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution's mail system. A new Director's Form sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the appellate court—district court, BAP, or court of appeals in the case of a direct appeal—has discretion to accept a declaration or notarized statement at a later date. The rule uses the phrase "exercises its discretion to permit"—rather than simply "permits"—to help ensure that pro se inmates are aware that a court will not necessarily forgive a failure to provide the declaration initially.

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Rule 8013. Motions; Intervention

* * * * *

(f) FORM OF DOCUMENTS; ~~PAGE~~ LENGTH LIMITS; NUMBER OF COPIES.

* * * * *

(2) *Format of an Electronically Filed Document*. A motion, response, or reply filed electronically must comply with the requirements of a paper version regarding covers, line spacing, margins, typeface, and type style. It must also comply with the ~~page~~ length limits under paragraph (3).

(3) ~~*Page*~~ *Length Limits*. ~~Unless the district court or BAP orders otherwise:~~ Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by subdivision (a)(2)(C):

(A) a motion or a response to a motion ~~must not exceed 20 pages, exclusive of the corporate disclosure statement and~~

~~accompanying documents authorized by subdivision (a)(2)(C)~~ produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words; ~~and~~

(B) ~~a reply to a response must not exceed 10 pages.~~ a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and

(D) a handwritten or typewritten reply must not exceed 10 pages.

* * * * *

Committee Note

Subdivision (f)(3) is amended to conform to F.R. App. P. 27(d)(2), which was recently amended to replace page limits with word limits for motions and responses produced using a computer. The word limits were derived from the current page limits, using the assumption that one page is equivalent to 260 words. Documents produced using a

computer must include the certificate of compliance required by Rule 8015(h); Official Form 417C suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 8013(a)(2)(C) and any items listed in Rule 8015(h).

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Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers

(a) PAPER COPIES OF A BRIEF. If a paper copy of a brief may or must be filed, the following provisions apply:

* * * * *

(7) *Length.*

(A) *Page limitation.* A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with subparagraph (B) ~~and (C)~~.

(B) *Type-volume limitation.*

(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:

- ~~it~~ contains no more than ~~14,000~~ 13,000 words; or

- ~~it~~ uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in item (i).

~~(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules, or regulations, and any certificates of counsel do not count toward the limitation.~~

~~(C) *Certificate of Compliance*.~~

~~(i) A brief submitted under subdivision (a)(7)(B) must include a certificate signed by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:~~

- ~~the number of words in the brief; or~~
- ~~the number of lines of monospaced type in the brief.~~

~~(ii) The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form.~~

* * * * *

(f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the ~~applicable~~ form requirements of this rule and the length limits set by these Part VIII rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all ~~of~~ the form requirements of this rule or the length limits set by these Part VIII rules.

(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not:

- the cover page;
- a corporate disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- an addendum containing statutes, rules, or regulations;

- certificates of counsel;
- the signature block;
- the proof of service; and
- any item specifically excluded by these rules or by local rule.

(h) CERTIFICATE OF COMPLIANCE.

(1) *Briefs and Documents That Require a Certificate*. A brief submitted under Rule 8016(d)(2), 8017(b)(4), or 8015(a)(7)(b)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) *Acceptable Form.* The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form.

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 32, which reduced the word limits generally allowed for briefs. When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. Amended F.R. App. P. 32 applies a conversion ratio of 260 words per page and reduces the word limits accordingly. Rule 8015(a)(7) adopts the same reduced word limits for briefs prepared by computer.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (f) is amended to make clear a court's ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (f) already established this authority as to the length limits in Rule 8015(a)(7); the amendment makes clear that this authority extends to all length limits in Part VIII of the Bankruptcy Rules.

A new subdivision (g) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in subdivision (a)(7)(C) is relocated to a new subdivision (h) and now applies to filings under all type-volume limits (other than Rule 8014(f)'s word limit)—including the new word limits in Rules 8013, 8016, 8017, and 8022. Conforming amendments are made to Official Form 417C.

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Rule 8016. Cross-Appeals

* * * * *

(d) LENGTH.

(1) *Page Limitation*. Unless it complies with paragraph~~s~~ (2) ~~and (3)~~, the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) *Type-Volume Limitation*.

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it includes a certificate under Rule 8015(h) and:

(i) ~~it~~ contains no more than ~~14,000~~ 13,000 words; or

(ii) ~~it~~ uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and:

(i) ~~it~~ contains no more than ~~16,500~~ 15,300 words; or

(ii) ~~it~~ uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in subparagraph (A).

