ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

April 8-9, 2021

ADVISORY COMMITTEE ON BANKRUPTCY RULES

April 8-9, 2021 Virtual Meeting

Discussion Agenda

1. Greetings and introductions; acknowledgment of outgoing member Judge Melvin Hoffman; welcome to new members Judge Rebecca Buehler Connelly, Judge Catherine Peek McEwen, Damian S. Schaible, Esq. and Tara Twomey, Esq. (Judge Dow).

2. Approval of minutes of September 22, 2020 virtual meeting (Judge Dow).

3. Oral reports on meetings of other committees:

   A. Standing Committee – January 5, 2021 (Judge Dow, Professors Gibson, and Bartell).

   B. Advisory Committee on Appellate Rules – April 7, 2021 (Judge Donald).

   C. Advisory Committee on Civil Rules –April 23, 2021 (Judge McEwen).

   D. Bankruptcy Committee – December 8-9, 2020 (Judge Dow, Judge Isicoff).

4. Report of the Emergency Rule Subcommittee (Judge Hoffman; Professor Gibson).

   A. Consider recommendation to publish for comment proposed Rule 9038 (Professor Gibson).

5. Report of the Privacy, Public Access, and Appeals Subcommittee (Judge Ambro).

   A. Consider Comments on Rule 8023 conforming to pending changes to Federal Rule of Appellate Procedure 42(b) (Professor Bartell).

6. Report of the Business Subcommittee (Judge McEwen).

   A. Consider Comments on SBRA Rules - Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, new Rule 3017.2, 3018, and 3019 (Professor Gibson).

   B. Review comments on Rule 7004(i) addressing Suggestion 19-BK-D -- clarifying that service on a corporate officer can be accomplished by using the officer's position or title (Professor Bartell).

   C. Review Comments on Rule 5005 -- eliminates need for filing verified statement that a document was transmitted to UST, and allows transmission to happen electronically (Professor Bartell).

7. Report of the Consumer Subcommittee (Judge Connelly).

   A. Recommendation Concerning Suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1 (Professor Gibson).

   B. Review Comments on Rule 3002 (regarding Suggestion 19-BK-F, allowing bar date extensions for domestic creditors under same terms as foreign creditors) (Professor Bartell).

   C. Consideration of *City of Chicago v. Fulton*, 141 S. Ct. 585 and Suggestions 21-BK-B and 21-BK-C for rule amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding (Professor Gibson).

8. Report of the Forms Subcommittee (Judge Hoffman).

A. Consider comments on SBRA Official Forms 101, 122B, 201, 309E1, 309E2, 309F1, 309F2, 314, 315, and 425A (Professor Gibson).

Tab 8A March 10, 2021 memo by Professor Gibson. 225
Official Form 122B. 228

B. Consider forms to implement proposed amendments to Rule 3002.1 (Professor Gibson).

Tab 8B March 10, 2021 memo by Professor Gibson. 232
Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10CN, 410C13-10R, and 410C13 CN. 235

C. Consider suggestions 20-BK-I from Judge Callaway and 21-BK-A from Judge Surratt-States concerning Employer Identification Numbers and Doing Business As names on Official Form 101, line 4, and Official Forms 309 (Professor Bartell).

Tab 8C March 9, 2021 memo by Professor Bartell. 249
Official Form 101 253

D. Consider suggestion 20-BK-E from Judge Dore concerning the format and direction at line 7 of Official Form 309E1, and line 8 of Official Form 309E2 (Professor Bartell).

Tab 8D March 9, 2021 memo by Professor Bartell. 262
Official Forms 309E1 and 309E2. 264

9. Report of Technology and Cross Boarder Insolvency Subcommittee (Judge Oetken; Professor Gibson).

A. Suggestion 20-BK-E from CACM (Judge Fleissig) for rule amendment establishing minimum procedures for electronic signatures of debtors and others (Professor Gibson).

Tab 9A March 10, 2021 memo by Professor Gibson. 271

10. Report of the Restyling Subcommittee (Judge Krieger; Professor Bartell).

A. Consider comments on, and recommendation for final approval of, the 1000 through 2000 series of Restyled Rules (Professor Bartell).

Tab 10A March 9, 2021 memo Regarding the 1000 through 2000 series of Rules by Professor Bartell; Restyled Rules and Committee Notes.....281

B. Consider recommendation to publish the 3000 through 6000 series of Restyled Rules. (Professor Bartell).

Tab 10B March 10, 2021 memo regarding the 3000 through 6000 series of Restyled Rules by Professor Bartell; Restyled Rules and Committee Notes. 404

11. Information Items

A. By an email vote closing February 3, 2021, with all members voting in favor, the Advisory Committee recommended Director's Form 4100S to address provisions of the Consolidated Appropriations Act of 2021. The form and the memo describing its purpose are attached.

Tab 11A January 29, 2021 memo by Professor Gibson. 526
Director's Form 4100S. 529

B. By an email vote closing January 28, 2021, with all members voting in favor, the Advisory Committee recommended Interim Rule 4001(c) for distribution to the courts to be adopted as a local rule if and after the Administrator of the Small Business Association takes certain action authorized under the Consolidated Appropriations Act of 2021. The Interim Rule and the memo describing its purpose are attached.

Tab 11B February 5, 2021 Report to the Standing Committee.....532
Interim Rule 4001(c). 536

12. Future meetings: The fall 2021 meeting will be on September 14, 2021.

13. New Business.

14. Adjourn.

Proposed Consent Agenda

The Chair and Reporters have proposed the following items for study and consideration prior to the Advisory Committee's meeting. **Absent any objection, all recommendations will be approved by acclamation at the meeting.** Any of these matters may be moved to the Discussion Agenda if a member or liaison feels that discussion or debate is required prior to Committee action. Requests to move an item to the Discussion Agenda must be brought to attention of the Chair by noon, Eastern Time, on **Thursday, April 1, 2021.**

1. Business Subcommittee.

   A. Recommendation of No Action regarding Suggestion 21-BK-D from former member Tom Mayer concerning Rule 3007(c)-(e) (Professor Bartell).

      Consent Tab 1A March 9, 2021 memo by Professor Bartell. 540

2. Consumer Subcommittee.

   A. Recommendation of No Action regarding Suggestion 20-BK-I from Judge Calloway for an amendment to Rule 3001(c) to require last transaction information for claims that may have a statute of limitations defense (Professor Bartell).

      Consent Tab 2A March 9, 2021 memo by Professor Bartell. 545

3. Forms Subcommittee

   A Recommendation of No Action regarding Suggestion 20-BK-H from Trustee Aguilar to include a question on Official Form 410 requiring the filing creditor to assert whether it believes its claim is protected by the anti-modification provisions of 11 U.S.C. § 1325(a), and to include instructions on how to assert the secured amount of such a claim (Professor Bartell).

