

AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCE-
DURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT,
PURSUANT TO 28 U.S.C. 2075



MAY 10, 2018.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

79-011

WASHINGTON : 2018

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 26, 2018.

Hon. PAUL D. RYAN,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to submit to the Congress the amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 4, 2017; a redline version of the rules with committee notes; an excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and excerpts from the December 2016 and May 2017 Reports of the Advisory Committee on Bankruptcy Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 26, 2018

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Bankruptcy Procedure be, and they hereby are, amended by including therein amendments to Bankruptcy Rules 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, and new Rule 8018.1, and new Part VIII Appendix.

[*See infra* pp. _____.]

2. That the foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2018, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Bankruptcy Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

**Rule 3002.1 Notice Relating to Claims Secured by
Security Interest in the Debtor's Principal
Residence**

* * * * *

(b) NOTICE OF PAYMENT CHANGES;
OBJECTION.

(1) *Notice.* The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.

(2) *Objection.* A party in interest who objects to the payment change may file a motion to determine

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

* * * * *

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

* * * * *

Rule 5005. Filing and Transmittal of Papers**(a) FILING.**

* * * * *

(2) *Electronic Filing and Signing.*

(A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney:

(i) may file electronically only if allowed by court order or by local rule; and

(ii) may be required to file electronically only by court order, or by a

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

local rule that includes reasonable exceptions.

(C) *Signing.* A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE 5

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

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6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F.R.Civ.P. applies in adversary proceedings, except that proceedings to enforce a judgment are stayed for 14 days after its entry.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 7

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

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 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 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 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 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

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(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).

* * * * *

Rule 8006. Certifying a Direct Appeal to the Court of Appeals

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(c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES.

(1) *How Accomplished.* A joint certification by all the appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using the appropriate Official Form. The parties may supplement the certification with a short statement of the basis for the certification, which may include the information listed in subdivision (f)(2).

(2) *Supplemental Statement by the Court.* Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.

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12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

(a) INITIAL MOTION IN THE BANKRUPTCY COURT.

(1) *In General.* Ordinarily, a party must move first in the bankruptcy court for the following relief:

(A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal;

(B) the approval of a bond or other security provided to obtain a stay of judgment;

* * * * *

(c) FILING A BOND OR OTHER SECURITY.

The district court, BAP, or court of appeals may condition relief on filing a bond or other security with the bankruptcy court.

(d) BOND OR OTHER SECURITY FOR A TRUSTEE OR THE UNITED STATES. The court may require a trustee to file a bond or other security when the

FEDERAL RULES OF BANKRUPTCY PROCEDURE 13

trustee appeals. A bond or other security is not required when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government.

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14 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8010. Completing and Transmitting the Record

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(c) RECORD FOR A PRELIMINARY MOTION IN THE DISTRICT COURT, BAP, OR COURT OF APPEALS. This subdivision (c) applies if, before the record is transmitted, a party moves in the district court, BAP, or court of appeals for any of the following relief:

- leave to appeal;
- dismissal;
- a stay pending appeal;
- approval of a bond or other security provided to obtain a stay of judgment; or
- any other intermediate order.

The bankruptcy clerk must then transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically.

Rule 8011. Filing and Service; Signature

(a) FILING.

* * * * *

(2) *Method and Timeliness.*

(A) *Nonelectronic Filing.*

(i) *In General.* For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in subdivision (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed for filing.

(ii) *Brief or Appendix.* A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is:

16 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or

- dispatched to a third-party commercial carrier for delivery within 3 days to the clerk.

(iii) *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)(A)(iii). A document not filed electronically by an inmate confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:

FEDERAL RULES OF BANKRUPTCY PROCEDURE 17

- 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

- the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this Rule 8011(a)(2)(A)(iii).

(B) *Electronic Filing.*

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(i) *By a Represented Person—Generally Required; Exceptions.* An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney:

- may file electronically only if allowed by court order or by local rule; and
- may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(iii) *Same as a Written Paper.* A document filed electronically is a written paper for purposes of these rules.

(C) *Copies.* If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular case the filing or furnishing of a specified number of paper copies.

* * * * *

(c) MANNER OF SERVICE.

(1) *Nonelectronic Service.* Nonelectronic service may be by any of the following:

(A) personal delivery;

(B) mail; or

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(C) third-party commercial carrier for delivery within 3 days.

(2) *Electronic Service.* Electronic service may be made by sending a document to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing.

(3) *When Service Is Complete.* Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

(d) PROOF OF SERVICE.

(1) *What Is Required.* A document presented for filing must contain either of the following if it was

FEDERAL RULES OF BANKRUPTCY PROCEDURE 21

served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served;

and

(iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served.

* * * * *

(e) SIGNATURE. Every document filed electronically must include the electronic signature of the

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

person filing it or, if the person is represented, the electronic signature of counsel. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.

Rule 8013. Motions; Intervention

* * * * *

(f) FORM OF DOCUMENTS; LENGTH LIMITS;
NUMBER OF COPIES.

* * * * *

(2) *Format of an Electronically Filed Document.* A motion, response, or reply filed electronically must comply with the requirements for a paper version regarding covers, line spacing, margins, typeface, and type style. It must also comply with the length limits under paragraph (3).

(3) *Length Limits.* 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 produced using a computer must include a

24 FEDERAL RULES OF BANKRUPTCY PROCEDURE

certificate under Rule 8015(h) and not exceed 5,200 words;

(B) 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.

* * * * *

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).

(B) *Type-volume Limitation.*

(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:

- contains no more than 13,000 words; or

26 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 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).

* * * * *

(f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by Part VIII of these rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by Part VIII of these rules.

(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and

FEDERAL RULES OF BANKRUPTCY PROCEDURE 27

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

28 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—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.

Rule 8016. Cross-Appeals

* * * * *

(d) LENGTH.

(1) *Page Limitation.* Unless it complies with paragraph (2), 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) contains no more than 13,000 words; or

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(ii) 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) contains no more than 15,300 words; or

(ii) 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).

* * * * *

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 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, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. 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.

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

(3) *Motion for Leave to File.* The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.

(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:

(A) a table of contents, with page references;

FEDERAL RULES OF BANKRUPTCY PROCEDURE 33

(B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—

34 FEDERAL RULES OF BANKRUPTCY PROCEDURE

contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and

(F) a certificate of compliance, if required by Rule 8015(h).

(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 the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(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

FEDERAL RULES OF BANKRUPTCY PROCEDURE 35

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.

(7) *Reply Brief.* Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.

(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

36 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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 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

FEDERAL RULES OF BANKRUPTCY PROCEDURE 37

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.

38 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter

If, on appeal, a 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 it as proposed findings of fact and conclusions of law.

Rule 8021. Costs

* * * * *

(c) COSTS ON APPEAL TAXABLE IN THE BANKRUPTCY COURT. The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule:

- (1) the production of any required copies of a brief, appendix, exhibit, or the record;
- (2) the preparation and transmission of the record;
- (3) the reporter's transcript, if needed to determine the appeal;
- (4) premiums paid for a bond or other security to preserve rights pending appeal; and
- (5) the fee for filing the notice of appeal.

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40 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 8022. Motion for Rehearing

* * * * *

(b) FORM OF THE 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. 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.

Rule 9025. Security: Proceedings Against Security Providers

Whenever the Code or these rules require or permit a party to give security, and security is given with one or more security providers, each provider submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

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 monospaced 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	5,200	20	Not applicable
		• Response to a motion			
	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

FEDERAL RULES OF BANKRUPTCY PROCEDURE 43

	Rule	Document Type	Word Limit	Page Limit	Line Limit
Parties' briefs (where cross-appeal)	8016(d)	<ul style="list-style-type: none"> • 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
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



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

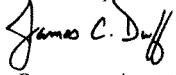
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

October 4, 2017

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, and new Rule 8018.1 of the Federal Rules of Bankruptcy Procedure, along with proposed new Part VIII Appendix, which were approved by the Judicial Conference at its September 2017 session. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a copy of the affected rules incorporating the proposed amendments and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) excerpts from the December 2016 and May 2017 Reports of the Advisory Committee on Bankruptcy Rules.

Attachments

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 3002.1 Notice Relating to Claims Secured by**
2 **Security Interest in the Debtor's Principal**
3 **Residence**

4 * * * * *

5 (b) NOTICE OF PAYMENT CHANGES;
6 OBJECTION.

7 (1) Notice. The holder of the claim shall file
8 and serve on the debtor, debtor's counsel, and the
9 trustee a notice of any change in the payment amount,
10 including any change that results from an interest-rate
11 or escrow-account adjustment, no later than 21 days
12 before a payment in the new amount is due. If the
13 claim arises from a home-equity line of credit, this
14 requirement may be modified by court order.

¹ New material is underlined; matter to be omitted is lined through.

22 * * * * *

23 (e) DETERMINATION OF FEES, EXPENSES, OR
24 CHARGES. On motion of a party in interest~~the debtor or~~
25 ~~trustee~~ filed within one year after service of a notice under
26 subdivision (c) of this rule, the court shall, after notice and
27 hearing, determine whether payment of any claimed fee,
28 expense, or charge is required by the underlying agreement
29 and applicable nonbankruptcy law to cure a default or
30 maintain payments in accordance with § 1322(b)(5) of the
31 Code.

Committee Note

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, what is now subdivision (b)(2) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

change was valid will require the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.

1 **Rule 5005. Filing and Transmittal of Papers**

2 (a) FILING.

3 * * * * *

4 (2) Electronic Filing and Signing~~by Electronic~~
5 ~~Means.~~6 (A) By a Represented Entity—Generally
7 Required; Exceptions.~~A court may by local rule~~
8 ~~permit or require documents to be filed, signed,~~
9 ~~or verified by electronic means that are~~
10 ~~consistent with technical standards, if any, that~~
11 ~~the Judicial Conference of the United States~~
12 ~~establishes. A local rule may require filing by~~
13 ~~electronic means only if reasonable exceptions~~
14 ~~are allowed.~~ An entity represented by an
15 attorney shall file electronically, unless
16 nonelectronic filing is allowed by the court for

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

17 good cause or is allowed or required by local
18 rule.

19 (B) *By an Unrepresented Individual—*
20 *When Allowed or Required.* An individual not
21 represented by an attorney:

22 (i) may file electronically only if
23 allowed by court order or by local rule; and
24 (ii) may be required to file
25 electronically only by court order, or by a
26 local rule that includes reasonable
27 exceptions.

28 (C) *Signing.* A filing made through a
29 person's electronic-filing account and authorized
30 by that person, together with that person's name
31 on a signature block, constitutes the person's
32 signature.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 7

33 (D) Same as a Written Paper. A paper
34 ~~document filed electronically by electronic means~~
35 ~~in compliance with a local rule constitutes~~ is a
36 written paper for ~~the purposes~~ of ~~applying~~ these
37 rules, the Federal Rules of Civil Procedure made
38 applicable by these rules, and § 107 of the Code.