~~(D) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules, or regulations, and any certificates of counsel do not count toward the limitation.~~

~~(3) *Certificate of Compliance*. A brief submitted either electronically or in paper form under paragraph (2) must comply with Rule 8015(a)(7)(C).~~

* * * * *

Committee Note

The rule is amended to conform to recent amendments to F.R. App. P. 28.1, which reduced the word limits generally allowed for briefs in cross-appeals. When Rule 28.1 was adopted in 2005, it modeled its type-volume limits on those set forth in F.R. App. P. 32(a)(7) for briefs in cases that did not involve a cross-appeal. At that time, Rule 32(a)(7)(B) set word limits based on an estimate of 280 words per page. Amended F.R. App. P. 32 and 28.1 apply a conversion ratio of 260 words per page and reduce the word limits accordingly. Rule 8016(d)(2) adopts the same reduced word limits.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (d) is amended to refer to new Rule 8015(h) (which now contains the certificate-of-compliance provision formerly in Rule 8015(a)(7)(C)).

Rule 8017. Brief of an Amicus Curiae

(a) DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS.

(1) *Applicability*. This Rule 8017(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) *When Permitted*. The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, except that a district court or BAP may by local rule prohibit the filing of an amicus brief that would result in the disqualification of a judge. On its own motion, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae.

~~(b)~~ (3) *Motion for Leave to File*. The motion must be accompanied by the proposed brief and state:

~~(1)~~ (A) the movant's interest; and

~~(2)~~ (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.

~~(c)~~ (4) *Contents and Form*. An amicus brief must comply with Rule 8015. In addition to the requirements of Rule 8015, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus brief need not comply with Rule 8014, but must include the following:

~~(1)~~ (A) a table of contents, with page references;

~~(2)~~ (B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

~~(3)~~ (C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

~~(4)~~ (D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether:

~~(A)~~ (i) a party's counsel authored the brief in whole or in part;

~~(B)~~ (ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

~~(C)~~ (iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to

fund preparing or submitting the brief and, if so, identifies each such person.

~~(5)~~ (E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review;

~~(6)~~ (F) a certificate of compliance, if required by Rule 8015(a)(7)(C) or 8015(b).

~~(d)~~ (5) *Length.* Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If a court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

~~(e)~~ (6) *Time for Filing*. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its

brief no later than 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.

~~(f)~~ (7) *Reply Brief*. Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.

~~(g)~~ (8) *Oral Argument*. An amicus curiae may participate in oral argument only with the district court's or BAP's permission.

(b) DURING CONSIDERATION OF WHETHER TO GRANT REHEARING.

(1) *Applicability*. This Rule 8017(b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a case provides otherwise.

(2) *When Permitted*. The United States or its officer or agency or a state may file an amicus-curiae

brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) *Motion for Leave to File*. Rule 8017(a)(3) applies to a motion for leave.

(4) *Contents, Form, and Length*. Rule 8017(a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.

(5) *Time for Filing*. An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

Committee Note

Rule 8017 is amended to conform to the recent amendment to F.R. App. P. 29, which now addresses amicus filings in connection with petitions for rehearing. Former Rule 8017 is renumbered Rule 8017(a), and language is added to that subdivision (a) to state that its provisions apply to amicus filings during the district court's or BAP's initial consideration of a case on the merits. New subdivision (b) is added to address amicus filings in connection with a motion for rehearing. Subdivision (b) sets default rules that apply when a district court or BAP does not provide otherwise by local rule or by order in a case. A court remains free to adopt different rules governing whether amicus filings are permitted in connection with motions for rehearing, and governing the procedures when such filings are permitted.

Under former Rule 8017(a), by the parties' consent alone, an amicus curiae might file a brief that resulted in the disqualification of a judge who was assigned to the case. The amendment to subdivision (a)(2) authorizes local rules that prohibit the filing of such a brief. It is modeled on an amendment to F.R. App. 29(a).

Rule 8022. Motion for Rehearing

* * * * *

(b) FORM OF MOTION; LENGTH. The motion must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as provided by Rule 8011. ~~Unless the district court or BAP orders otherwise, a motion for rehearing must not exceed 15 pages.~~ Except by the district court's or BAP's permission:

(1) a motion for rehearing produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and

(2) a handwritten or typewritten motion must not exceed 15 pages.

Committee Note

Subdivision (b) is amended to conform to the recent amendment to F.R. App. P. 40(b), which was one of several appellate rules in which word limits were substituted for page limits for documents prepared by computer. The word limits were derived from the previous page limits using the assumption that one page is equivalent to 260 words. Documents produced using a computer must include the certificate of compliance required by Rule

8015(h); completion of Official Form 417C suffices to meet that requirement.

Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 8015(g).

Appendix:
Length Limits Stated in Part VIII of
the Federal Rules of Bankruptcy Procedure

This chart shows the length limits stated in Part VIII of the Federal Rules of Bankruptcy Procedure. Please bear in mind the following:

- In computing these limits, you can exclude the items listed in Rule 8015(g).
- If you are using a word limit or line limit (other than the word limit in Rule 8014(f)), you must include the certificate required by Rule 8015(h).
- If you are using a line limit, your document must be in monospaced typeface. A typeface is monofaced when each character occupies the same amount of horizontal space.
- For the limits in Rules 8013 and 8022:
  -- You must use the word limit if you produce your document on a computer; and
  -- You must use the page limit if you handwrite your document or type it on a typewriter.

	Rule	**Document Type**	**Word Limit**	**Page Limit**	**Line Limit**
Motions	8013(f)(3)	• Motion • Response to a motion	5,200	20	Not applicable
	8013(f)(3)	• Reply to a response to a motion	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	8015(a)(7)	• Principal brief	13,000	30	1,300
	8015(a)(7)	• Reply brief	6,500	15	650
Parties' briefs (where cross-appeal)	8016(d)	• Appellant's principal brief • Appellant's response and reply brief	13,000	30	1,300
	8016(d)	• Appellee's principal and response brief	15,300	35	1,500
	8016(d)	• Appellee's reply brief	6,500	15	650

	Rule	Document type	Word limit	Page limit	Line limit
Party's supplemental letter	8014(f)	• Letter citing supplemental authorities	350	Not applicable	Not applicable
Amicus briefs	8017(a)(5)	• Amicus brief during initial consideration of case on merits	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief	One-half the length set by the Part VIII Rules for a party's principal brief
	8017(b)(4)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable
Motion for rehearing	8022(b)	• Motion for rehearing	3,900	15	Not applicable

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
   _____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

   For appeals in an adversary proceeding.

   ❑ Plaintiff
   ❑ Defendant
   ❑ Other (describe) _____

   For appeals in a bankruptcy case and not in an adversary proceeding.

   ❑ Debtor
   ❑ Creditor
   ❑ Trustee
   ❑ Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

2. State the date on which the judgment, order, or decree was entered: _____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____
   _____
   _____
   _____

2. Party: _____ Attorney: _____
   _____
   _____
   _____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ❑ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

_____ Date: _____

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

_____
_____
_____
_____

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

*[**Note to inmate filers:** If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4710 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]*

[This certification must be appended to your ~~brief~~ document if ~~the~~ its length ~~of your brief~~ is calculated by maximum number of words or lines of text rather than number of pages.]

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements ~~Rule 8015(a)(7)(B) or 8016(d)(2)~~

1. This ~~brief~~ document complies with [the type-volume limit~~ation~~ of ~~Rule 8015(a)(7)(B) or 8016(d)(2) because:~~ Fed. R. Bankr. P. [*insert Rule citation; e.g.,8015(a)(7)(B)*]] [the word limit of Fed. R. Bankr. P. [*insert Rule citation; e.g., 8013(f)(3)(A)*]] because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g) [and [*insert applicable Rule citation, if any*]]:

- ❑ this ~~brief~~ document contains [*state the number of*] words, ~~excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D),~~ **or**

- ❑ this brief uses a monospaced typeface ~~having no more than 10½ characters per inch~~ and contains [*state the number of*] lines of text~~, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D)~~.

2. This document complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed. R. Bankr. P. 8015(a)(6) because:

- ❑ this document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*], **or**

- ❑ this brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

_____ Date: _____
Signature

Print name of person signing certificate of compliance:

_____

Declaration of Inmate Filing

_____

[*insert name of court; for example,*
United States District Court for the District of Minnesota]

In re _____ [*insert debtor name*]

_____, Plaintiff

v. Case No. _____

_____, Defendant

I am an inmate confined in an institution. Today, _____ [*insert date*], I am depositing the _____ [*insert title of document; for example, "notice of appeal"*] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here_____

Signed on _____ [*insert date*]

[*Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. Bankr. P. 8002(c)(1) or Fed. R. Bankr. P. 8011(a)(2)(C).*]

TAB

Consent 1A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTION REGARDING SOCIAL SECURITY NUMBERS ON NOTICES OF MEETING OF CREDITORS

DATE: MARCH 7, 2016

At the fall 2015 meeting, the Committee considered Suggestion 14-BK-G submitted by Gary Streeting, an attorney advisor in the clerk's office of the Bankruptcy Court for the Eastern District of Missouri. He proposed that Rule 2002(a)(1) be revised to require that only the last four digits of the debtor's social security number ("SSN") be included on the notice of the meeting of creditors (Official Form 309) in cases of individual debtors. Rule 2002(a)(1) currently states that the notice of the meeting of creditors "shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number," unless the court orders otherwise. This directive contrasts with Rule 1005, which requires that only the last four digits of the debtor's SSN be included in the caption of a bankruptcy petition, and Rule 9037, which provides that filings with the court shall include only the last four SSN digits.