      Consent Tab 3A March 9, 2021 memo by Professor Bartell. 550

TAB 1

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair	Reporter
Honorable Dennis R. Dow United States Bankruptcy Court Charles Evans Whittaker U.S. Courthouse 400 East Ninth Street Kansas City, MO 64106	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill 5073 Van Hecke-Wettach Hall Chapel Hill, NC 27599-3380
	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School 471 W. Palmer Detroit, MI 48202

Members

Honorable Thomas L. Ambro United States Court of Appeals J. Caleb Boggs Federal Building 844 North King Street Wilmington, DE 19801-3519	Honorable Rebecca B. Connelly United States Bankruptcy Court U.S. Courthouse 116 North Main Street Harrisonburg, VA 22802
Honorable Bernice B. Donald United States Court of Appeals Clifford Davis and Odell Horton Building 167 North Main Street Memphis, TN 38103	Honorable Melvin S. Hoffman United States Bankruptcy Court 5 Post Office Square Boston, MA 02109-3945
Honorable David A. Hubbert Acting Assistant Attorney General, Tax Division (ex officio) United States Department of Justice 950 Pennsylvania Ave. NW Washington, DC 20530	Honorable Marcia S. Krieger United States District Court Alfred A. Arraj U.S. Courthouse 901 19th Street Denver, CO 80294
Honorable Catherine P. McEwen United States Bankruptcy Court Sam M. Gibbons U.S. Courthouse 801 North Florida Avenue Tampa, FL 33602-3849	Debra L. Miller, Esq. Chapter 13 Bankruptcy Trustee P. O. Box 11550 South Bend, IN 46634

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New York, NY 10007-1501

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Balch & Bingham LLP
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Davis Polk & Wardwell LLP
450 Lexington Avenue
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Professor David A. Skeel
University of Pennsylvania Law School
3501 Sansom Street
Philadelphia, PA 19104

Tara Twomey, Esq.
National Consumer Bankruptcy Rights Center
1501 The Alameda, Suite 200
San Jose, CA 95126

Honorable George H. Wu
United States District Court
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Deputy Director/General Counsel
Executive Office for U.S. Trustees
20 Massachusetts Ave., NW
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Honorable Laurel M. Isicoff
(*Committee on the Administration of the Bankruptcy System*)
United States Bankruptcy Court
C. Clyde Atkins United States Courthouse
301 North Miami Avenue
Miami, FL 33128

Honorable William J. Kayatta, Jr.
(*Standing*)
United States Court of Appeals
Edward T. Gignoux Federal Courthouse
156 Federal Street
Portland, ME 04101-4152

Clerk of Court Representative

Kenneth S. Gardner
Clerk
United States Bankruptcy Court
721 19th Street
Denver, CO 80202-2508

Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date	End Date
Dennis Dow Chair	B	Missouri (Western)	Member: 2014 Chair: 2018	---- 2021
Thomas L. Ambro	C	Third Circuit	2016	2022
Rebecca B. Connelly	B	Virginia (Western)	2021	2023
Bernice B. Donald	C	Sixth Circuit	2019	2022
Melvin S. Hoffman	B	Massachusetts	2016	2022
David A. Hubbert*	DOJ	Washington, DC	----	Open
Marcia S. Krieger	D	Colorado	2017	2023
Catherine P. McEwen	B	Florida (Middle)	2021	2023
Debra Miller	ESQ	Indiana	2017	2023
J. Paul Oetken	D	New York (Southern)	2019	2022
Jeremy L. Retherford	ESQ	Alabama	2018	2021
Damian S. Schaible	ESQ	New York	2021	2023
David A. Skeel	ACAD	Pennsylvania	2016	2022
Tara Twomey	ESQ	California	2021	2023
George H. Wu	D	California (Central)	2018	2021
S. Elizabeth Gibson Reporter	ACAD	North Carolina	2008	Open
Laura B. Bartell Associate Reporter	ACAD	Michigan	2017	2022

Principal Staff: Bridget Healy 202-502-1313

Scott Myers 202-502-1913

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RULES COMMITTEE LIAISON MEMBERS

Liaisons for the Advisory Committee on Appellate Rules	Hon. Frank M. Hull *(Standing)* Hon. Bernice B. Donald *(Bankruptcy)*
Liaison for the Advisory Committee on Bankruptcy Rules	Hon. William J. Kayatta, Jr. *(Standing)*
Liaisons for the Advisory Committee on Civil Rules	Peter D. Keisler, Esq. *(Standing)* Hon. Catherine P. McEwen *(Bankruptcy)*
Liaison for the Advisory Committee on Criminal Rules	Hon. Jesse M. Furman *(Standing)*
Liaisons for the Advisory Committee on Evidence Rules	Hon. James C. Dever III *(Criminal)* Hon. Carolyn B. Kuhl *(Standing)* Hon. Sara Lioi *(Civil)*

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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective February 3, 2021

Business Subcommittee Judge Catherine Peek McEwen, Chair Judge Thomas Ambro Judge Melvin Hoffman Judge Marcia S. Krieger Judge J. Paul Oetken Damian S. Schaible, Esq. Professor David Skeel Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*	**CARES ACT Emergency Rules Taskforce** Judge Melvin Hoffman, Chair Debra L. Miller, Esq. Damian S. Schaible, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*
Consumer Subcommittee Judge Rebecca Buehler Connelly, Chair Judge Bernice Bouie Donald Judge George H. Wu Debra L. Miller, Esq. Jeremy L. Retherford, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*	**Forms Subcommittee** Judge Melvin Hoffman, Chair Judge George H. Wu Jeremy L. Retherford, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio* David Hubbert, Esq., *ex officio* Debra L. Miller, Esq.
Privacy, Public Access, and Appeals Subcommittee Judge Thomas Ambro, Chair Judge Bernice Bouie Donald Judge Catherine Peek McEwen Damian S. Schaible, Esq. Ramona D. Elliott, Esq., *EOUST liaison* David Hubbert, Esq., *ex officio*	**Restyling Subcommittee** Judge Marcia S. Krieger, Chair Judge A. Benjamin Goldgar Judge Melvin Hoffman Debra L. Miller, Esq. Tara Twomey, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio* John Rao, Esq. *consultant*
Technology and Cross Border Insolvency Subcommittee Judge J. Paul Oetken, Chair Judge Rebecca Buehler Connelly Judge Melvin Hoffman Professor David Skeel Ramona D. Elliott, Esq., *EOUST liaison*	
Appellate Rules Liaison: Judge Bernice Bouie Donald	**Bankruptcy Committee Liaison:** Judge Rebecca Buehler Connelly
Civil Rules Liaison: Judge Catherine Peek McEwen	