39 * * * * *

Committee Note

Electronic filing has matured. Most districts have adopted local rules that require electronic filing and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts, except for filings made by an individual not represented by an attorney. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons.

Filings by an individual not represented by an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

by pro se litigants is left for governing by local rules or court order. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in these and other courts, along with the growing availability of the systems required for electronic filing and the increasing familiarity of most people with electronic communication. Room is also left for a court to require electronic filing by a pro se litigant by court order or by local rule. Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.

A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 9

1 **Rule 7004. Process; Service of Summons,**
2 **Complaint**

3 (a) SUMMONS; SERVICE; PROOF OF SERVICE.

4 (1) Except as provided in Rule 7004(a)(2),
5 Rule 4(a), (b), (c)(1), (d)~~(4)~~(5), (e)–(j), (l), and (m)
6 F.R.Civ.P. applies in adversary proceedings. Personal
7 service under Rule 4(e)–(j) F.R.Civ.P. may be made
8 by any person at least 18 years of age who is not a
9 party, and the summons may be delivered by the clerk
10 to any such person.

11 * * * * *

Committee Note

In 1996, Rule 7004(a) was amended to incorporate by reference F.R.Civ.P. 4(d)(1). Civil Rule 4(d)(1) addresses the effect of a defendant's waiver of service. In 2007, Civil Rule 4 was amended, and the language of old Civil Rule 4(d)(1) was modified and renumbered as Civil Rule 4(d)(5). Accordingly, Rule 7004(a) is amended to update the cross-reference to Civil Rule 4.

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 7062. Stay of Proceedings to Enforce a Judgment**

2 Rule 62 F.R.Civ.P. applies in adversary proceedings,

3 except that proceedings to enforce a judgment are stayed4 for 14 days after its entry.**Committee Note**

The rule is amended to retain a 14-day period for the automatic stay of a judgment. F.R.Civ.P. 62(a) now provides for a 30-day stay to accommodate the 28-day time periods under the Federal Rules of Civil Procedure for filing post-judgment motions and the 30-day period for filing a notice of appeal. Under the Bankruptcy Rules, however, those periods are limited to 14 days. *See* Rules 7052, 8002, 9015, and 9023.

1 **Rule 8002. Time for Filing Notice of Appeal**

2 (a) IN GENERAL.

3 * * * * *

4 (5) Entry Defined.5 (A) A judgment, order, or decree is
6 entered for purposes of this Rule 8002(a):7 (i) when it is entered in the docket
8 under Rule 5003(a), or9 (ii) if Rule 7058 applies and
10 Rule 58(a) F.R.Civ.P. requires a separate
11 document, when the judgment, order, or
12 decree is entered in the docket under
13 Rule 5003(a) and when the earlier of these
14 events occurs:15 • the judgment, order, or
16 decree is set out in a separate
17 document; or

12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 • 150 days have run from
19 entry of the judgment, order, or
20 decree in the docket under
21 Rule 5003(a).

22 (B) A failure to set out a judgment, order,
23 or decree in a separate document when required
24 by Rule 58(a) F.R.Civ.P. does not affect the
25 validity of an appeal from that judgment, order,
26 or decree.

27 (b) EFFECT OF A MOTION ON THE TIME TO
28 APPEAL.

29 (1) *In General.* If a party ~~timely~~ files in the
30 bankruptcy court any of the following motions and
31 does so within the time allowed by these rules, the
32 time to file an appeal runs for all parties from the
33 entry of the order disposing of the last such remaining
34 motion:

FEDERAL RULES OF BANKRUPTCY PROCEDURE 13

* * * * *

35

36 (c) APPEAL BY AN INMATE CONFINED IN AN
37 INSTITUTION.

38 (1) *In General.* If an institution has a system
39 designed for legal mail, an inmate confined there must
40 use that system to receive the benefit of this
41 Rule 8002(c)(1). If an inmate ~~confined in an~~
42 ~~institution~~ files a notice of appeal from a judgment,
43 order, or decree of a bankruptcy court, the notice is
44 timely if it is deposited in the institution's internal
45 mail system on or before the last day for filing. ~~If the~~
46 ~~institution has a system designed for legal mail, the~~
47 ~~inmate must use that system to receive the benefit of~~
48 ~~this rule. Timely filing may be shown by a~~
49 ~~declaration in compliance with 28 U.S.C. § 1746 or by~~
50 ~~a notarized statement, either of which must set forth~~

14 FEDERAL RULES OF BANKRUPTCY PROCEDURE

51 ~~the date of deposit and state that first-class postage~~
52 ~~has been prepaid, and:~~

53 (A) it is accompanied by:

54 (i) a declaration in compliance
55 with 28 U.S.C. § 1746—or a
56 notarized statement—setting out the
57 date of deposit and stating that first-
58 class postage is being prepaid; or

59 (ii) evidence (such as a
60 postmark or date stamp) showing
61 that the notice was so deposited and
62 that postage was prepaid; or

63 (B) the appellate court exercises its
64 discretion to permit the later filing of a
65 declaration or notarized statement that satisfies
66 Rule 8002(c)(1)(A)(i).

67 * * * * *

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. 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

16 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 17

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.

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8006. Certifying a Direct Appeal to the Court of**
2 **Appeals**

3 * * * * *

4 (c) JOINT CERTIFICATION BY ALL
5 APPELLANTS AND APPELLEES.

6 (1) How Accomplished. A joint certification by
7 all the appellants and appellees under 28 U.S.C.
8 § 158(d)(2)(A) must be made by using the appropriate
9 Official Form. The parties may supplement the
10 certification with a short statement of the basis for the
11 certification, which may include the information listed
12 in subdivision (f)(2).

13 (2) Supplemental Statement by the Court.
14 Within 14 days after the parties' certification, the
15 bankruptcy court or the court in which the matter is
16 then pending may file a short supplemental statement
17 about the merits of the certification.

18 * * * * *

Committee Note

Subdivision (c) is amended to provide authority for the court to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all of the parties to the appeal. It is a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion.

The bankruptcy court may file a supplemental statement within 14 days after the certification, even if the appeal is no longer pending before it according to subdivision (b). If the appeal is pending in the district court or BAP during that 14-day period, the appellate court is authorized to file a statement. In all cases, the filing of a statement by the court is discretionary.

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8007. Stay Pending Appeal; Bonds; Suspension**
2 **of Proceedings**3 (a) INITIAL MOTION IN THE BANKRUPTCY
4 COURT.5 (1) *In General.* Ordinarily, a party must move
6 first in the bankruptcy court for the following relief:7 (A) a stay of a judgment, order, or decree
8 of the bankruptcy court pending appeal;9 (B) the approval of a ~~supersedeas~~ bond or
10 other security provided to obtain a stay of
11 judgment;

12 * * * * *

13 (c) FILING A BOND OR OTHER SECURITY.

14 The district court, BAP, or court of appeals may condition
15 relief on filing a bond or other ~~appropriate~~ security with the
16 bankruptcy court.17 (d) BOND OR OTHER SECURITY FOR A
18 TRUSTEE OR THE UNITED STATES. The court may

FEDERAL RULES OF BANKRUPTCY PROCEDURE 21

19 require a trustee to file a bond or other appropriate security
20 when the trustee appeals. A bond or other security is not
21 required when an appeal is taken by the United States, its
22 officer, or its agency or by direction of any department of
23 the federal government.

24 * * * * *

Committee Note

The amendments to subdivisions (a)(1)(B), (c), and (d) conform this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8010. Completing and Transmitting the Record**

2 * * * * *

3 (c) RECORD FOR A PRELIMINARY MOTION
4 IN THE DISTRICT COURT, BAP, OR COURT OF
5 APPEALS. This subdivision (c) applies if, before the
6 record is transmitted, a party moves in the district court,
7 BAP, or court of appeals for any of the following relief:

- 8 • leave to appeal;
9 • dismissal;
10 • a stay pending appeal;
11 • approval of a ~~supersedeas~~ bond, or other security
12 provided to obtain a stay of judgment ~~additional~~
13 ~~security on a bond or undertaking on appeal~~; or
14 • any other intermediate order.

15 The bankruptcy clerk must then transmit to the clerk of the
16 court where the relief is sought any parts of the record

- 17 designated by a party to the appeal or a notice that those
18 parts are available electronically.

Committee Note

The amendment of subdivision (c) conforms this rule with the amendment of Rule 62 F.R.Civ.P., which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

24 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8011. Filing and Service; Signature**

2 (a) FILING.

3 * * * * *

4 (2) *Method and Timeliness.*5 (A) Nonelectronic Filing.

6 (A)(i) *In General.* ~~Filing~~For a
7 document not filed electronically, filing may
8 be accomplished by ~~transmission~~mail
9 addressed to the clerk of the district court or
10 BAP. Except as provided in subdivision
11 ~~(a)(2)(B) and (C)~~ (a)(2)(A)(ii) and (iii),
12 filing is timely only if the clerk receives the
13 document within the time fixed for filing.

14 ~~(B)(ii)~~ *Brief or Appendix.* A brief
15 or appendix not filed electronically is also
16 timely filed if, on or before the last day for
17 filing, it is:

FEDERAL RULES OF BANKRUPTCY PROCEDURE 25

18 (i)• mailed to the clerk by first-
19 class mail—or other class of mail that
20 is at least as expeditious—postage
21 prepaid, ~~if the district court's or BAP's~~
22 ~~procedures permit or require a brief or~~
23 ~~appendix to be filed by mailing; or~~

24 (ii)• dispatched to a third-party
25 commercial carrier for delivery within
26 3 days to the clerk, ~~if the court's~~
27 ~~procedures so permit or require.~~

28 (C)(iii) *Inmate Filing.* If an
29 institution has a system designed for legal
30 mail, an inmate confined there must use that
31 system to receive the benefit of this
32 Rule 8011(a)(2)(A)(iii). A document not
33 filed electronically by an inmate confined in
34 an institution is timely if it is deposited in

26 FEDERAL RULES OF BANKRUPTCY PROCEDURE

35 the institution's internal mailing system on
36 or before the last day for filing. ~~If the~~
37 ~~institution has a system designed for legal~~
38 ~~mail, the inmate must use that system to~~
39 ~~receive the benefit of this rule. Timely~~
40 ~~filing may be shown by a declaration in~~
41 ~~compliance with 28 U.S.C. § 1746 or by a~~
42 ~~notarized statement, either of which must set~~
43 ~~forth the date of deposit and state that first-~~
44 ~~class postage has been prepaid; and:~~

45 • it is accompanied by a
46 declaration in compliance with 28
47 U.S.C. § 1746—or a notarized
48 statement—setting out the date of
49 deposit and stating that first-class
50 postage is being prepaid; or evidence
51 (such as a postmark or date stamp)

FEDERAL RULES OF BANKRUPTCY PROCEDURE 27

52 showing that the notice was so
53 deposited and that postage was
54 prepaid; or

55 • the appellate court exercises
56 its discretion to permit the later filing
57 of a declaration or notarized statement
58 that _____ satisfies _____ this
59 Rule 8011(a)(2)(A)(iii).