In considering Mr. Streeting's suggestion, the Committee noted that the same issue was presented to the Committee in 2012 in a suggestion (11-BK-J) submitted by Judge Julie A. Robinson on behalf of the Committee on Court Administration and Case Management ("CACM") and that the Committee had decided then to retain the full SSN on the notice of meeting of creditors. The decision was based on the results of two surveys conducted by the AO that showed that a number of public and private creditors still needed the full SSN to accurately identify debtors.

At the time that the Committee considered the CACM suggestion, it recognized that because creditors were increasingly using identifiers other than SSNs, at some point in the future they would no longer need to receive a debtor's full SSN. The question that Mr. Streeting's suggestion presented was whether there had been a sufficient change in SSN usage over the last three years to warrant the Committee's reconsideration of the issue.

At the fall meeting, the Committee accepted the Subcommittee's recommendation not reconsider the issue, given its relatively recent thorough consideration of a similar suggestion. The Subcommittee did, however, indicate that it planned to engage in some informal outreach to certain creditors to inquire whether they are still reliant on full SSNs and that it would report back to the Committee if it determined that most creditors no longer need an individual debtor's full SSN.

The Subcommittee's subsequent inquiries have confirmed that there remains a need to retain the full SSN on Official Forms 309A, B, E, G, and I. Both the IRS and state taxing authorities indicated that they need to have a debtor's full SSN to make a proper identification. The Subcommittee therefore does not propose that the Committee reconsider the decision it made at the fall meeting.

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Consent 1B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES
SUBCOMMITTEE ON CONSUMER ISSUES

RE: COMMENTS TO PROPOSED AMENDMENTS TO RULES 1001, 1006(b)

DATE: MARCH 3, 2016

The Advisory Committee approved for publication certain amendments to Bankruptcy Rules 1001 and 1006(b). The amendment to Bankruptcy Rule 1001 changes the last sentence of the rule to conform to changes made to Civil Rule 1. The amendment to Bankruptcy Rule 1006(b) clarifies that an individual debtor's voluntary petition must be accepted even if a required initial installment-payment of fees is not made. Although two public hearings to consider these amendments were set for January 2016, no party requested to appear at such hearings, and the hearings were cancelled. The comment period for these proposed amendments ended on February 16, 2016.

The Advisory Committee received two comments to the proposed rule amendments. One comment submitted by Cheryl Siler, on behalf of Aderant, simply stated, "We agree with the amendments as proposed." The other comment submitted by someone identified only as "MK" concerns general drafting matters and nothing particular to either rule. The comment questions the use of the word "should" in proposed rules, as the author believes the word conveys discretion (and not a requirement) to comply with the rules. The comment concludes with the following, "Please note that since this comment is asking for clarity in the construction of a proposed rule change/amendment, it should be understood to be referenced to any current and future interpretations and writing of all things dealing with the laws that govern…."

The Subcommittee on Consumer Issues considered the comments to the proposed amendment to Bankruptcy Rule 1006(b) during its conference call on February 14, 2016. The Subcommittee on Business Issues considered the comments to the proposed amendment to Bankruptcy Rule 1001 during its conference call on February 19, 2016. The Subcommittees do not believe that the comment submitted by MK warrants any action with respect to the proposed amendments to Bankruptcy Rules 1001 and 1006(b), particularly since the comment addresses existing language in the two rules that is not proposed for amendment. Accordingly, the Subcommittees recommend that the Advisory Committee submit the proposed amendments to Bankruptcy Rules 1001 and 1006(b) to the Standing Committee for final approval at its June 2016 meeting.

Rule 1006. Filing Fee

* * * * *

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application to Pay Filing Fee in Installments*. A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

* * * * *

Committee Note

Subdivision (b)(1) is amended to clarify that an individual debtor's voluntary petition, accompanied by an application to pay the filing fee in installments, must be accepted for filing, even if the court requires the initial installment to be paid at the time the petition is filed and the debtor fails to make that payment. Because the debtor's bankruptcy case is commenced upon the filing of the petition, dismissal of the case due to the debtor's failure to

make the initial or a subsequent installment payment is governed by Rule 1017(b)(1).