Effective December 1, 2020

REA History:

- No contrary action by Congress
- Adopted by Supreme Court and transmitted to Congress (Apr 2020)
- Approved by Judicial Conference (Sept 2019) and transmitted to Supreme Court (Oct 2019)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 35, 40	Amendment clarifies that length limits apply to responses to petitions for rehearing plus minor wording changes.	
BK 2002	Amendment (1) requires giving notice of the entry of an order confirming a chapter 13 plan; (2) limits the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases; and (3) adds a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.	
BK 2004	Subdivision (c) amended to refer specifically to electronically stored information and to harmonize its subpoena provisions with the current provisions of Civil Rule 45, which is made applicable in bankruptcy cases by Bankruptcy Rule 9016.	CV 45
BK 8012	Conforms rule to proposed amendment to Appellate Rule 26.1.	AP 26.1
BK 8013, 8015, and 8021	Eliminated or qualified the term "proof of service" when documents are served through the court's electronic-filing system, conforming the rule to the 2019 amendments to AP Rules 5, 21, 26, 32, and 39.	AP 5, 21, 26, 32, and 39
CV 30	Subdivision (b)(6), the rule that addresses deposition notices or subpoenas directed to an organization, amended to require that the parties confer about the matters for examination before or promptly after the notice or subpoena is served. The subpoena must notify a nonparty organization of its duty to confer and to designate each person who will testify.	
EV 404	Subdivision (b) amended to expand the prosecutor's notice obligations by: (1) requiring the prosecutor to "articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose"; (2) deleting the requirement that the prosecutor must disclose only the "general nature" of the bad act; and (3) deleting the requirement that the defendant must request notice. The phrase "crimes, wrongs, or other acts" replaced with the original "other crimes, wrongs, or acts."	

Effective (no earlier than) December 1, 2021

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2020)

REA History:

- Approved by Judicial Conference (Sept 2020)
- Approved by Standing Committee (June 2020)
- Approved by relevant advisory committee (Apr/May 2020)
- Published for public comment (Aug 2019-Feb 2020)
- Unless otherwise noted, approved for publication (June 2019)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 3	The proposed amendment to Rule 3 addresses the relationship between the contents of the notice of appeal and the scope of the appeal. The proposed amendment changes the structure of the rule and provides greater clarity, expressly rejecting the *expressio unius* approach, and adds a reference to the merger rule.	AP 6, Forms 1 and 2
AP 6	Conforming amendment to the proposed amendment to Rule 3.	AP 3, Forms 1 and 2
AP Forms 1 and 2	Conforming amendments to the proposed amendment to Rule 3, creating Form 1A and Form 1B to provide separate forms for appeals from final judgments and appeals from other orders.	AP 3, 6
BK 2005	The proposed amendment to subsection (c) of the replaces the reference to 18 U.S.C. § 3146(a) and (b) (which was repealed in 1984) with a reference to 18 U.S.C. § 3142.	
BK 3007	The proposed amendment clarifies that credit unions may be served with an objection claim under the general process set forth in Rule 3007(a)(2)(A) - by first-class mail sent to the person designated on the proof of claim.	
BK 7007.1	The proposed amendment would conform the rule to recent amendments to Rule 8012 and Appellate Rule 26.1.	
BK 9036	The proposed amendment would require high-volume paper notice recipients (initially designated as recipients of more than 100 court papers notices in calendar month) to sign up for electronic service and noticing, unless the recipient designates a physical mailing address if so authorized by statute.	

Effective (no earlier than) December 1, 2022

Current Step in REA Process:

- Published for public comment (Aug 2020-Feb 2021)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 25	The proposed amendment to Rule 25 extends the privacy protections afforded in Social Security benefit cases to Railroad Retirement Act benefit cases.	
AP 42	The proposed amendment to Rule 42 clarifies the distinction between situations where dismissal is mandated by stipulation of the parties and other situations. (These proposed amendments were published Aug 2019 – Feb 2020).	
BK 3002	The proposed amendment would allow an extension of time to file proofs of claim for both domestic and foreign creditors if "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim."	
BK 5005	The proposed changes would allow papers to be transmitted to the U.S. trustee by electronic means rather than by mail, and would eliminate the requirement that the filed statement evidencing transmittal be verified.	
BK 7004	The proposed amendments add a new Rule 7004(*i*) clarifying that service can be made under Rule 7004(b)(3) or Rule 7004(h) by position or title rather than specific name and, if the recipient is named, that the name need not be correct if service is made to the proper address and position or title.	
BK 8023	The proposed amendments conform the rule to pending amendments to Appellate Rule 42(b) that would make dismissal of an appeal mandatory upon agreement by the parties.	AP 42(b)
BK Restyled Rules (Parts I & II)	The proposed rules, approximately 1/3 of current bankruptcy rules, are restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The remaining bankruptcy rules will be similarly restyled and published for comment in 2021 and 2022, with the full set of restyled rules expected to go into effect no earlier than December 1, 2024.	
SBRA Rules (BK 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3017.2 (new), 3018, 3019)	The SBRA Rules would make necessary rule changes in response to the Small Business Reorganization Act of 2019. The SBRA Rules are based on Interim Bankruptcy Rules adopted by the courts as local rules in February 2020 in order to implement the SBRA which when into effect February 19, 2020.	

Effective (no earlier than) December 1, 2022

Current Step in REA Process:

- Published for public comment (Aug 2020-Feb 2021)

Rule	Summary of Proposal	Related or Coordinated Amendments
SBRA Forms (Official Forms 101, 122B, 201, 309E-1, 309E-2, 309F-1, 309F-2, 314, 315, 425A)	The SBRA Forms make necessary changes in response to the Small Business Reorganization Act of 2019. All but the proposed change to Form 122B were approved on an expedited basis with limited public review in 2019 and became effective February 19, 2020, the effective date of the SBRA. They are being published along with the SBRA Rules in order to give the public a full opportunity to comment. If approved by the Advisory Committee, the Standing Committee, and the Judicial Conference, the proposed change to Form 122B will go into effect December 1, 2021. The remaining SBRA forms will remain in effect as approved in 2019, unless the Advisory Committee recommends amendments in response to comments.	
CV 12	The proposed amendment to paragraph (a)(4) would extend the time to respond (after denial of a Rule 12 motion) from 14 to 60 days when a United States officer or employee is sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf.	
CV Supplemental Rules for Social Security Review Actions Under 42 U.S.C. § 405(g)	Proposed set of uniform procedural rules for cases under the Social Security Act in which an individual seeks district court review of a final administrative decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).	
CR 16	Proposed amendment addresses the lack of timing and the lack of specificity in the current rule with regard to expert witness disclosures, while maintaining reciprocal structure of the current rule.	