60 (B) *Electronic Filing.*

61 (i) *By a Represented Person—*
62 *Generally Required; Exceptions.* An entity
63 represented by an attorney must file
64 electronically, unless nonelectronic filing is
65 allowed by the court for good cause or is
66 allowed or required by local rule.

28 FEDERAL RULES OF BANKRUPTCY PROCEDURE

67 (ii) By an Unrepresented
68 Individual—When Allowed or Required. An
69 individual not represented by an attorney:

70 • may file electronically only
71 if allowed by court order or by local
72 rule; and

73 • may be required to file
74 electronically only by court order, or
75 by a local rule that includes reasonable
76 exceptions.

77 (iii) Same as a Written Paper. A
78 document filed electronically is a written
79 paper for purposes of these rules.

80 ~~(D)(C)~~ Copies. If a document is filed
81 electronically, no paper copy is required. If a
82 document is filed by mail or delivery to the
83 district court or BAP, no additional copies are

84 required. But the district court or BAP may
85 require by local rule or by order in a particular
86 case the filing or furnishing of a specified
87 number of paper copies.

88 * * * * *

89 (c) MANNER OF SERVICE.

90 (1) Nonelectronic Service. ~~Methods. Service~~
91 ~~must be made electronically, unless it is being made~~
92 ~~by or on an individual who is not represented by~~
93 ~~counsel or the court's governing rules permit or~~
94 ~~require service by mail or other means of delivery.~~
95 ~~Service~~ Nonelectronic service may be made by or on
96 an ~~unrepresented~~ party by any of the following
97 methods:

- 98 (A) personal delivery;
- 99 (B) mail; or

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

100 (C) third-party commercial carrier for
101 delivery within 3 days.

102 (2) Electronic Service. Electronic service may
103 be made by sending a document to a registered user
104 by filing it with the court's electronic-filing system or
105 by using other electronic means that the person served
106 consented to in writing.

107 ~~(2)~~(3) *When Service is Complete.* Service
108 by electronic means is complete on ~~transmission~~filing
109 or sending, unless the ~~party~~person making service
110 receives notice that the document was not ~~transmitted~~
111 ~~successfully~~received by the person served. Service by
112 mail or by commercial carrier is complete on mailing
113 or delivery to the carrier.

114 (d) PROOF OF SERVICE.

115 (1) *What is Required.* A document presented
116 for filing must contain either of the following if it was

117 served other than through the court's electronic-filing
118 system:

119 (A) an acknowledgment of service by the
120 person served; or

121 (B) proof of service consisting of a
122 statement by the person who made service
123 certifying:

124 (i) the date and manner of service;

125 (ii) the names of the persons served;

126 and

127 (iii) the mail or electronic address, the
128 fax number, or the address of the place of
129 delivery, as appropriate for the manner of
130 service, for each person served.

131 * * * * *

132 (e) SIGNATURE. Every document filed
133 electronically must include the electronic signature of the

32 FEDERAL RULES OF BANKRUPTCY PROCEDURE

134 person filing it or, if the person is represented, the
135 electronic signature of counsel. ~~The electronic signature~~
136 ~~must be provided by electronic means that are consistent~~
137 ~~with any technical standards that the Judicial Conference of~~
138 ~~the United States establishes. A filing made through a~~
139 person's electronic-filing account and authorized by that
140 person, together with that person's name on a signature
141 block, constitutes the person's signature. Every document
142 filed in paper form must be signed by the person filing the
143 document or, if the person is represented, by counsel.

Committee Note

The rule is amended to conform to the amendments to F.R.App.P. 25 on inmate filing, electronic filing, signature, service, and proof of service.

Consistent with Rule 8001(c), subdivision (a)(2) generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule.

Subdivision (a)(2)(A)(iii) is revised to conform to F.R.App.P. 25(a)(2)(A)(iii), 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.

Subdivision (c) is amended to authorize electronic service by means of the court's electronic-filing system on registered users without requiring their written consent. All other forms of electronic service require the written consent of the person served.

34 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Service is complete when a person files the paper with the court's electronic-filing system for transmission to a registered user, or when one person sends it to another person by other electronic means that the other person has consented to in writing. But service is not effective if the person who filed with the court or the person who sent by other agreed-upon electronic means receives notice that the paper did not reach the person to be served. The rule does not make the court responsible for notifying a person who filed the paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service.

As amended, subdivision (d) eliminates the requirement of proof of service when service is made through the electronic-filing system. The notice of electronic filing generated by the system serves that purpose.

Subdivision (e) requires the signature of counsel or an unrepresented party on every document that is filed. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. A person's electronic-filing account means an account established by the court for use of the court's electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court.

1 **Rule 8013. Motions; Intervention**

2 * * * * *

3 (f) FORM OF DOCUMENTS; ~~PAGE~~LENGTH
4 LIMITS; NUMBER OF COPIES.

5 * * * * *

6 (2) *Format of an Electronically Filed*
7 *Document.* A motion, response, or reply filed
8 electronically must comply with the requirements for
9 a paper version regarding covers, line spacing,
10 margins, typeface, and type style. It must also comply
11 with the ~~pagelength~~ limits under paragraph (3).

12 (3) *PageLength Limits.* ~~Unless the district~~
13 ~~court or BAP orders otherwise:~~Except by the district
14 court's or BAP's permission, and excluding the
15 accompanying documents authorized by subdivision
16 (a)(2)(C):

36 FEDERAL RULES OF BANKRUPTCY PROCEDURE

17 (A) a motion or a response to a motion
18 ~~must not exceed 20 pages, exclusive of the~~
19 ~~corporate disclosure statement and~~
20 ~~accompanying documents authorized by~~
21 ~~subdivision (a)(2)(C) produced using a computer~~
22 must include a certificate under Rule 8015(h)
23 and not exceed 5,200 words; and

24 (B) ~~a reply to a response must not exceed~~
25 ~~10 pages; a handwritten or typewritten motion or~~
26 a response to a motion must not exceed 20
27 pages;

28 (C) a reply produced using a computer
29 must include a certificate under Rule 8015(h)
30 and not exceed 2,600 words; and

31 (D) a handwritten or typewritten reply
32 must not exceed 10 pages.

33 * * * * *

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).

38 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8015. Form and Length of Briefs; Form of**
2 **Appendices and Other Papers**

3 (a) PAPER COPIES OF A BRIEF. If a paper copy
4 of a brief may or must be filed, the following provisions
5 apply:

6 * * * * *

7 (7) *Length.*

8 (A) *Page ~~L~~imitation.* A principal brief
9 must not exceed 30 pages, or a reply brief 15
10 pages, unless it complies with subparagraph (B)
11 and (C).

12 (B) *Type-volume ~~L~~imitation.*

13 (i) A principal brief is acceptable if
14 it contains a certificate under Rule 8015(h)
15 and:

16 • ~~it~~ contains no more than
17 ~~14,000~~ 13,000 words; or

FEDERAL RULES OF BANKRUPTCY PROCEDURE 39

18 • ~~it~~ uses a monospaced face
19 and contains no more than 1,300 lines
20 of text.

21 (ii) A reply brief is acceptable if it
22 includes a certificate under Rule 8015(h)
23 and contains no more than half of the type
24 volume specified in item (i).

25 (iii) ~~Headings, footnotes, and~~
26 ~~quotations count toward the word and line~~
27 ~~limitations. The corporate disclosure~~
28 ~~statement, table of contents, table of~~
29 ~~citations, statement with respect to oral~~
30 ~~argument, any addendum containing~~
31 ~~statutes, rules, or regulations, and any~~
32 ~~certificates of counsel do not count toward~~
33 ~~the limitation.~~

34 ~~(C) Certificate of Compliance.~~

40 FEDERAL RULES OF BANKRUPTCY PROCEDURE

35 ~~(i) A brief submitted under~~
36 ~~subdivision (a)(7)(B) must include a~~
37 ~~certificate signed by the attorney, or an~~
38 ~~unrepresented party, that the brief complies~~
39 ~~with the type-volume limitation. The person~~
40 ~~preparing the certificate may rely on the~~
41 ~~word or line count of the word-processing~~
42 ~~system used to prepare the brief. The~~
43 ~~certificate must state either:~~

44 ~~• the number of words in the~~
45 ~~brief; or~~
46 ~~• the number of lines of~~
47 ~~monospaced type in the brief.~~

48 ~~(ii) The certification requirement is~~
49 ~~satisfied by a certificate of compliance that~~
50 ~~conforms substantially to the appropriate~~
51 ~~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 Part VIII of these 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 Part VIII of these 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;

42 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- 69 • an addendum containing statutes, rules, or
70 regulations;
- 71 • certificates of counsel;
- 72 • the signature block;
- 73 • the proof of service; and
- 74 • any item specifically excluded by these
75 rules or by local rule.

76 (h) CERTIFICATE OF COMPLIANCE.

77 (1) Briefs and Documents That Require a
78 Certificate. A brief submitted under
79 Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a
80 document submitted under Rule 8013(f)(3)(A),
81 8013(f)(3)(C), or 8022(b)(1)—must include a
82 certificate by the attorney, or an unrepresented party,
83 that the document complies with the type-volume
84 limitation. The individual preparing the certificate
85 may rely on the word or line count of the word-

86 processing system used to prepare the document. The
87 certificate must state the number of words—or the
88 number of lines of monospaced type—in the
89 document.

90 (2) *Acceptable Form.* The certificate
91 requirement is satisfied by a certificate of compliance
92 that conforms substantially to the appropriate Official
93 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

44 FEDERAL RULES OF BANKRUPTCY PROCEDURE.

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.

1 **Rule 8016. Cross-Appeals**

2 * * * * *

3 (d) LENGTH.

4 (1) *Page Limitation.* Unless it complies with
5 paragraphs (2) ~~and (3)~~, the appellant's principal brief
6 must not exceed 30 pages; the appellee's principal and
7 response brief, 35 pages; the appellant's response and
8 reply brief, 30 pages; and the appellee's reply brief,
9 15 pages.

10 (2) *Type-volume* ~~Volume~~ *Limitation.*

11 (A) The appellant's principal brief or the
12 appellant's response and reply brief is acceptable
13 if it includes a certificate under Rule 8015(h)
14 and:

15 (i) ~~it contains no more than 14,000~~
16 13,000 words; or

46 FEDERAL RULES OF BANKRUPTCY PROCEDURE

17 (ii) ~~it~~ uses a monospaced face and
18 contains no more than 1,300 lines of text.