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Consent 2A

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MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Subcommittee on Forms

SUBJECT: Technical changes to forms

DATE: February 29, 2016

At its March 15, 2016 meeting, the Judicial Conference will consider a recommendation that would allow the Advisory Committee to make technical, non-substantive changes to Official Bankruptcy Forms when the need for such changes is determined, subject to retroactive approval by the Standing Committee. If that process is approved by the Judicial Conference, the technical changes listed in this memo can be approved by the Advisory Committee at this meeting and go into effect immediately. A report of the changes will be made to the Standing Committee for its approval at its next meeting, and the Standing Committee will note the changes in its report to the Judicial Conference.

If for some reason the Judicial Conference does not approve the proposed new technical changes process, the Advisory Committee's approval of the recommendations below would go through the current process (submitted to the Standing Committee and Judicial Conference at their next meetings) and if approved would go into effect on December 1, 2016.[1]

[1] The subcommittee recommends that the technical changes go into effect immediately if the Judicial Conference adopts the new approval process. If the new process is not adopted, however, there is no need to take extraordinary measures to seek immediate approval of the listed changes. The current version of Rule 9009 states that "the Official Forms prescribed by the Judicial Conference of the United States shall be used with alterations as may be appropriate." The subcommittee understands that CM/ECF programmers and private forms vendors have already made the technical changes described in this memo so as to avoid confusion. Likewise, Rules Committee Support Office staff has posted correct versions of the forms on the courts' public website (www.uscourts.gov).

Although Rule 9009 currently allows "alterations [to Official Forms] as may be appropriate," it is still important that the Judicial Conference adopt a process that allows technical changes to be made to the forms immediately. Such a process has the benefit of making clear under what circumstances such changes can be made. Moreover, the

The Forms Subcommittee recommends the Advisory Committee approve following technical changes:

- Official Form 106E/F - Line number references in the instruction at the top of Part 2 start at an incorrect number; they need to be changed from "4.3 followed by 4.4" to "4.4 followed by 4.5."
- Official Form 119 - Because there is no "Part 3" on the form, the reference to "Part 3" at the top of page 1 needs to be changed to "Part 2."
- Official Form 201 - The hyperlink in Question 7 for NACIS codes needs to be updated to match the new landing page maintained by the Administrative Office.
- Official Form 206 Summary - Cross-references to line numbers 6a and 6b of Official Form 206E/F are incorrect and need to be changed to 5a and 5b.
- Official Form 309A - Line 9 is formatted differently than the remainder of the lines in the form and should be corrected.
- Official Form 309I - The last line of instruction 13 on page 2 should be deleted, and the penultimate sentence should be changed to: "If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1328(f), you must file a motion by the deadline."
- Official Form 423 - The reference near the top of the form to 11 U.S.C. §1141(d)(3) needs to be changed from "does not apply" to "applies."
- Official Form 424 - The top of page 2 should be changed to Rule 8006 rather than 8001.

Chapter 13 plan form package that is under consideration by the Advisory Committee would amend Rule 9009 by removing the ability to make alterations as "may be appropriate."

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Consent 2B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SUGGESTION FOR CLARIFICATION OFAMENDMENTS TO RULE 9009

DATE: MARCH 2, 2016

At the fall 2015 meeting, the Committee approved several rule amendments that are part of the proposal for a chapter 13 plan form. Among them is Rule 9009 (Forms). The Committee is proposing to amend the rule in order to ensure that official forms are used as promulgated, except to the extent there is authorization at the national level for alteration. As approved by the Committee, the rule reads as follows:

Rule 9009. Forms

(a) OFFICIAL FORMS. ~~Except as otherwise provided in Rule 3016(d), the~~ The Official Forms prescribed by the Judicial Conference of the United States shall be ~~observed and~~ used ~~with alterations as may be appropriate~~ without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. ~~Forms may be combined and their contents rearranged to permit economies in their use.~~ Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

(1) expand the prescribed areas for responses in order to permit complete responses;

(2) delete space not needed for responses; or

(3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.

(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.

Rule 9009, along with the other rules related to the chapter 13 plan form, is being held until the entire package of rules and the form are ready to be presented to the Standing Committee for final approval.