Legislation that Directly or Effectively Amends the Federal Rules
117th Congress
(January 3, 2021 – January 3, 2023)

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Protect the Gig Economy Act of 2021	**H.R. 41** *Sponsor:* Biggs (R-AZ)	CV 23	**Bill Text:** https://www.congress.gov/117/bills/hr41/BILLS-117hr41ih.pdf **Summary (authored by CRS):** This bill limits the certification of a class action lawsuit by prohibiting in such a lawsuit an allegation that employees were misclassified as independent contractors.	• 1/4/21: Introduced in House; Referred to Judiciary Committee • 3/1/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet
Injunctive Authority Clarification Act of 2021	**H.R. 43** *Sponsor:* Biggs (R-AZ)	CV	**Bill Text:** https://www.congress.gov/117/bills/hr43/BILLS-117hr43ih.pdf **Summary (authored by CRS):** This bill prohibits federal courts from issuing injunctive orders that bar enforcement of a federal law or policy against a nonparty, unless the nonparty is represented by a party in a class action lawsuit.	• 1/4/21: Introduced in House; Referred to Judiciary Committee • 3/1/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet
COVID-19 Bankruptcy Relief Extension Act of 2021	**S.473** *Sponsor:* Durbin (D-IL) *Co-sponsor:* Grassley (R-IA) **H.R.1651** *Sponsor:* Nadler (D-NY) *Co-sponsor:* Cline (R-VA)	BK	**Bill Text:** https://www.congress.gov/bill/117th-congress/senate-bill/473/text **Summary** The bill would amend the CARES Act and the CAA of 2021 to extend certain temporary provisions of those acts (notably, an expanded definition of debtors who can take advantage of Chapter 11, Subchapter V of the Bankruptcy Code) until March 27, 2022.	• 2/25/21: S.473 Introduced to Senate and referred to Judiciary Committee • 3/8/21: HR.1651 introduced to the House and referred to Judiciary Committee • 3/18/21: H.R. 1651 passed the house.

TAB 2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of Sept. 22, 2020
Held Remotely by Conference Call and Microsoft Teams

The following members attended the meeting:

Bankruptcy Judge Dennis Dow, Chair
Circuit Judge Thomas Ambro
Bankruptcy Judge Stuart M. Bernstein
Circuit Judge Bernice Bouie Donald
Bankruptcy Judge A. Benjamin Goldgar
Jeffery J. Hartley, Esq.
Bankruptcy Judge Melvin S. Hoffman
David A. Hubbert, Esq.
District Judge Marcia S. Krieger
Thomas Moers Mayer, Esq.
Debra L. Miller, Esq.
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Professor David A. Skeel
District Judge George Wu

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura Bartell, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
District Judge John D. Bates, incoming Chair of Standing Committee
Professor Daniel Coquillette, consultant to the Standing Committee
Professor Catherine Struve, reporter to the Standing Committee
Professor Daniel J. Capra, liaison to the CARES Act Subcommittee
District Judge Sara Darrow, Chair of the Committee on the Administration of the Bankruptcy System
Circuit Judge William J. Kayatta, Jr., liaison from the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Brittany Bunting, Administrative Office

Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Shelly Cox, Administrative Office
David A. Levine, Administrative Office
Dana Yankowitz Elliott, Administrative Office
Daniel J. Isaacs-Smith, Administrative Office
Kevin Crenny, Rules Law Clerk
Molly T. Johnson, Federal Judicial Center
Nancy Whaley, National Association of Chapter 13 Trustees
Christopher N. Coyle, Bankruptcy Attorney, VandenBos & Chapman, LLP
Teri E. Johnson, Bankruptcy Attorney, Law Office of Teri E. Johnson, PLLC
John Hawkinson, freelance journalist

Discussion Agenda

1. Greetings and introductions

Judge Dennis Dow welcomed the group and thanked them for joining this meeting remotely. He introduced Judge Campbell, Judge Bates, Judge Darrow, Cathie Struve, Dan Coquillette, Dan Capra, Molly Johnson, and the new Rules Law Clerk Kevin Crenny, and the other observers. He noted that there were recent additions to the materials that have been added to the updated agenda. He thanked outgoing members of the Advisory Committee, Judge Stuart Bernstein, Judge A. Benjamin Goldgar, Jeffery J. Hartley, and Thomas M. Mayer. Judge Dow also asked Scott Myers to describe use of the software program used for the meeting.

2. Approval of minutes of remote meeting held on April 3, 2020.

Mr. Mayer and Ms. Elliott made suggestions for amendments to the minutes. The minutes were approved with the amendments by motion and vote.

3. Oral reports on meetings of other committees

(A) June 23, 2020 Standing Committee meeting

Judge Dow gave the report. Each Advisory Committee reported on its efforts in response to the directive of Section 15002(b)(6) of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") , Pub. L. 116-136, which required that "the Judicial Conference of the United States and the Supreme Court of the United States shall consider rule amendments under chapter 131 of title 28, United States Code (commonly known as the "Rules Enabling Act"), that address emergency measures that may be taken by the Federal courts when the

President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.)." Judge Dow reported on the review of the rules by the bankruptcy subcommittee and the plan to present a draft of a generally-applicable rule for emergencies at the next Advisory Committee meeting. The Standing Committee recommended that the various Advisory Committees coordinate in their consideration proposed emergency rules. Professor Dan Capra was appointed to assist in the coordination efforts.

The Advisory Committee presented proposed amendments to four rules that were published for comment last August. The amendments are to Rules 2005 (Apprehension and Removal of Debtor to Compel Attendance for Examination), 3007 (Objections to Claims), 7007.1 (Corporate Ownership Statement), and 9036 (Notice and Service Generally). The Standing Committee gave final approval to those amendments and transmitted them to the Judicial Conference. The Advisory Committee also submitted conforming amendments to five official forms in response to changes made to the Bankruptcy Code in the CARES Act that were approved without publication under the Advisory Committee's delegated authority to make technical and conforming changes to official forms, subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. The Standing Committee retroactively approved (and undertook to provide notice to the Judicial Conference concerning) the amendments to the five official forms.