19 (B) The appellee's principal and response
20 brief is acceptable if it includes a certificate
21 under Rule 8015(h) and:

22 (i) ~~it~~ contains no more than ~~16,500~~
23 15,300 words; or

24 (ii) ~~it~~ uses a monospaced face and
25 contains no more than 1,500 lines of text.

26 (C) The appellee's reply brief is
27 acceptable if it includes a certificate under
28 Rule 8015(h) and contains no more than half of
29 the type volume specified in subparagraph (A).

30 ~~(D) Headings, footnotes, and quotations~~
31 ~~count toward the word and line limitations. The~~
32 ~~corporate disclosure statement, table of contents,~~
33 ~~table of citations, statement with respect to oral~~

40 * * * * *

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

48 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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)).

1 **Rule 8017. Brief of an Amicus Curiae**

2 (a) DURING INITIAL CONSIDERATION OF A
3 CASE ON THE MERITS.

4 (1) Applicability. This Rule 8017(a) governs
5 amicus filings during a court's initial consideration of
6 a case on the merits.

7 (2) When Permitted. The United States or its
8 officer or agency or a state may file an amicus-curiae
9 brief without the consent of the parties or leave of
10 court. Any other amicus curiae may file a brief only
11 by leave of court or if the brief states that all parties
12 have consented to its filing, but a district court or BAP
13 may prohibit the filing of or may strike an amicus
14 brief that would result in a judge's disqualification.
15 On its own motion, and with notice to all parties to an
16 appeal, the district court or BAP may request a brief
17 by an amicus curiae.

50 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 ~~(b)~~(3) *Motion for Leave to File.* The motion
19 must be accompanied by the proposed brief and state:

20 ~~(1)~~(A) the movant's interest; and

21 ~~(2)~~(B) the reason why an amicus brief is
22 desirable and why the matters asserted are
23 relevant to the disposition of the appeal.

24 ~~(e)~~(4) *Contents and Form.* An amicus brief
25 must comply with Rule 8015. In addition to the
26 requirements of Rule 8015, the cover must identify
27 the party or parties supported and indicate whether the
28 brief supports affirmance or reversal. If an amicus
29 curiae is a corporation, the brief must include a
30 disclosure statement like that required of parties by
31 Rule 8012. An amicus brief need not comply with
32 Rule 8014, but must include the following:

33 ~~(1)~~(A) a table of contents, with page
34 references;

35 ~~(2)~~(B) a table of authorities—cases
36 (alphabetically arranged), statutes, and other
37 authorities—with references to the pages of the
38 brief where they are cited;

39 ~~(3)~~(C) a concise statement of the
40 identity of the amicus curiae, its interest in the
41 case, and the source of its authority to file;

42 ~~(4)~~(D) unless the amicus curiae is one
43 listed in the first sentence of subdivision (a)(2), a
44 statement that indicates whether:

45 ~~(A)~~(i) a party's counsel authored
46 the brief in whole or in part;

47 ~~(B)~~(ii) a party or a party's counsel
48 contributed money that was intended to fund
49 preparing or submitting the brief; and

50 ~~(C)~~(iii) a person—other than the
51 amicus curiae, its members, or its counsel—

52 FEDERAL RULES OF BANKRUPTCY PROCEDURE

52 contributed money that was intended to fund
53 preparing or submitting the brief and, if so,
54 identifies each such person;

55 ~~(5)~~(E) an argument, which may be
56 preceded by a summary and need not include a
57 statement of the applicable standard of review;
58 and

59 ~~(6)~~(F) a certificate of compliance, if
60 required by Rule 8015~~(a)(7)(C)~~ or 8015~~(b)(h)~~.

61 ~~(d)~~(5) *Length.* Except by the district court's
62 or BAP's permission, an amicus brief must be no
63 more than one-half the maximum length authorized by
64 these rules for a party's principal brief. If the court
65 grants a party permission to file a longer brief, that
66 extension does not affect the length of an amicus
67 brief.

68 ~~(e)~~(6) *Time for Filing.* An amicus curiae
69 must file its brief, accompanied by a motion for filing
70 when necessary, no later than 7 days after the
71 principal brief of the party being supported is filed.
72 An amicus curiae that does not support either party
73 must file its brief no later than 7 days after the
74 appellant's principal brief is filed. The district court
75 or BAP may grant leave for later filing, specifying the
76 time within which an opposing party may answer.

77 ~~(f)~~(7) *Reply Brief.* Except by the district
78 court's or BAP's permission, an amicus curiae may
79 not file a reply brief.

80 ~~(g)~~(8) *Oral Argument.* An amicus curiae
81 may participate in oral argument only with the district
82 court's or BAP's permission.

83 (b) DURING CONSIDERATION OF WHETHER
84 TO GRANT REHEARING.

54 FEDERAL RULES OF BANKRUPTCY PROCEDURE

85 (1) *Applicability.* This Rule 8017(b) governs
86 amicus filings during a district court's or BAP's
87 consideration of whether to grant rehearing, unless a
88 local rule or order in a case provides otherwise.

89 (2) *When Permitted.* The United States or its
90 officer or agency or a state may file an amicus brief
91 without the consent of the parties or leave of court.
92 Any other amicus curiae may file a brief only by leave
93 of court.

94 (3) *Motion for Leave to File.* Rule 8017(a)(3)
95 applies to a motion for leave.

96 (4) *Contents, Form, and Length.*
97 Rule 8017(a)(4) applies to the amicus brief. The brief
98 must include a certificate under Rule 8015(h) and not
99 exceed 2,600 words.

100 (5) *Time for Filing.* An amicus curiae
101 supporting the motion for rehearing or supporting

102 neither party must file its brief, accompanied by a
103 motion for filing when necessary, no later than 7 days
104 after the motion is filed. An amicus curiae opposing
105 the motion for rehearing must file its brief,
106 accompanied by a motion for filing when necessary,
107 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 the procedures when such filings are permitted.

The amendment to subdivision (a)(2) authorizes orders or local rules that prohibit the filing of or permit the striking of an amicus brief by party consent if the brief would result in a judge's disqualification. The amendment

56 FEDERAL RULES OF BANKRUPTCY PROCEDURE

does not alter or address the standards for when an amicus brief requires a judge's disqualification. It is modeled on an amendment to F.R.App.P. 29(a). A comparable amendment to subdivision (b) is not necessary. Subdivision (b)(1) authorizes local rules and orders governing filings during a court's consideration of whether to grant rehearing. These local rules or orders may prohibit the filing of or permit the striking of an amicus brief that would result in a judge's disqualification. In addition, under subdivision (b)(2), a court may deny leave to file an amicus brief that would result in a judge's disqualification.

1 **Rule 8018.1. District-Court Review of a Judgment that**
2 **the Bankruptcy Court Lacked the**
3 **Constitutional Authority to Enter**

4 If, on appeal, a district court determines that the
5 bankruptcy court did not have the power under Article III
6 of the Constitution to enter the judgment, order, or decree
7 appealed from, the district court may treat it as proposed
8 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 whenever it determines that the bankruptcy court lacked constitutional authority to enter the judgment, order, or decree appealed from. Consistent with the Supreme Court's decision in *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014), the district court in that situation may treat the bankruptcy court's judgment as proposed findings of fact and conclusions of law. 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.

58 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8021. Costs**

2 * * * * *

3 (c) COSTS ON APPEAL TAXABLE IN THE
4 BANKRUPTCY COURT. The following costs on appeal
5 are taxable in the bankruptcy court for the benefit of the
6 party entitled to costs under this rule:

7 (1) the production of any required copies of a
8 brief, appendix, exhibit, or the record;

9 (2) the preparation and transmission of the
10 record;

11 (3) the reporter's transcript, if needed to
12 determine the appeal;

13 (4) premiums paid for a ~~supersedeas~~ bond or
14 other security ~~bonds~~—to preserve rights pending
15 appeal; and

16 (5) the fee for filing the notice of appeal.

17 * * * * *

Committee Note

The amendment of subdivision (c) conforms this rule with the amendment of F.R.Civ.P. 62, which is made applicable in adversary proceedings by Rule 7062. Rule 62 formerly required a party to provide a “supersedeas bond” to obtain a stay of the judgment and proceedings to enforce the judgment. As amended, Rule 62(b) allows a party to obtain a stay by providing a “bond or other security.”

60 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8022. Motion for Rehearing**

2 * * * * *

3 (b) FORM OF THE MOTION; LENGTH. The
4 motion must comply in form with Rule 8013(f)(1) and (2).
5 Copies must be served and filed as provided by Rule 8011.
6 ~~Unless the district court or BAP orders otherwise, a motion~~
7 ~~for rehearing must not exceed 15 pages.~~Except by the
8 district court's or BAP's permission:

- 9 (1) a motion for rehearing produced using a
10 computer must include a certificate under
11 Rule 8015(h) and not exceed 3,900 words; and
12 (2) a handwritten or typewritten motion must
13 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

FEDERAL RULES OF BANKRUPTCY PROCEDURE 61

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).

62 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 9025. Security: Proceedings Against Sureties**
2 **Security Providers**

3 Whenever the Code or these rules require or permit
4 ~~the giving of security by a party~~ a party to give security, and
5 security is given ~~in the form of a bond or stipulation or~~
6 ~~other undertaking~~ with one or more ~~sureties~~ security
7 providers, each ~~surety~~ provider submits to the jurisdiction of
8 the court, and liability may be determined in an adversary
9 proceeding governed by the rules in Part VII.

Committee Note

This rule is amended to reflect the amendment of Rule 62 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7062. Rule 62 allows a party to obtain a stay of a judgment “by providing a bond or other security.” Limiting this rule’s enforcement procedures to sureties might exclude use of those procedures against a security provider that is not a surety. All security providers are brought into the rule by these amendments.

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 monospaced 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	5,200	20	Not applicable
		• Response to a motion			
	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

64 FEDERAL RULES OF BANKRUPTCY PROCEDURE

	Rule	Document Type	Word Limit	Page Limit	Line Limit
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
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

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

* * * * *

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules ** Recommended for Approval and Transmission***

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, and new Rule 8018.1, new Part VIII Appendix, *****, with a recommendation that they be approved and transmitted to the Judicial Conference.

Most of these proposed changes were published for comment in 2016, and the others were recommended for final approval without publication. The Standing Committee recommended Rule 7004 ***** for final approval at its January 2017 meeting, and recommended the remaining rules ***** for final approval at its June 2017 meeting.

Rules *** Published for Comment in 2016**

Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). Rule 3002.1(b) and (e) apply with respect to home mortgage claims in chapter 13 cases. These provisions impose notice requirements on the creditor to enable the debtor or trustee to make mortgage payments in the correct amount during a pending bankruptcy case.