Walter Oney, an attorney and bankruptcy software creator, has submitted Suggestion 15-BK-J, which seeks clarification of three aspects of the proposed amendments to Rule 9009. They are discussed in turn below. The Subcommittee considered the suggestion during its February 16 conference call, and **it recommends that no further action be taken.**

1. Addition of Lines Rather than Use of Continuation Sheets

Mr. Oney notes that several of the modernized forms have questions that call for a listing of multiple items and include an instruction to use a continuation sheet if the number of lines following the question is insufficient. He says that he assumes that the Committee intends to allow a user to add more lines underneath the question (when completing the form electronically), rather than using a continuation sheet, but he fears that some clerks will insist on

compliance with the instruction to attach a continuation sheet. He suggests that the Committee's intent be made clear.

As currently proposed, Rule 9009 allows changes that "expand the prescribed areas for responses in order to permit complete responses." The Subcommittee concluded that adding additional lines for responses falls within that authorization and that no clarification is needed.

2. Elimination of Graphical Instructions

The means test forms (Official Forms 122A, B, and C) require multiple arithmetic calculations to determine a debtor's current monthly income, disposable income, and status under the chapter 7 means test. In an effort to be user friendly, the new forms include "graphical instructions" (such as "copy here") at various points that lead the user through the arithmetic. Here is an example from Official Form 122A-2:

People who are 65 years of age or older
7d. Out-of-pocket health care allowance per person $_____

7e. Number of people who are 65 or older X _____

7f. **Subtotal.** Multiply line 7d by line 7e. $_____ **Copy here** → $_____

7g. **Total**. Add lines 7c and 7f. ..... $_____ **Copy total here→** $_____

Mr. Oney says that there is "little reason for software generated forms to include intermediate calculation detail" because the software itself computes the total amount without a need to lead the person completing the form through the intermediate steps. He seeks clarification that a form prepared using software may omit the graphical instructions.

The Subcommittee concluded that a completed form that includes the requested subtotals and totals would be in compliance with any common-sense reading of amended Rule 9009, even if it omitted an instruction to "copy here." Because Subcommittee members believe that a clerk's office would not challenge such a form, the Subcommittee found no need for a clarification.

3. Director's Forms

Mr. Oney's final suggestion relates to what will be subdivision (b) of Rule 9009. He fears that without an explicit statement in the rule, some clerks will assume that Director's forms are now mandatory. If that is not the Committee's intent, he suggests "retaining the previous language."

The Subcommittee concluded that the amendments to Rule 9009 do not present the problem Mr. Oney poses. Subdivision (a), which requires the use of forms and restricts their alteration, clearly applies just to official forms. Subdivision (b), which governs Director's forms, uses the language that is in the current rule. The only amendment to this part of the rule is the creation of a new subdivision, which should make it even clearer that the more restrictive provisions of the rule are not applicable to these forms. The Subcommittee therefore decided that there is no need to make any changes in response to this part of Mr. Oney's suggestion.

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Consent 2C

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: REQUEST ON FORM 201 FOR NAICS CODE

DATE: MARCH 2, 2016

Michael Mikikian of Inforuptcy LLC[1] has submitted Suggestion 16-BK-A, which states that over 75% of entities that have filed the new bankruptcy petition form for non-individuals (Official Form 201) have not provided the information asked for in question 7 regarding the debtor's 4-digit NAICS code. According to the AO website, the National American Industry Classification System is "the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy." This question has been on the petition form only since December 1, 2015. The request for this code was added to the petition for non-individual debtors when the forms were modernized in order to provide information sometimes needed by Federal Judicial Center researchers and AO statistics personnel.

Mr. Mikikian does not suggest how to increase the response rate for this question. Instead, he filed his suggestion to call the situation to the attention of the Advisory Committee for consideration of whether there is anything it might do to obtain greater compliance. The Subcommittee considered the suggestion during its February 16 conference call, and **it recommends that no further action be taken.**

[1] Inforuptcy is an online service that allows free access to PACER documents that are in its database. It also facilitates the purchase of bankruptcy assets and claims. *See* https://www.inforuptcy.com/filings/search-court-filings; http://blogs.wsj.com/bankruptcy/2012/04/18/new-website-launches-bankruptcy-focused-pacer-alternative/?mod=google_news_blog.

The Subcommittee decided that it is unclear how Form 201 or its instructions could be changed to make it more likely that non-individual debtors will provide their NAICS code. While it is possible that this classification system is unknown to some non-individual debtors and their lawyers, the form anticipates that possibility and provides a link to helpful explanatory information and access to the entire list of 4-digit NAICS codes. Question 7 of Form 201 states:

> "C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes.
>
> ___ ___ ___ ___"

Furthermore, the Committee Note for Form 201 explains, "Additionally, an instruction has been added to require the debtor to list its North American Industry Classification System 4-digit code. A hyperlink is provided for information on finding the correct code."