The Advisory Committee also presented for publication (1) restyled Parts I and II of the Bankruptcy Rules that are proposed as part of the rules restyling project; and (2) amendments to thirteen rules and ten official forms that were previously issued on an interim basis in response to the Small Business Reorganization Act of 2019 ("SBRA"); as well as one additional form, Official Form 122B, proposed for amendment in response to SBRA. The Standing Committee voted to publish those rules and amendments. The Standing Committee also approved for publication amendments to Rule 3002(c)(6) (Time for Filing Proof of Claim), Rule 5005 (Filing and Transmittal of Papers), Rule 7004 (Process; Service of Summons, Complaint), Rule 8023 (Voluntary Dismissal).

Judge Dow reported to the Standing Committee on the approval of a modification to Interim Rule 1020 for one year only to reflect the changes implemented by the CARES Act that allow additional small business debtors to proceed under subchapter V of chapter 11. The Standing Committee approved that modification by email vote concluded April 11, and the Executive Committee of the Judicial Conference approved the amendment on April 14 and authorized its distribution. The interim rule was distributed to all chief judges of the district and bankruptcy courts on April 20, 2020.

Finally, Judge Dow reported to the Standing Committee on the adoption of Director's Forms relating to a discharge for debtors who proceed under subchapter V of chapter 11.

(B) April 4, 2020 and October 20, 2020 Meetings of the Advisory Committee on Appellate Rules

Judge Donald asked Bridget Healey to make the report. The Appellate Committee gave final approval to Federal Rule of Appellate Procedure 3, and conforming amendments to FRAP 6 and to Forms 1 and 2. The Appellate Committee had been looking at an amendment to Rule 42 but decided not to go forward with it at the meeting. At the upcoming meeting the Committee will revisit Rule 42 and consider some issues relating to *in forma pauperis* cases.

(C) April 1, 2020 and October 16, 2020 Meetings of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report. This is his last report as liaison to the Civil Rules Committee.

The spring Civil Rules Committee was conducted telephonically because of the Covid-19 health emergency.

A joint subcommittee from the Appellate, Civil, and Bankruptcy Rules Committees is considering whether some amendment, probably to Fed. R. Civ. P. 42(a) or 54(b), would be appropriate in the wake of the Supreme Court's *Hall v. Hall* decision. At the subcommittee's request, the FJC studied whether as a practical matter *Hall* poses enough of a problem to justify an amendment. The FJC completed its study and found no evidence of any practical problems. The subcommittee therefore has decided not to proceed at this time.

Another joint subcommittee continues to study whether the e-filing deadline should be moved from midnight to the time when the clerk's offices closes.

After considerable discussion, the Committee gave final approval to the proposed amendments to Rule 7.1 published for comment last year. Among other changes, Rule 7.1(a)(1) would be amended to make the ownership disclosure requirement for nongovernmental corporate parties applicable to a nongovernmental corporation that seeks to intervene as a party. (A comparable amendment to Bankruptcy Rule 7007.1(a) was published for comment at the same time.) The sticking points in the Committee's discussion were proposed changes to Rules 7.1(a)(2) and (b), which are not relevant to bankruptcy, and the change to Rule 7.1(a)(1), which was non-controversial. The Committee will vote by email on a revised Committee Note that conforms to the proposed amended Rule.

The Committee will study a proposed amendment to Rule 17(d). Rule 17(d) says that a public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added. The proposed

amendment would make the rule mandatory rather than permissive ("must" be designated by official title rather than "may"). The idea is to avoid the need for substitution of the official's successor by name when the official leaves office. The Appellate Rules Committee has a similar proposal before it.

The Committee decided not to address proposals relating to (a) judicial involvement in settlement conferences, (b) sanctions for failing to participate in settlement conferences in good faith, and (c) so-called procedural safeguards in local ADR rules. The item was removed from the agenda.

The Committee decided not to consider proposed amendments to Rules 7(b)(2) and 10 addressing the forms of captions in pleadings and motions. The item was removed from the agenda.

The next Civil Rules Committee is to be held virtually on October 16.

Judge Bates thanked Judge Goldgar for his insights in the work of the committee during his service as liaison.

(D) June 11, 2020 meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")

Judge Darrow provided the report.

She thanked Judge Bernstein for his contributions to the Bankruptcy Committee.

The Bankruptcy Committee met by videoconference on June 11, 2020. Before that meeting, the Committee took action to address the impact of the COVID-19 pandemic on the bankruptcy system. Following the enactment in March 2020 of the CARES Act, and based on the possibility at the time that Congress might quickly move forward with further legislation in response to COVID-19, the Bankruptcy Committee recommended a legislative proposal that was included in the judiciary's package of legislative proposals transmitted to Congress in April 2020.

That proposal would authorize bankruptcy courts to extend statutory deadlines and toll statutory time periods under title 11 and chapter 6 of title 28 of the United States Code during the COVID-19 national emergency, upon a finding that the emergency conditions materially affect the functioning of a particular bankruptcy court of the United States. The authorization would expire 30 days after the date that the COVID-19 national emergency declaration terminates, or upon a finding that emergency conditions no longer materially affect the functioning of the particular bankruptcy court, whichever is earlier. Unfortunately, since the legislative proposal

was transmitted to Congress in April, Congress has taken no action on it and it has not been included in any of the draft COVID-19 stimulus legislation introduced to date.

At its June meeting, the Bankruptcy Committee considered whether to recommend a permanent grant of authority during an ongoing emergency, which could enable bankruptcy courts to respond more quickly to future emergency or major disaster declarations. The Committee deferred making any recommendation until the COVID-19 emergency has subsided or ended and courts have resumed normal operations, and to evaluate the potential impact of any Bankruptcy Rule changes under consideration by the Bankruptcy Rules Committee that would impact or overlap with the proposal. As drafted, the permanent grant of authority under consideration would not extend to the Bankruptcy Rules.

Subcommittee Reports and Other Action Items

4. Report by Appeals, Privacy, and Public Access Subcommittee

(A) Report on possible amendments to Bankruptcy Rule 8003 to conform to proposed amendments to FRAP 3(c)

Judge Ambro introduced the issue. Last year the Advisory Committee on Appellate Rules published proposed amendments to FRAP 3(c) (Contents of the Notice of Appeal), which is intended to resolve the different practices in different courts of appeals with respect to whether a notice of appeal that mentions a specific order could inadvertently result in the appellant losing the right to appeal other orders that merge into the judgment. The Standing Committee has given its final approval to the amendments to FRAP 3, and the Subcommittee now recommends conforming changes to the equivalent Bankruptcy Rule, Rule 8003.

Professor Gibson provided the report. There are many bankruptcy cases that apply the merger rule, the rule that interlocutory orders merge into a final judgment and an appeal can be had from the interlocutory orders by filing a notice of appeal from entry of the final judgment. Adopting the amendments to FRAP 3(c) for Bankruptcy Rule 8003 would therefore not introduce any new doctrine or difficulty for bankruptcy appeals that does not already exist. Instead, the confirming amendment is intended to prevent appellants from unintentionally narrowing the scope of their appeals.