There were three comments submitted in response to the publication. The commenters each expressed support for the amendments, with some suggested wording changes. One commenter noted that although the published rule purported to prevent a proposed payment

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

change from going into effect if a timely objection was filed, under time counting rules the deadline for filing the objection was actually later than the scheduled effective date of the payment change. The advisory committee revised the proposed amendment to eliminate this possibility.

Rule 5005 (Filing and Transmittal of Papers). Rule 5005(a)(2) addresses filing documents electronically in federal bankruptcy cases. The amendments published for public comment in August 2016 sought consistency with the proposed amendments to Civil Rule 5(d)(3), which addresses electronic filing in civil cases. The publication of changes to Bankruptcy Rule 5005 and Civil Rule 5 were coordinated with similar proposed changes to the criminal and appellate electronic filing rules: Criminal Rule 49 and Appellate Rule 25.

The advisory committee received six comments on the proposed amendments to Rule 5005(a)(2). Most comments addressed the wording of subdivision (a)(2)(C), the intent of which was to identify who can file a document and what information is required in the signature block. Other advisory committees received similar comments with respect to the parallel provision in their rules, and the advisory committees each worked to coordinate language to clarify the provisions.

In addition, the advisory committee received one comment (also submitted to the other advisory committees) opposing the default wording in the rule that pro se parties cannot file electronically. Along with the other advisory committees, the Bankruptcy Rules Committee chose to retain a default against permitting electronic filing by pro se litigants. It reasoned that under the published version of the rule pro se parties would be able to request permission to file electronically, and courts would be able to adopt a local rule that mandated electronic filing by pro se parties, provided that such rule included reasonable exceptions.

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

The Standing Committee approved the proposed amendments to Rule 5005(a)(2), as well as the electronic filing rules proposed by the other advisory committees, after making minor stylistic changes.

Proposed amendments to conform Bankruptcy Appellate Rules to recent or proposed amendments to the Federal Rules of Appellate Procedure (“FRAP”). A large set of FRAP amendments went into effect on December 1, 2016. The amendments to Bankruptcy Rules, Part VIII, Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022, Official Forms 417A and 417C, and the Part VIII Appendix discussed below bring the Bankruptcy Rules into conformity with the relevant amended FRAP provisions. One additional amendment to Rule 8011 was proposed to conform to a parallel FRAP provision that was also published for comment last summer.

- Rules 8002 (Time for Filing Notice of Appeal) and 8011 (Filing and Service; Signature), and Official Form 417A (Notice of Appeal and Statement of Election).

Bankruptcy Rules 8002(c) and 8011(a)(2)(C) include inmate-filing provisions that are virtually identical to, and are intended to conform to, the inmate-filing provisions of Appellate Rules 4(c) and 25(a)(2)(C). These rules treat notices of appeal and other papers as timely filed by inmates if certain specified requirements are met, including that the documents are deposited in the institution’s internal mail system on or before the last day for filing. To implement the FRAP amendments, a new appellate form was adopted to provide a suggested form for an inmate declaration under Rules 4 and 25. A similar director’s form was developed for bankruptcy appeals, and the advisory committee published an amendment to Official Form 417A (Notice of Appeal and Statement of Election) that will alert inmate filers to the existence of the director’s form.

Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), set out a list of post-judgment motions that toll the time for filing an appeal. The 2016 amendment to Appellate Rule 4(a)(4)

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

added an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made in order to have a tolling effect for the purpose of determining the deadline for filing a notice of appeal. A similar amendment to Rule 8002(b) was published in August 2016.

No comments were submitted specifically addressing the proposed amendments to Rule 8002, Rule 8011, or Official Form 417A.

- Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), 8016 (Cross-Appeals), and 8022 (Motion for Rehearing), Official Form 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements), and Part VIII Appendix (length limits). The 2016 amendments to Appellate Rules 5, 21, 27, 35, and 40 converted page limits to word limits for documents prepared using a computer. For documents prepared without using a computer, the existing page limits were retained. The FRAP amendments also reduced the existing word limits of Rules 28.1 (Cross-Appeals) and 32 (Briefs).

Appellate Rule 32(f) sets out a uniform list of the items that can be excluded when computing a document's length. The local variation provision of Rule 32(e) highlights a court's authority (by order or local rule) to set length limits that exceed those in FRAP. Appellate Form 6 (Certificate of Compliance with Rule 32(a)) was amended to reflect the changed length limits. Finally, a new appendix was adopted that collects all the FRAP length limits in one chart.

The advisory committee proposed parallel amendments to Rules 8013(f), 8015(a)(7) and (f), 8016(d), and 8022(b), along with Official Form 417C. In addition, it proposed an appendix to Part VIII that is similar to the FRAP appendix.

In response to publication, no comments were submitted that specifically addressed the amendments to these provisions or to the appendix.

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

- Rule 8017 (Brief of an Amicus Curiae). Rule 8017 is the bankruptcy counterpart to Appellate Rule 29. The recent amendment to Rule 29 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 previously did not address the topic; it was limited to amicus briefs filed in connection with the original hearing of an appeal. The 2016 amendment does not require courts to accept amicus briefs regarding rehearing, but it provides guidelines for such briefs as are permitted. The advisory committee proposed a parallel amendment to Rule 8017.

In August 2016 the Appellate Rules Advisory Committee published another amendment to Appellate Rule 29(a) that would authorize a court of appeals to prohibit or strike the filing of an amicus brief if the filing would result in the disqualification of a judge. The Bankruptcy Rules Advisory Committee proposed and published a similar amendment to Rule 8017 to maintain consistency between the two sets of rules.

Two comments were submitted in response to publication of Rule 8017. One commenter opposed the amendment because amicus briefs are usually filed before an appeal is assigned to a panel of judges, and thus the amicus and its counsel would not know whether recusal would later be required. The advisory committee rejected this comment because the proposed amendment merely permits, but does not *require*, striking amicus briefs in order to address recusal issues. The other commenter opposed the wording of the amendment, suggesting instead a more extensive and detailed rewrite of the rule. The advisory committee rejected this comment as beyond the scope of the proposed amendment.

Additional Amendments to the Bankruptcy Appellate Rules. In addition to the conforming amendments to Part VIII rules discussed above, amendments to Bankruptcy Appellate Rules 8002, 8006, and 8023 and new Bankruptcy Appellate Rule 8018.1 were published last summer. None of the comments submitted in response to publication specifically

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

addressed these amendments. Following discussion of the amendments at its spring 2017 meeting, the advisory committee recommended final approval of each rule as published, except for Rule 8023, which the advisory committee sent back to a subcommittee for further consideration.

- Rule 8002 (Time for Filing Notice of Appeal). The proposed amendment to Rule 8002(a) adds a new subdivision (a)(5) defining entry of judgment. The proposed amendment clarifies that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and either (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

- Rule 8006 (Certifying a Direct Appeal to the Court of Appeals). The proposed amendment to Rule 8006 adds a new subdivision (c)(2) that authorizes the bankruptcy judge to file a statement on the merits of a certification for direct review by the court of appeals when the certification is made jointly by all the parties to the appeal.

- Rule 8018.1 (District Court Review of a Judgment that the Bankruptcy Court Lacked Constitutional Authority to Enter). New Rule 8018.1 authorizes a district court to treat a bankruptcy court's judgment as proposed findings of fact and conclusions of law if the district court determines that the bankruptcy court lacked constitutional authority to enter a final judgment. The procedure would eliminate the need to remand an appeal to the bankruptcy court merely to recharacterize the judgment as proposed findings and conclusions.

* * * * *

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

Conforming Changes Proposed without Publication

*Rules ***** Considered at the January 2017 Committee Meeting.* At the Standing Committee's January 2017 meeting, the advisory committee recommended final approval without publication of technical conforming amendments to Rule 7004(a)(1) *****.

- Rule 7004 (Process; Service of Summons, Complaint). Rule 7004 incorporates by reference certain components of Civil Rule 4. In 1996, Rule 7004(a) was amended to incorporate by reference the provision of Civil Rule 4(d)(1) addressing a defendant's waiver of service of a summons.

In 2007, Civil Rule 4(d) was amended to change, among other things, the language and placement of the provision addressing waiver of service of summons. The cross-reference to Civil Rule 4(d)(1) in Rule 7004(a), however, was not changed at that time.

Accordingly, the advisory committee recommended an amendment to Rule 7004(a) to refer to Civil Rule 4(d)(5). Based on its technical and conforming nature, the advisory committee also recommended that the proposed amendment be submitted to the Judicial Conference for approval without prior publication.

* * * * *

*Rules ***** Considered at the June 2017 Standing Committee Meeting.* At the Standing Committee's June 2017 meeting, the advisory committee recommended that the changes described below to Rules 7062, 8007, 8010, 8011, 8021, and 9025,***** be approved and transmitted to the Judicial Conference.

- Rule 8011 (Filing and Service; Signature). Rule 8011 addresses filing, service, and signatures in bankruptcy appeals. At the time the advisory committee recommended publication of the proposed amendments to Rule 5005 regarding electronic filing, service, and signatures in coordination with the other advisory committees' e-filing rules, it overlooked the

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

need for similar amendments to Rule 8011. It accordingly recommended that conforming amendments to Rule 8011 consistent with the e-filing changes to Rule 5005 and its counterpart, Appellate Rule 25, be approved without publication so that all of the e-filing amendments could go into effect at the same time. The Standing Committee accepted the advisory committee's recommendation, approving amendments to Rule 8011 after incorporating stylistic changes it made to the other e-filing amendments at the meeting.

- Rules 7062 (Stay of Proceedings to Enforce a Judgment), 8007 (Stay Pending Appeal; Bonds; Suspension of Proceedings), 8010 (Completing and Transmitting the Record, 8021 (Costs), and 9025 (Security: Proceedings Against Sureties). The advisory committee recommended conforming amendments to Rules 7062, 8007, 8010, 8021, and 9025, consistent with proposed and published amendments to Civil Rules 62 (Stay of Proceedings to Enforce a Judgment) and 65.1 (Proceedings Against a Surety) that would lengthen the period of the automatic stay of a judgment and modernize the terminology “supersedeas bond” and “surety” by using instead the broader term “bond or other security.” The Advisory Committee on Appellate Rules also published amendments to Appellate Rules 8 (Stay or Injunction Pending Appeal), 11 (Forwarding the Record), and 39 (Costs) that would adopt conforming terminology.