The Subcommittee suggests that it is possible that the current widespread failure of debtors to answer this question is a temporary problem that will be resolved as debtors' lawyers become familiar with this question and consult the explanatory information provided by the AO and as new software becomes available for completing the new petition form. The Subcommittee concluded that in the meantime, because this information was not previously asked for, is not required by any law to be revealed on a bankruptcy petition, and is not needed by participants in a bankruptcy case, the failure to obtain this information from all non-individual debtors is not causing significant harm.

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Consent 3A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: REVIEW OF RULE 3007(a)

DATE: MARCH 3, 2016

At the fall 2015 meeting, the Advisory Committee gave final approval to amendments to Rule 3007(a) (Objection to Claims), but it accepted the Consumer Subcommittee's recommendation that this Subcommittee review the amendments prior to the submission of the rule to the Standing Committee. The Consumer Subcommittee made this recommendation because, after publication of the proposed amendments, it added a provision relating to the service of a claim objection in a chapter 9 or 11 case when a proof of claim is deemed filed under § 925 or § 1111(a) of the Code. The Committee asked this Subcommittee to further review the proposed amendments to make sure that it did not see any problems with the rule as it was proposed to be amended.

The Subcommittee considered the proposed amendments to Rule 3007(a)(2)(B) during its conference call on February 19. Members raised concerns about serving a claim objection on a creditor at the address listed in the debtor's schedules. **The Subcommittee therefore recommends that the proposed amendments to Rule 3007(a) be removed from the chapter-13-plan-form package of rule amendments and that the Subcommittee give further consideration to the method of service in this circumstance as part of its broader study of noticing issues under the Bankruptcy Rules.**

Background Information About the Amendments

The amendment of Rule 3007(a) has been pending before the Committee for several years. The Consumer Subcommittee first took up the issue of the manner of serving claims objections in response to two suggestions submitted on behalf of the Bankruptcy Judges Advisory Group. The first suggestion (09-BK-H), from Judge Margaret D. McGarity, proposed that Rule 3007(a) be amended to permit the use of a negative notice procedure for objections to claims. The second suggestion (09-BK-N), from Judge Michael E. Romero, sought clarification of the proper method of serving objections to claims. The proposed amendments were initially published in 2011, but the Committee delayed sending them forward to the Standing Committee for final approval so that they could be considered as part of the package of amendments related to a national chapter 13 plan form. The Committee reasoned that the method of service on a claimant should be the same regardless of the method used for seeking a determination of the claim amount—whether by motion, claim objection, or plan confirmation.

The proposed amendments to Rule 3007(a) were published again in 2013 and 2014 as part of the chapter-13-plan package of amendments. After the 2013 publication, a cross-reference to the proposed provision in Rule 3012 for determining claims as part of the chapter 13 plan-confirmation process was deleted. Despite the fact that the proposed amendments to Rule 3007(a) no longer related to the chapter 13 plan form, Rule 3007(a) was nevertheless retained as part of the package of rule amendments accompanying the chapter 13 plan form that was republished in 2014.

Following the 2014 publication, Rule 3007(a) was revised to add a new provision, subdivision (a)(2)(B), to fill in a gap in the rule. Because subdivision (a)(2) generally provides for service of an objection to a claim on the person listed on the proof of claim at the address

given there, a rule is needed for situations in which there is an objection to a claim but no proof of claim was filed because the claim was scheduled in a chapter 9 or chapter 11 case as undisputed, noncontingent, and liquidated.[1] As revised, the rule provides in that situation that an objection to the claim must be served on the creditor at the address listed in the schedule of liabilities.

[1] In that situation, §§ 1111(a) and 925 provide that the claim is "deemed filed."

The Rule as Approved at the Fall Meeting

The relevant part of proposed Rule 3007(a), as it was approved by the Advisory Committee in the fall (and with style changes incorporated), provides as follows:

Rule 3007. Objections to Claims

(a) ~~OBJECTIONS TO CLAIMS~~TIME AND MANNER OF SERVICE.

* * * * *

(2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail addressed to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository

institution, in the manner provided by Rule 7004(h).

(B) If, as authorized by Rule 3003(b)(1), no proof of claim was filed, the objection and notice shall be served on the creditor by first-class mail at the address contained in the schedule of liabilities and, if applicable, in the manner provided in Rule 7004(b)(4) or (5) or in Rule 7004(h).