Moreover, the Advisory Committee has tried to keep Part VIII rules parallel to the appellate rules so that procedures are consistent throughout the stages of a bankruptcy appeal. A failure to make conforming changes to Rule 8003 might suggest that the case law the amendments reject for appeals to courts of appeals is still applicable under Rule 8003.

Judge Campbell asked if "decree" should be mentioned in line 11 on p. 204, as it is in line 7. Professor Gibson agreed.

Judge Goldgar noted that "judgment" is defined in Rule 9001(7) as "any appealable order," so it seems redundant to use the additional terms. Professor Gibson noted that the Civil Rules have the same definition, but not everyone understands that judgment means something other than what is entered at the end of a case, and we are trying to conform to the Civil Rule. Professor Struve agreed that use of all terms – judgment, order and decree -- makes it clear that they are all included, and the Civil Rules have always broken out judgments and orders. Judge Hoffman noted that there are final decrees in bankruptcy cases, so reference to decrees is also appropriate.

Judge Goldgar pointed out that the references to "decree" should be added in several places on p. 205.

The Advisory Committee approved the Rule 8003 and its committee note as amended and directed that they be submitted to the Standing Committee for publication.

(B) Report on Suggestion 20-BK-G from the Bankruptcy Committee to amend Rule 3011

Judge Ambro introduced the topic. Professor Bartell provided the report. The Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) submitted a suggestion requesting that the Advisory Committee recommend amendments to Federal Rule of Bankruptcy 3011 for the purpose of requiring the clerk to publish notice of funds paid into court pursuant to § 347(a) of the Bankruptcy Code. The suggestion is consistent with past efforts of the Bankruptcy Committee to reduce the balance of unclaimed funds and to limit the potential statutory liability imposed on clerks of court for their record-keeping and disbursement of unclaimed funds.

The proposed amendment to Rule 3011 would designate the current language of the Rule as paragraph (a) and would add a new paragraph (b) to require the clerk to provide searchable access on the court's website to data about funds deposited pursuant to § 347(a). The Subcommittee made two changes from the suggested language. It changed the requirement that the clerk "publish" information about unclaimed funds -- which the Subcommittee thought might suggest that the clerk had to list names – to a requirement that the clerk provide access to the information. Second, the Subcommittee eliminated the phrase "unless the court order otherwise" at the beginning of the new section.

Subsequent to the meeting, Bridget Healy and Scott Myers discussed the recommendation with Dana Elliot, one of the staff attorneys supporting the Bankruptcy Committee, and David Levine, Chief of the Judicial Policy Division. They provided some background on why the Bankruptcy Committee wanted the "unless the court orders otherwise" clause. It was suggested by the clerk of the court that hosts the unclaimed funds locator that some courts do not post information on unclaimed funds that are subject to a sealing order for some reason. An example given was claimants with unclaimed funds in a church diocese case. (The Subcommittee seemed to have anticipated that concern in part and attempted to address it by eliminating the word "publish" from the language suggested by the Bankruptcy Committee.) A second category are unclaimed funds from very old cases (apparently there are some over 50 years old), and lack of good information about the underlying claims. There may be other reasons to give a court discretion in the rule as well, but those were the examples that prompted the Bankruptcy Committee to include court discretion language in the suggestion.

Judge Goldgar expressed concern about the language "unless the court orders otherwise" as contrary to circuit guidance which requires a case by case determination. Ken Gardner said that particular unclaimed funds could be sealed in the unclaimed funds register, and that doing so is different from requiring the clerk to make the locator searchable. Judge Dow suggested adding language to (b) as follows: "The court may limit access to information in the database with respect to a specific case for cause shown." The proposed addition was accepted by Judge Darrow on behalf of the Bankruptcy Committee.

The Advisory Committee approved the proposed amendments to Rule 3011 and the committee note with the modification suggested by Judge Dow and directed that they be submitted to the Standing Committee for publication.

5. Report by the Business Subcommittee

(A) Consider Suggestion 20-BK-D from Thomas Moers Mayer regarding Rule 7007.1

Professor Bartell provided the report. Thomas Moers Mayer made a suggestion that Rule 9014(c) be modified to include Rule 7007.1 in the list of bankruptcy rules from Part VII that are applicable to contested matters.

Rule 7007.1 requires disclosure by any corporation that is party to an adversary proceeding (other than the debtor or a governmental unit) of any corporation that owns, directly or indirectly, 10% or more of any class of the corporation's equity interests. The Rule was derived from Fed. R. App. P. 26.1 and is similar to Fed. R. Civ. P. 7.1. The purpose of the disclosure required by the Rule is to assist the judge in making an informed decision on disqualification.

Rule 7007.1 was drafted at the direction of the Standing Committee acting at the request of the Committee on Codes of Conduct. It was approved by the Advisory Committee in 2001. At the time, the Subcommittee on Attorney Conduct Including Rule 2014 Disclosure Requirements, after lengthy discussions, declined to make it applicable to contested matters because of the complexity and speed with which contested matters, such as motions for relief from the stay, are presented to the court.

The Subcommittee agreed that including Rule 7007.1 in the list of Part VII rules applicable to all contested matters in Rule 9014(c) may not be advisable, although the Subcommittee did not find all the reasons itemized by the Subcommittee on Attorney Conduct Including Rule 2014 Disclosure Requirements particularly persuasive. For example, the Subcommittee did not see any logic in distinguishing contested matters based on whether they sought relief from the stay or something else.

However, the Subcommittee believes that in certain contested matters disclosure of the type described in Rule 7007.1 is highly desirable to allow the bankruptcy judge to make an informed decision on disqualification.

The Subcommittee did not come to any conclusion on how to identify which contested matters should trigger compliance with Rule 7007.1. Possibilities that were discussed included matters involving a significant amount in controversy, or any contested matter if the court so orders, or all contested matters in non-consumer cases, or all contested matters in chapter 11 and chapter 15 cases only.

The Subcommittee decided to solicit the views of the Advisory Committee on whether disclosure should be required in all or some contested matters, and if in only some contested matters, which ones.

Judge Goldgar expressed the view that requiring disclosure in chapter 13 cases would be impossible. Mr. Mayer said that in business cases it seems strange to require disclosure in adversary proceedings, which are relatively rare, and not in contested matters, which are plentiful. Goldgar suggested limiting disclosure to chapter 11 and 15 cases. Mr. Mayer suggested adding chapter 9. Mr. Mayer then noted that requiring disclosure by chapter is not a perfect alignment with “big” cases (there are “big” chapter 7 cases). He would be fine with a rule requiring disclosure based on debt limit or size of the case. He understands it can’t apply to all cases. He thought that perhaps this should be solved by local rulemaking rather than the federal rules.