Because Bankruptcy Rule 7062 incorporates the whole of Civil Rule 62, the new security terminology will automatically apply in bankruptcy adversary proceedings when the civil rule goes into effect. Rule 62, however, also includes a change that would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days. The civil rule change addresses a gap between the end of the judgment-stay period and the 28-day time period for making certain post-judgment motions in civil practice. Because the deadline for post-judgment motions in bankruptcy is 14 days, however, the advisory committee recommended an amendment to Rule 7062 that would maintain the current 14-day duration of the automatic stay

Excerpt from the September 2017 Report of the Committee on Rules of Practice and Procedure

of judgment. As revised, Rule 7062 would continue incorporation of Rule 62, “except that proceedings to enforce a judgment are stayed for 14 days after its entry.”

Because the amendments to Rules 7062, 8007, 8010, 8021, and 9025 simply adopt conforming terminology changes from the other rule sets that have been recommended for final approval, and maintain the status quo with respect to automatic stays of judgments in the bankruptcy courts, the advisory committee recommended approval of these rules without publication.

* * * * *

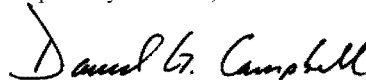
The Standing Committee voted unanimously to support the recommendations of the advisory committee.

Recommendation: That the Judicial Conference:

- a. Approve proposed amendments to Bankruptcy Rules 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, and new Rule 8018.1, and the new Part VIII Appendix, and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law;

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	William K. Kelley
Gregory G. Garre	Rod J. Rosenstein
Daniel C. Girard	Amy J. St. Eve
Susan P. Graber	Larry D. Thompson
Frank M. Hull	Richard C. Wesley
Peter D. Keisler	Jack Zouhary

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR
REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

NEIL M. GORSUCH
APPELLATE RULES

SANDRA SEGAL IKUTA
BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

WILLIAM K. SESSIONS III
EVIDENCE RULES

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 5, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on November 14, 2016. *****

The Committee also approved a technical amendment to one rule *****. It seeks the Standing Committee's approval of these amendments without publication.

These action items are discussed in Part II of this report.

II. Action Items

Excerpt from the December 5, 2016 Report of the Advisory Committee on Bankruptcy Rules

Report to the Standing Committee
 Advisory Committee on Bankruptcy Rules
 December 5, 2016

Page 2

B. Items for Final Approval Without Publication

The Committee requests that the Standing Committee approve amendments to Rule 7004(a)(1) ***** without publication due to their technical and conforming nature. The Committee recommends that the amendment to Form 101 take effect on December 1, 2017.

Action Item 2. Reference to Civil Rule 4 in Rule 7004(a)(1) (Summons; Service; Proof of Service).

Rule 7004 incorporates by reference certain components of Civil Rule 4. In 1996, the Committee amended Rule 7004(a) to incorporate by reference the provision of Civil Rule 4 addressing a defendant's waiver of service of a summons. At that time, the relevant provision of the civil rules was set forth in Civil Rule 4(d)(1), which read:

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

In 2007, Civil Rule 4(d) was amended to change, among other things, the language and placement of the foregoing provision. Specifically, the 2007 amendments renumbered the provision as Civil Rule 4(d)(5) and modified the language to read:

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

The cross-reference to Civil Rule 4(d)(1) in Rule 7004(a), however, was not changed at that time.

Accordingly, the Committee recommends an amendment to Rule 7004(a) to incorporate the correct subsection of Civil Rule 4(d), that being Civil Rule 4(d)(5). The language of the proposed amendment to Rule 7004(a) is included in *Appendix A2*. Based on its technical and conforming nature, the Committee further recommends that the proposed amendment to Rule 7004(a) be submitted to the Judicial Conference for approval without prior publication.

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR
REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES
MICHAEL A. CHAGARES
APPELLATE RULES
SANDRA SEGAL IKUTA
BANKRUPTCY RULES
JOHN D. BATES
CIVIL RULES
DONALD W. MOLLOY
CRIMINAL RULES
WILLIAM K. SESSIONS III
EVIDENCE RULES

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure
FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules
RE: Report of the Advisory Committee on Bankruptcy Rules
DATE: May 22, 2017

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Nashville, Tennessee, on April 6, 2017. *****

At the meeting the Committee considered comments that were submitted in response to the publication in August 2016 of one proposed new rule and proposed amendments to ten existing rules ***** and a new appendix. The majority of these rule and form amendments were proposed to conform to recent and proposed amendments to the civil and appellate rules and forms. After making some changes in response to comments, the Committee gave final approval to all but one of the published rules and to the published forms.

The Committee also approved conforming amendments to six rules that had not been published for comment. These amendments track the wording of proposed amendments to the civil and appellate rules regarding electronic filing, service, and signatures and the posting of security for stays of judgment.

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
 Advisory Committee on Bankruptcy Rules
 May 22, 2017

Page 2

The action items presented by the Committee are discussed below in Part II, organized as follows:

A. Items for Final Approval

(A1) Rules ***** published for comment in August 2016—

- Rule 3002.1(b) and (e);
- Rule 5005(a)(2);
- Rules 8002(b) and (c), 8011(a)(2)(C), 8013, 8015, 8016, 8017, 8022, *****, and new Part VIII Appendix;
- Rules 8002(a), 8006, and new Rule 8018.1;
- *****

(A2) Conforming changes proposed without publication—

- Rule 8011(a), (c), (d), and (e);
- Rules 7062, 8007, 8010, 8021, and 9025;
- *****

II. Action Items

A. Items for Final Approval*A1. Rules published for comment in August 2016.*

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2016 and are discussed below. Bankruptcy Appendix A includes the rules and forms that are in this group.

Action Item 1. Rule 3002.1(b) and (e) (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence). This rule applies with respect to home mortgage claims in chapter 13 cases. It imposes noticing requirements on the creditor in order to enable the debtor or trustee to make mortgage payments in the correct amount while the bankruptcy case is pending. The published amendments to subdivisions (b) and (e) do three things: they (i) create flexibility regarding a notice of payment change for home equity lines of credit; (ii) create a procedure for objecting to a notice of payment change; and (iii) expand the category of parties who can seek a determination of fees, expenses, and charges that are owed at the end of the case.

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 3

Three comments were submitted in response to the publication. They were submitted by Aderant CompuLaw (BK-2016-0003-0006); the National Conference of Bankruptcy Judges (“NCBJ”) (BK-2016-0003-0007); and the Pennsylvania Bar Association (BK-2016-0003-0008). The Bar Association stated that it supports adoption of the amendments to Rule 3002.1(b) and (e). The other two commenters expressed support for these amendments but made some wording suggestions.

The NCBJ comment made stylistic suggestions, in response to which the Committee divided subdivision (b) into two paragraphs with separate captions and changed the word “that” to “who” in the first sentence of (b)(2).

Aderant noted the impact of Rule 9006(f) on the timing provisions of the proposed amendment to subdivision (b). It pointed out that if a notice of a payment change is served by mail, Rule 9006(f) would give an objector three extra days to file a motion that would keep the change from going into effect. As a result, a timely objection could be filed on or after the effective date of the payment change. For example, if the notice were served by mail 21 days before the payment due date, under the rule an objector would have 24 days to file its motion, thereby permitting a motion designed to stop the change to be filed three days after the change went into effect. Aderant suggested that to avoid this confusion, the rule should require a motion that would stop the payment change from taking effect to be filed “by the day prior to the date the new amount is due.” The Committee made revisions, using slightly different language, in response to this suggestion.

With those changes and additional ones suggested by the style consultants, the Committee unanimously approved the amendments to Rule 3002.1(b) and (e).

Action Item 2. Rule 5005(a)(2) (Electronic Filing and Signing). Rule 5005(a)(2) governs the filing of documents electronically in federal bankruptcy cases. Consistent with the Standing Committee’s suggestion that the advisory committees work collaboratively on electronic filing and service issues, the Committee worked with the Civil, Criminal, and Appellate Advisory Committees on matters relating to Rule 5005(a)(2). Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings. Therefore, an amendment to Civil Rule 5(d)(3) automatically applies in adversary proceedings unless Rule 7005 is amended to provide otherwise. The Bankruptcy Rules, however, also address electronic filing in Rule 5005(a)(2). That rule largely tracks the language of current Civil Rule 5(d)(3). Because Rule 7005 incorporates any amendments to Civil Rule 5(d)(3), and Rule 5005(a)(2) should be consistent with Rule 7005, the Committee proposed amending Rule 5005(a)(2) in a similar manner.

The amendments to Rule 5005(a)(2) that were published for public comment in August 2016 were consistent, to the greatest extent possible, with the proposed amendments to Civil Rule 5(d)(3). The variations between the proposed amendments to Rule 5005(a)(2) and Civil Rule 5(d)(3) relate primarily to different terminology used by the Bankruptcy Rules and the

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 4

Bankruptcy Code.¹

The Committee received six public comments on the proposed amendments to Rule 5005(a)(2). Notably, the majority of these comments concerned the language of Rule 5005(a)(2)(C), which, as published, read:

(C) *Signing.* The user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's signature.²

Several comments suggested that this language is confusing and does not clearly state who can file the document, who can sign the document, or the information required on the signature block. The other advisory committees received similar comments on their proposed amendments akin to the language of Rule 5005(a)(2)(C). In addition, our Committee received one comment (also submitted to the other advisory committees) from an individual named Sai (BK-2016-0003-0012) who opposed the default rule that pro se parties cannot file electronically. We received another comment—from the New York City Bar Association—that requested that the following language, which appears in the Committee Note to the proposed amendments to Civil Rule 5, be added to the Committee Note to Rule 5005(a)(2):

Care should be taken to ensure that an order to file electronically does not impede access to the court, and reasonable exceptions must be included in a local rule that requires electronic filing by a pro se litigant.

At the spring meeting, the Committee considered all of these comments and a suggested revision to Rule 5005(a)(2)(C) that the reporters to the various advisory committees had discussed and that the other committees would consider at their spring meetings. The Committee voted unanimously to approve the following language for the provision:

(C) *Signing.* A filing made through a person's electronic-filing account, together with the person's name on a signature block, constitutes the person's signature.

¹ The civil rule uses the term "person," which under § 101(41) of the Bankruptcy Code includes an "individual, partnership, and corporation." Because only human beings may proceed without an attorney, the proposed bankruptcy rule uses the term "individual" rather than "person." Where the civil rule refers to "a person proceeding with an attorney," the bankruptcy rule uses the term "entity," which under § 101(15) of the Bankruptcy Code includes estates, trusts, governmental units, and United States trustees, as well as persons.

² Comments addressing the signature provision were submitted by Carolyn Buffington (BK-2016-0003-0005), NCBJ (BK-2016-0003-0007), the Pennsylvania Bar Association (BK-2016-0003-0008), Heather Dixon (BK-2016-0003-0010), and the New York City Bar Association (BK-2016-0003-0011).