(C) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

* * * * *

The Subcommittee's Deliberations and Recommendation

The Subcommittee discussed two concerns about providing for service of an objection to a claim on the creditor at the address contained in the schedule of liabilities. First, a debtor often

schedules a creditor at the address to which payments are sent, which may be just a post office box. Service at such an address is unlikely to reach the particular agent of the creditor who needs to know about the objection. It was suggested that service addressed to the attention of an officer, managing or general agent, or other agent authorized by appointment or law, as required by Rule 7004(b)(3) and (h), would be preferable. The assistant reporter then pointed out that one of the suggestions that the Subcommittee will consider as part of the noticing project—Suggestion 14-BK-E submitted by the National Bankruptcy Conference—points out the difficulty of making service under Rule 7004(h) (and to a lesser extent Rule 7004(b)(3)) because of the difficulty of identifying correct addresses and officers or agents. As a result, the Subcommittee thought that Rule 3007(a)(2)(B) should not require that type of service until the matter is given further study.

Second, a subcommittee member noted that the situation being addressed by the rule—in which a chapter 11 debtor schedules a claim as undisputed, noncontingent, and liquidated but later objects to the claim—sometimes arises in another manner. The debtor amends its schedules to change the designation of the claim to disputed, contingent, or unliquidated, thus requiring the creditor to file a proof of claim to which an objection may be made. In the latter situation, Rule 1009(a) requires that the debtor give notice to the affected creditor of the amendment to the schedule, but the rule does not specify how notice should be given. Subcommittee members thought that provision of notice to the creditor of an objection to a scheduled claim and of an amendment of the schedule should be accomplished in the same manner, and thus Rule 3007(a)(2)(B) and Rule 1009(a) should be considered together.

The Subcommittee's discussions led it to conclude that further thought needs to be given to how a creditor should be given notice of a claim objection when no proof of claim was filed.

Because this issue overlaps with a suggestion that will be considered by the Subcommittee, it recommends that the amendments to Rule 3007(a) be retained by the Committee and considered further as part of the noticing project. Because the rule does not bear directly on the implementation of the chapter 13 plan form, the Subcommittee does not believe that there is any reason that the rule needs to remain part of the chapter-13-plan package.

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Consent 3B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES
SUBCOMMITTEE ON CONSUMER ISSUES

RE: COMMENTS TO PROPOSED AMENDMENTS TO RULES 1001, 1006(b)

DATE: MARCH 3, 2016

The Advisory Committee approved for publication certain amendments to Bankruptcy Rules 1001 and 1006(b). The amendment to Bankruptcy Rule 1001 changes the last sentence of the rule to conform to changes made to Civil Rule 1. The amendment to Bankruptcy Rule 1006(b) clarifies that an individual debtor's voluntary petition must be accepted even if a required initial installment-payment of fees is not made. Although two public hearings to consider these amendments were set for January 2016, no party requested to appear at such hearings, and the hearings were cancelled. The comment period for these proposed amendments ended on February 16, 2016.

The Advisory Committee received two comments to the proposed rule amendments. One comment submitted by Cheryl Siler, on behalf of Aderant, simply stated, "We agree with the amendments as proposed." The other comment submitted by someone identified only as "MK" concerns general drafting matters and nothing particular to either rule. The comment questions the use of the word "should" in proposed rules, as the author believes the word conveys discretion (and not a requirement) to comply with the rules. The comment concludes with the following, "Please note that since this comment is asking for clarity in the construction of a proposed rule change/amendment, it should be understood to be referenced to any current and future interpretations and writing of all things dealing with the laws that govern…."

The Subcommittee on Consumer Issues considered the comments to the proposed amendment to Bankruptcy Rule 1006(b) during its conference call on February 14, 2016. The Subcommittee on Business Issues considered the comments to the proposed amendment to Bankruptcy Rule 1001 during its conference call on February 19, 2016. The Subcommittees do not believe that the comment submitted by MK warrants any action with respect to the proposed amendments to Bankruptcy Rules 1001 and 1006(b), particularly since the comment addresses existing language in the two rules that is not proposed for amendment. Accordingly, the Subcommittees recommend that the Advisory Committee submit the proposed amendments to Bankruptcy Rules 1001 and 1006(b) to the Standing Committee for final approval at its June 2016 meeting.

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Committee Note

The last sentence of the rule is amended to incorporate the changes to Rule 1 F.R. Civ. P. made in 1993 and 2015.

The word "administered" is added to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

The addition of the phrase "employed by the court and the parties" emphasizes that parties share in the duty of using the rules to secure the just, speedy, and inexpensive determination of every case and proceeding. Achievement

of this goal depends upon cooperative and proportional use of procedure by lawyers and parties.

This amendment does not create a new or independent source of sanctions. Nor does it abridge the scope of any other of these rules.