Judge Bernstein noted that bankruptcy judges have the authority under Rule 9014(c) to direct that Rule 7007.1 be applicable in a particular contested matter and thought we should just rely on the discretion of the judge to get the information necessary for disqualification when necessary.

The Advisory Committee decided to take no further action on the suggestion.

6. Report by the Consumer Subcommittee

(A) Consideration of Suggestion 20-BK-E from CACM for rule amendment establishing minimum procedures for electronic signatures of debtors and others

Professor Gibson presented the report. Judge Audrey Fleissig, chair of the Committee on Court Administration and Case Management ("CACM"), submitted a suggestion based on a question her committee received from Bankruptcy Judge Vincent Zurzolo (C.D. Cal.). Judge Zurzolo inquired whether debtors and others without CM/ECF filing privileges are permitted to electronically sign documents filed in bankruptcy cases. Judge Fleissig noted that in 2013 CACM "requested that the Rules Committee explore creating a national federal rule regarding electronic signatures and the retention of paper documents containing original signatures to replace the model local rules." That effort was eventually abandoned, however, largely because of opposition from the Department of Justice. Among the reasons for the DOJ's opposition were that current procedures work fine and scanning of signatures would be more complicated, scanned documents will require greater electronic storage capacity, there is or soon will be superior technology that will assure the validity of electronic signatures, and elimination of the retention requirement will make prosecutions and civil enforcement actions for bankruptcy fraud and abuse more difficult.

Judge Fleissig's letter was addressed to Judge David Campbell, chair of the Standing Committee, and he referred it to the Advisory Committee. In doing so, he noted that, although the suggestion relates specifically to bankruptcy, it is an issue that is relevant to the work of the other rules advisory committees. He requested that the Advisory Committee take the lead in pursuing the issues.

The use of electronic signatures by debtors and others without a CM/ECF account is a matter that the Advisory Committee spent several years considering (2012-2014), only to abandon the proposed rule after reviewing the comments received following publication. Based on the Committee's earlier experience, the Subcommittee believes it would be desirable to get some input regarding the DOJ's position as early as possible. While it doubts that the Department will take any definitive position before seeing what is proposed, it does not want to get too far down the road without knowing whether the DOJ remains opposed, given currently

available technology, to any use of electronic signatures (without the retention of wet signatures) by debtors and others without CM/ECF filing privileges.

If this project goes forward, the Subcommittee will seek the involvement of someone with knowledge of current e-signature products, their security safeguards, and the feasibility of their use with bankruptcy software and the CM/ECF filing system. It will explore whether someone at the AO or FJC could provide this expertise. It will also reach out to relevant bankruptcy organizations for input on the desirability of allowing e-signatures by non-registered users.

David Hubbert recommended that this project go forward, and suggested that he could recommend that the Deputy Attorney General conduct a survey on the topic. The DOJ would not look at a specific product, but just the general topic of electronic signatures and fraud. Molly Johnson could also survey courts on their experience during the pandemic with electronic signatures.

The Advisory Committee authorized pursuit of the CACM suggestion and will consider which subcommittee will take the lead.

(B) Consideration of Suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1

Judge Goldgar introduced the topic and described the problem in chapter 13 of debtors who complete their chapter 13 plans only to find out that their mortgage lenders assert that they have not made all required payments on their home mortgages. Professor Gibson provided the report. As was discussed at the last three Advisory Committee meetings, the Advisory Committee has received suggestions 18-BK-G and 18-BK-H from the National Association of Chapter Thirteen Trustees and the American Bankruptcy Institute's Commission on Consumer Bankruptcy regarding amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence).

Judge Goldgar appointed a working group to review the suggestions and make a recommendation to the Subcommittee. The Subcommittee has carefully considered the Suggestions and the drafts of proposed amendments submitted by the two groups. At its meeting on July 21, it approved a draft to present to the Advisory Committee for discussion at the fall meeting. After obtaining that feedback, the Subcommittee hopes to prepare a final draft of the proposed amendments, along with a committee note and implementing forms, for consideration for publication at the spring 2021 Advisory Committee meeting.

Professor Gibson described the proposed changes to Rule 3002.1. The title to the Rule would change to refer to Chapter 13. Subdivision (a) would be modified only to make it applicable to reverse mortgages that do not have regular payments made in installments.

Subdivision (b) is intended to provide the debtor and the trustee notice of any changes in the home mortgage payment amount during the course of a chapter 13 case so that the debtor can remain current on the mortgage. The two main changes to this subdivision are the addition of provisions about the effect of late payment change notices and detailed provisions about notice of payment changes for home equity lines of credit (HELOCs). Proposed subdivision (b)(2) would provide that late notices of a payment increase would not go into effect until the required notice period (at least 21 days) expires. There would be no delay, however, in the effective date of an untimely notice of a payment decrease. Members of the Subcommittee debated whether the Rules Enabling Act, 28 U.S.C. § 2075, allows a rule to impose a delay in a payment increase. Some thought that it is permissible for the rule to impose such a consequence for failure to comply with a procedural requirement, while others thought that such a provision improperly modifies a substantive right. The Subcommittee decided that the best course would be to publish the rule with this provision in it and see whether it draws any concerns.

Judge Hoffman expressed concerns with the penalty provision. He suggested instead eliminating any penalties imposed on the debtor for failure to meet the new payment requirements if the notice of a payment increase was untimely. Others pointed out that such a provision also altered the contract provisions and would be equally questionable under the Rules Enabling Act, if the existing provision is. Ms. Miller said that this suggestion came through the mortgage liaison committee between the mortgage servicers and chapter 13 trustees. She said this penalty provision is consistent with caselaw since about 2004.

Professor Gibson described the new subdivision (b)(3) which would replace language added to the rule in 2018 and would provide that a HELOC claimant would only file annual payment change notices—which would include a reconciliation figure (net over- or underpayment for the past year)—unless the payment change in a single month was for more than $10. This provision, too, would ensure at least 21 days' notice before a payment change took effect.

There were mostly stylistic changes to Subdivision (c) and (d), although subdivision (d) has been moved to subdivision (j). Subdivisions (e)and (f) implement a new mid-case assessment of the status of the mortgage. The Suggestions proposed such an addition so that a debtor would be informed of any deficiencies in payment while there is still time in the chapter 13 case to become current before the case is closed. As drafted, the procedure would begin with the trustee providing notice of the status of payments to cure any prepetition arrearage. In a conduit district—one in which the trustee rather than the debtor makes the postpetition mortgage

payments—the trustee would also state the amount and due date of the next contractual payment. The mortgage lender would then have to respond (subdivision (f)) by stating any mortgage or arrearage amounts on which it contends the debtor is not current. The debtor or trustee could object to the response. If no objection was made, the amounts stated in the lender's response would be accepted as correct. New official forms would be created for both the notice and the response.