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 5

The Committee decided against inserting the word “authorized” before the word “filing” (a change adopted by some of the other advisory committees) because Rule 5005(a)(2)(C) does not indicate who would authorize the filing or how the authorization would be accomplished. Rather than introduce such ambiguity into this provision, the Committee decided to revise the Committee Note to indicate that the filing must comply with court rules, which may specify when someone may file a document electronically using someone else’s CM/ECF credentials. The following language was approved for inclusion in the Committee Note:

A filing made through a person’s electronic-filing account, together with the person’s name on a signature block, constitutes the person’s signature. A person’s electronic-filing account means an account established by the court for use of the court’s electronic-filing system, which account the person accesses with the user name and password (or other credentials) issued to that person by the court. The filing also must comply with the rules of the court governing electronic filing.

The Committee also accepted the New York City Bar Association’s suggestion that the Committee Note include the language from the civil rule’s Committee Note about ensuring access to courts.

Along with the other advisory committees, our Committee chose not to adopt a default rule permitting electronic filing by pro se litigants. In reaching this conclusion, the Committee examined other potential default rules, including one that would mandate electronic filing by pro se litigants and one that would allow pro se litigants to elect to file either electronically or manually, both subject to certain exceptions and qualifications. It decided that, on balance, it was preferable to maintain the proposed language of the electronic filing and service rules, which would allow a pro se party to request permission to file electronically and allow courts to adopt a local rule that mandated electronic filing by pro se parties, provided that such rule included reasonable exceptions.

Action Item 3. **Proposed amendments to the bankruptcy appellate rules and forms to conform to recent and proposed amendments to the Federal Rules of Appellate Procedure (“FRAP”).** Part VIII of the Bankruptcy Rules (Appeals) was completely revised in 2014 to conform as closely as possible to parallel FRAP provisions. Rather than incorporating FRAP provisions by reference, the Part VIII rules largely track the language of FRAP.

A large set of FRAP amendments went into effect on December 1, 2016. With one exception, the Part VIII amendments included in this action item were proposed to bring the Bankruptcy Rules into conformity with the relevant FRAP provisions that were amended. One

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 6

other amendment, discussed below, was proposed to conform to a parallel FRAP provision that was also published for comment last summer.

Three comments were submitted in response to the publication of these rules, forms, and appendix. One commenter—the NCBJ—stated that it supports all of the published bankruptcy appellate rules (BK-2016-0003-0007). It did not comment on the forms or appendix. The other two comments were submitted by the Pennsylvania Bar Association (BK-2016-0003-0008) and attorney Heather Dixon (BK-2016-0003-0009). The Bar Association expressed support for all of the published appellate rules, form, and appendix, except as noted below. Ms. Dixon proposed alternative language for Rule 8017.

The Committee unanimously approved all of these rules, forms, and appendix as published.

A. Rules 8002(c), 8011(a)(2)(C), ***** (inmate filing provisions). 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 virtually identical to the former provisions of Appellate Rules 4(c) and 25(a)(2)(C). 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 2016 FRAP amendments were made to clarify certain issues that have produced conflicts in the case law. They (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 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. The Committee's proposed amendments to Rules 8002(c) and 8011(a)(2)(C) track these changes.

No comments were submitted that specifically addressed these proposed amendments.

B. Rule 8002(b) (timeliness of tolling motions). Rule 8002(b) and its counterpart, Appellate Rule 4(a)(4), set out a list of postjudgment motions that toll the time for filing an appeal. Prior to amendment, the appellate rule provided that the motion must be “timely file[d]” in order to have a tolling effect. The 2016 amendment to Rule 4(a)(4) resolved 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 amendment added an explicit requirement that the motion must be filed within the time period specified by the rule under which it is made in order

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 7

to have a tolling effect for the purpose of determining the deadline for filing a notice of appeal. A similar amendment to Rule 8002(b) was published in August 2016, and no comments were submitted specifically addressing this provision.

C. Rules 8013, 8015, 8016, 8022, ***, and Part VIII Appendix** (length limits). The 2016 amendments to Appellate Rules 5, 21, 27, 35, and 40 converted the existing page limits to word limits for documents prepared using a computer. For documents prepared without the aid of a computer, the page limits set out in those rules were retained. The amendments employed a conversion ratio of 260 words per page. The previous ratio was 280 words per page.

The FRAP amendments also reduced the word limits of Rule 32 for briefs to reflect the 260 words-per-page ratio. The 14,000-word limit for a party's principal brief became a 13,000-word limit; the limit for a reply brief changed from 7,000 to 6,500 words. The 2016 amendments correspondingly reduced the word limits set by Rule 28.1 for cross-appeals.

Rule 32(f) sets out a uniform list of the items that can be excluded when computing a document's length. The local variation provision of Rule 32(e) highlights a court's authority (by order or local rule) to set length limits that exceed those in FRAP. Appellate Form 6 (Certificate of Compliance with Rule 32(a)) was amended to reflect the changed length limits. Finally, a new appendix was adopted that collects all the FRAP length limits in one chart.

The Committee proposed parallel amendments to Rules 8013(f) (Motions), 8015(a)(7) and (f) (Form and Length of Briefs), 8016(d) (Cross-Appeals), and 8022(b) (Motion for Rehearing), along with Official Form 417C (Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)). In addition, it proposed an appendix to Part VIII, which is similar to the FRAP appendix.

In response to publication, no comments were submitted that specifically addressed the amendments to these provisions or to the appendix.

D. Rule 8017 (amicus filings). Rule 8017 is the bankruptcy counterpart to Appellate Rule 29. The recent amendment to Rule 29 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 previously did not address the topic; it was limited to amicus briefs filed in connection with the original hearing of an appeal. The 2016 amendment does not require courts to accept amicus briefs regarding rehearing, but it provides guidelines for such briefs that are permitted.

Our Committee proposed a parallel amendment to Rule 8017. The proposed amendment designates the existing rule as subdivision (a) and governs amicus briefs during a court's initial consideration of a case on the merits. It adds a new subdivision (b), which governs amicus briefs

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 8

when a district court or bankruptcy appellate panel (BAP) considers whether to grant rehearing. The latter subdivision could be overridden by a local rule or order in a case.

In August 2016 the Appellate Rules Advisory Committee published another amendment to Appellate Rule 29(a). It would authorize a court of appeals to prohibit or strike the filing of an amicus brief to which the parties consented if the filing would result in the disqualification of a judge. Our Committee proposed and published a similar amendment to Rule 8017 in order to maintain consistency between the two sets of rules.

In response to publication, two comments were submitted that addressed the proposed amendment to Rule 8017(a) regarding the striking of amicus briefs to avoid a judge's disqualification. Both the Pennsylvania Bar Association and attorney Heather Dixon incorporated comments that they had submitted in response to publication of the parallel amendments to Appellate Rule 29. The Bar Association stated that it opposed this amendment in both sets of rules because amicus briefs are usually filed before an appeal is assigned to a panel of judges and thus the amicus and its counsel would have no way of knowing whether recusal would later be required. The Association suggested that under those circumstances the better course would be for the judge to recuse. Striking of the amicus brief might be appropriate, the Association commented, if it appeared that the brief was filed for the purpose of obtaining a recusal, but the proposed provision is not so limited. The Association further stated that when an amicus retains counsel for the purpose of prompting a recusal of a judge, the lawyer could be disqualified instead.

Ms. Dixon expressed opposition to the wording of the Appellate Rule 29/Bankruptcy Rule 8017 amendments as published. She proposed a revision of Rule 29(a) and (b) that would eliminate the filing of amicus briefs with the consent of all parties, would not require the amicus brief to accompany a motion for leave to file, and would specify the circumstances under which it would be permissible to file an amicus brief that would cause a judge's recusal.

The Committee voted unanimously to approve Rule 8017 as published, subject to reconsideration if the Appellate Rules Committee concluded that changes to the Appellate Rule 29(a) amendment should be made.³ The Committee concluded that Ms. Dixon's proposal represented a more fundamental change in the rule than either advisory committee had in mind when it proposed an amendment to address the narrow situation of authorizing the denial of amicus participation, despite the consent of all parties, when recusal would otherwise result. As for the Pennsylvania Bar Association's concern about the potential unfairness of striking amicus briefs, members noted that, because the proposed rule is permissive, an appellate court could

³ The Committee was subsequently informed that the Appellate Rules Committee voted not to make any changes to its proposed amendment in response to the comments. It did, however, make some stylistic changes and added to subdivision (b), in addition to (a), the proposed provision regarding amicus briefs that may cause a judge's disqualification. Our Committee made similar changes.

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 9

weigh competing considerations in deciding whether recusal, lawyer disqualification, or striking the brief would be appropriate in a particular case.

Action Item 4. Additional amendments to the bankruptcy appellate rules. In addition to the conforming amendments to Part VIII rules discussed in the previous action item, three additional bankruptcy appellate rule amendments and a new bankruptcy appellate rule were published last summer in response to a suggestion and comments that the Committee had received.

In response to publication, no comments were submitted specifically addressing these amendments. Following discussion of them at the spring meeting, the Committee voted unanimously to seek final approval of all of them as published, except for Rule 8023, which was sent back to a subcommittee for further consideration. Rule 8023 is discussed as an information item in Part III of this report.

A. Rule 8002(a) (separate document requirement). In response to the August 2012 publication of the proposed revision of the Part VIII rules, Judge Christopher M. Klein (Bankr. E.D. Cal.), commented that it would be useful for Rule 8002 to have a provision similar to Appellate Rule 4(a)(7), which addresses when a judgment or order is entered for purposes of Rule 4(a). He noted that the provision would help clarify timing issues presented by the separate-document requirement.

Appellate Rule 4(a)(7) specifies when a judgment or order is entered for purposes of Rule 4(a) (Appeal in a Civil Case). It provides that, if Civil Rule 58(a) does not require a separate document, the judgment or order is entered when it is entered in the civil docket under Civil Rule 79(a). If Rule 58(a) does require a separate document, the judgment or order is entered when it is entered in the civil docket and either (1) the judgment or order is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first. The rule was amended in 2002 to resolve several circuit splits that arose out of uncertainties about how Rule 4(a)(7)'s definition of when a judgment or order is "entered" interacted with the requirement in Civil Rule 58 that, to be "effective," a judgment must be set forth on a separate document.

The Bankruptcy Rules have adopted Civil Rule 58 and its separate document requirement only for adversary proceedings. Rule 7058 was added in 2009, making Civil Rule 58 applicable in adversary proceedings. At the same time, Rule 9021 was amended to provide that a "judgment or order is effective when entered under Rule 5003 [Records Kept by the Clerk]." The latter rule applies to contested matters and does not require a separate document.

The Committee concluded that the rules specifying when a separate document is required and the impact of the requirement on the date of entry of the judgment are sufficiently confusing that, as suggested by Judge Klein, Rule 8002 would likely be improved by adding a provision

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 10

similar to Appellate Rule 4(a)(7). The proposed amendment adds a new subdivision (a)(5) defining entry of judgment. As proposed for amendment, it would clarify that the time for filing a notice of appeal under subdivision (a) begins to run upon docket entry in contested matters and adversary proceedings for which Rule 58 does not require a separate document. In adversary proceedings for which Rule 58 does require a separate document, the time commences when the judgment, order, or decree is entered in the civil docket and (1) it is set forth on a separate document, or (2) 150 days have run from the entry in the civil docket, whichever occurs first.

B. Rule 8006(c) (court statement on merits of certification). The Committee published another amendment suggested by Judge Klein in response to the 2012 publication of the Part VIII amendments. Under 28 U.S.C. § 158(d)(2)(A), which is implemented by revised Rule 8006(c), all appellants and all appellees, acting jointly, may certify a proceeding for direct appeal to the court of appeals without any action being taken by the bankruptcy court, district court, or BAP. Judge Klein suggested that a provision be added to Rule 8006(c) that would be a counterpart to Rule 8006(e)(2). The latter provision authorizes a party to file a short supplemental statement regarding the merits of certification within 14 days after the court certifies a case for direct appeal on its own motion. Judge Klein suggested that the bankruptcy court should have a similar opportunity to comment when the parties certify the appeal.

At the fall 2013 meeting, the Committee concluded that the court of appeals would likely benefit from the court's statement about whether the appeal satisfies one of the grounds for certification. The Committee decided, however, that authorization should not be limited to the bankruptcy court. Because under Rule 8006(b) the matter might be deemed to be pending in the district court or BAP at the time or shortly after the parties file the certification, those courts should also be authorized to file a statement with respect to appeals pending before them. The authorization would be permissive, however, so a court would not be required to file a statement. A new subdivision (c)(2) would authorize such supplemental statements by the court.

C. New Rule 8018.1 (district court review of a judgment that the bankruptcy court lacked constitutional authority to enter). The proposed rule would authorize a district court to treat a bankruptcy court's 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 procedure is consistent with the Supreme Court's decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014).

In response to *Stern v. Marshall*, 564 U.S. 462 (2011), Professor Alan Resnick submitted Suggestion 12-BK-H, which proposed a rule amendment to address the situation in which an appeal is taken from a bankruptcy court judgment and the district court decides that the proceeding is one in which the bankruptcy court lacked constitutional authority to enter a final judgment. Adopting a procedure that some districts have authorized by local rule, the proposed rule would allow the district court to review the judgment as if the bankruptcy court had treated

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 11

the proceeding as non-core under 28 U.S.C. § 157(c)(1).⁴ This procedure would eliminate the need for a remand to the bankruptcy court for the entry of proposed findings and conclusions.

In *Arkison* the Supreme Court held that *Stern* claims can be treated as non-core under § 157(c)(1). The Court explained that “because these *Stern* claims fit comfortably within the category of claims governed by § 157(c)(1), the Bankruptcy Court would have been permitted to follow the procedures required by that provision, *i.e.*, to submit proposed findings of fact and conclusions of law to the District Court to be reviewed *de novo*.” While the case before the Court “did not proceed in precisely that fashion,” the Court nevertheless affirmed. *Id.* at 2174. It concluded that the petitioner had received the equivalent of the review it was entitled to—*de novo* review—because the district court had reviewed the bankruptcy court’s entry of summary judgment *de novo* and had “conclude[ed] in a written opinion that there were no disputed issues of material fact and that the trustee was entitled to judgment as a matter of law.” *Id.* at 2174.

The decision made clear that *Stern* claims do not fall within a statutory gap of being neither core nor non-core. Instead, once identified as *Stern* claims, they can be treated under the statutory provisions for non-core claims, as the proposed rule authorizes. Moreover, *Arkison* shows the Court’s acceptance of a pragmatic approach to dealing with errors in the handling of *Stern* claims. Rather than reversing and remanding for the bankruptcy court to handle the proceeding as a non-core matter, it accepted the district court’s review as being tantamount to review of a non-core proceeding. *See also Stern*, 564 U.S. at 471-72 (noting without criticism that “[b]ecause the District Court concluded that Vickie’s counterclaim was not core, the court determined that it was required to treat the Bankruptcy Court’s judgment as ‘proposed[.]’ rather than final,’ and engage in an ‘independent review’ of the record”).

The Committee discussed at the spring 2016 meeting whether to include provisions in the rule regarding the time for filing objections and responses to the bankruptcy court’s proposed findings and conclusions and addressing whether parties could choose to rely on their appellate briefs instead. In the end, the Committee was persuaded by district judge members 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

⁴ Section 157(c)(1) provides as follows:

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
 Advisory Committee on Bankruptcy Rules
 May 22, 2017

Page 12

novo review is sought or whether they should be supplemented with specific objections and responses.

(A2) Conforming changes proposed for approval without publication.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule and form amendments that are discussed below. The reasons for seeking approval without publication are discussed for each action item. Bankruptcy Appendix A includes the rules and forms that are in this group.

Action Item 7. Rule 8011(a), (c), (d), and (e) (Filing and Service; Signature). At the January Standing Committee meeting, the Committee informed the Standing Committee that it had initially overlooked the need to amend Rule 8011 at the same time as it made changes in coordination with the other advisory committees' proposed amendments regarding electronic filing, service, and signatures. In order that conforming amendments to Rule 8011 can be approved to go into effect at the same time as the amendments to Rule 5005(a) and the parallel provisions of the civil, criminal, and appellate rules, the Committee seeks approval of these amendments without publication. The text of the proposed amendments to Rule 8011, which includes the published amendments regarding inmate filing that are discussed at Action Item 2, is set out in Appendix A.

At the spring meeting, the Committee considered the comments that were submitted in response to the publication of Rule 5005(a) and the parallel rules, and it approved responsive changes that generally conform to the proposed amendments to Rule 5005 and Civil Rule 5, Criminal Rule 49, and Appellate Rule 25. The proposed amendments, however, differ in wording from the parallel civil, criminal, and appellate rules in a few respects. First, as is the case with Rule 5005(a)(2)(C), the provision regarding electronic signatures is not limited to "authorized" filings. Second, maintaining a difference in the existing rules, Rule 8011(c)(3) provides that electronic service is "complete upon filing or sending, unless the person making service *receives notice* that the document was not received by the person served." This differs from Civil Rule 5(b)(2)(E)'s and Criminal Rule 49(a)(3)(A)'s references to "the filer or sender⁵ *learn[ing]* that the document was not received" and Appellate Rule 25(c)(4)'s reference to "the person making service *[being]* notified that the paper was not received." Finally, Rule 8011 generally follows the organization of Appellate Rule 25, which differs from the organization of Civil Rule 5 and proposed Criminal Rule 49.

The Committee unanimously approved the amendments to Rule 8011 as set out in Appendix A.

⁵ The criminal rule says "the serving party" rather than "the filer or sender."

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 13

Action Item 8. Rules 7062 (Stay of Proceedings to Enforce a Judgment), 8007 (Stay Pending Appeal; Bonds; Suspension of Proceedings), 8010 (Completing and Transmitting the Record), 8021 (Costs), and 9025 (Security: Proceedings Against Sureties). The Committee seeks approval of amendments to these rules to conform in part to proposed and published amendments to Civil Rules 62 (Stay of Proceedings to Enforce a Judgment) and 65.1 (Proceedings Against a Surety) that would lengthen the period of the automatic stay of a judgment and broaden and modernize the terminology “supersedeas bond” and “surety.” The Appellate Rules Committee has also published amendments to Appellate Rules 8 (Stay or Injunction Pending Appeal), 11 (Forwarding the Record), and 39 (Costs) that would adopt conforming terminology.

If the amendments are approved, Civil Rule 62 would no longer refer to a “supersedeas bond.” Instead, the rule would use the more expansive terms “bond or other security.” This amendment is proposed in order to make clear that security in a form other than a bond may be used. Consistent with that change, Civil Rule 65.1 would be amended to refer to “other security providers.”

Bankruptcy Rule 7062 does not need to be amended to adopt the changed terminology because it provides that Civil Rule 62 “applies in adversary proceedings.” Thus any amendment to Rule 62 automatically applies in bankruptcy adversary proceedings. Rule 9025 does, however, need to be amended to be consistent with amended Rules 62 and 7062. The Committee also seeks approval of amendments to Rule 8007, 8010, and 8021 to conform to the terminology changes proposed for Appellate Rules 8, 11, and 39. The texts of the proposed amendments are included in Appendix A.

In addition to changing the terminology of Civil Rule 62, the published amendments to that rule would lengthen the automatic stay of a judgment entered in the district court from 14 to 30 days. The Committee Note explains this change as follows:

New Rule 62(a) extends the period of the automatic stay to 30 days. Former Rule 62(a) set the period at 14 days, while former Rule 62(b) provided for a court-ordered stay “pending disposition of” motions under Rules 50, 52, 59, and 60. The time for making motions under Rules 50, 52, and 59, however, was later extended to 28 days, leaving an apparent gap between expiration of the automatic stay and any of those motions (or a Rule 60 motion) made more than 14 days after entry of judgment. The revised rule eliminates any need to rely on inherent power to issue a stay during this period. Setting the period at 30 days coincides with the time for filing most appeals in civil actions, providing a would-be appellant the full period of appeal time to arrange a stay by other

Excerpt from the May 22, 2017 Report of the Advisory Committee on Bankruptcy Rules

Report to Standing Committee
Advisory Committee on Bankruptcy Rules
May 22, 2017

Page 14

means. A 30-day automatic stay also suffices in cases governed by a 60-day appeal period.

If no exception is made to Rule 7062's incorporation of Civil Rule 62, this change will apply to bankruptcy adversary proceedings, thereby lengthening to 30 days the period of the automatic stay of judgment.

The Committee voted unanimously to amend Rule 7062 to retain the current 14-day duration of the automatic stay of judgment. Such a change is needed to keep Rule 7062 consistent with other Bankruptcy Rules that govern post-judgment motions and the time for appeal. When the Civil Rules were amended to provide 28 days for post-judgment motions, the Bankruptcy Rules were not similarly amended. Bankruptcy Rules 7052, 9015, and 9023 provide for a 14-day period for seeking a renewed motion for judgment as a matter of law, an amendment of findings, or a new trial. Similarly, Rule 8002 provides for a 14-day period for filing a notice of appeal. These shorter periods have been retained because expedition is frequently important in bankruptcy cases.

To accomplish this departure from Rule 62's time period, the Committee voted to add the following carve-out to Rule 7062's incorporation of Rule 62: "except that proceedings to enforce a judgment are stayed for 14 days after its entry."

Because these amendments are being proposed to (i) adopt terminology changes that will automatically apply in bankruptcy adversary proceedings and (ii) maintain the status quo with respect to automatic stays of judgments in the bankruptcy courts, the Committee seeks approval of these amendments without publication.