Judge Hoffman noted that on line 116, the reference to "trustee" should be to "claim holder." Questions were raised about the use of the term "contractual payment" in line 112 and whether it should say "postpetition payment." The general consensus was that the context made the term clear.

Regarding (f)(1), Judge Hoffman thought the description of the response does not correspond to the scope of the objection. Professor Gibson and Ms. Miller expressed the view that the language covers everything to which the claim holder could object.

Judge Goldgar questioned use of the phrase "prepetition arrearage calculation." Professor Gibson and Ms. Miller will consider a better description of the concept.

Judge Hoffman questioned the word "correct" in line 132. The Advisory Committee supported changing it to "binding."

Subdivisions (g)–(i) provide for an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure would be changed, however, from a notice to a motion procedure. The trustee would begin the procedure by filing a motion to determine the status of the mortgage. An official form would be created for this purpose. The claim holder would have to respond, again using an official form to provide the required information. Either the trustee or the debtor could object to the response. This process would end with a court order detailing the status of the mortgage. If the claim holder failed to respond to the trustee's motion, the order would state that the debtor is current on the mortgage. If there was a response and no objection to it was made, the order would accept as accurate the amounts stated in the response. If there was both a response and an objection, the court would determine the status of the mortgage. Subdivision (i)(4) specifies the contents of the order.

Subdivision (k) is the sanctions provision, and has only stylistic changes. The Subcommittee decided that it was not necessary to provide for an order compelling the servicer to respond and allowing contempt if it does not. The consequences of failure to respond were deemed sufficient.

Ms. Miller commented that the amended rule is going to be a great benefit to the parties and the court. Judge Hoffman commented that the language of line 140— "whether any arrearage has been cured" — is inconsistent with the existing language —"whether any default has been cured" — and with statutory language. He also expressed the view that the language made no sense because arrearages are not cured. Deb Miller suggested "whether any prepetition default has been cured." That was accepted by the Advisory Committee, and Professor Gibson will search the draft to be sure that it is used consistently throughout. Judge Hoffman commented on lines 210-212 and suggested adding "and other escrow amounts" after "taxes." That suggestion was accepted.

The Advisory Committee supported the continuing work on the draft rule and associated forms.

7. Report by the Forms Subcommittee

(A) Consideration of Suggestion 20-BK-C from Judge Eric Frank for an amendment to Official Form 410A or its instructions

Professor Bartell provided the report. Bankruptcy Judge Eric Frank of the E.D. Penn. submitted a suggestion with respect to the instructions (Instructions for Mortgage Proof of Claim Attachment) to Form 410A (Proof of Claim, Attachment A) regarding the "Information required in Part 2: Total Debt Calculation." He notes that the instructions are unclear when applied to mortgage debts that have been reduced to judgment through a foreclosure proceeding and merge into that judgment under the merger rule.

Form 410A is the successor to Attachment A to former Official Form 10, an attachment that was adopted in 2011 to implement Rule 3001(c)(2) added the same year. Rule 3001(c)(2) requires that certain supporting information be provided by a mortgage claimant in an individual debtor case. The form requires an itemization of prepetition interest, fees, expenses and charges included in the claim and a statement of the amount necessary to cure any default. It also requires the claimant to provide a loan history showing when payments were received, how they were applied, when fees and charges were incurred, and when escrow charges were satisfied. The form is intended to provide specificity with respect to the components of a claim secured by an individual debtor's principal residence and, if the debtor was in default prior to the bankruptcy filing, the amount necessary to cure that prepetition default.

The problem with Rule 3001(c)(2) and Form 410A is that they assume that the mortgage debt being described by the claimant is represented by a contractual obligation of the debtor — a note and a mortgage. Any such debt will therefore have a principal amount, will accrue interest from its inception until it is paid in full, and may carry with it contractual obligations to pay fees

and costs and escrow amounts for taxes and insurance. Once the note and mortgage have merged into a judgment, the amounts owing by the debtor will be determined not by the note and mortgage but by the judgment itself.

Attachment A to Form 410A requires the creditor to provide a Total Debt Calculation by adding the specified principal balance, interest due, fees, costs due, and escrow deficiency for funds advanced, and subtracting total funds on hand, to find the total debt as of the filing date. If a secured claim has merged into a foreclosure judgment, the term "principal balance on the debt" is misleading; it could be read to be either the amount of the judgment or alternatively the principal balance on the debt if no judgment had been obtained. In addition, any postjudgment interest, fees, costs and escrow deficiencies specified in the mortgage will be continuing obligations of the debtor only insofar as the judgment recognizes those obligations or state law otherwise provides that they survive the merger of the mortgage into the judgment.

The Subcommittee recommended inserting a single new paragraph in the instructions to Form 410A with respect to the information to be included in Part 2 before the paragraph beginning with: "Also disclose the *Total amount of funds on hand.*" This new paragraph would read as follows:

> If the secured debt has merged into a prepetition judgment, the principal balance on the debt is the amount of the judgment. Any post-judgment interest due and owing, fees and costs and escrow deficiency for funds advanced shall be the amounts that are collectible under applicable law.

Judge Goldgar suggested inserting a comma after the word "costs." Judge Campbell questioned whether some of the judgment might have been paid prepetition so that "amount of the judgment" was overbroad. Ms. Miller suggested dealing with that concern by inserting the word "remaining" before "amount of the judgment." The Advisory Committee approved that change, and approved the proposed amendment as modified to the instructions to Form 410A. The change does not require publication and will be immediately implemented by the AO.

(B) Proposed conforming amendments to Official Form 417A (Notice of Appeal and Statement of Election)

Professor Gibson provided the report. The Subcommittee was asked to recommend to the Advisory Committee whether to propose amendments to Official Form 417A that conform to amendments to Appellate Form 1 (Notice of Appeal) that have been proposed by the Advisory Committee on Appellate Rules and published for public comment.

This Subcommittee decided to recommend using the language of the proposed amendment to Rule 8003(a)(3)(B) but not creating two separate notice-of-appeal forms. The Subcommittee thought that using separate forms would potentially create confusion.

Professor Gibson noted that the comma after the word "order" should be deleted in Parts 2 and 3 of the proposed form.

The Advisory Committee approved the proposed amendments to Form 417A and committee note and directed they be submitted to the Standing Committee for publication with the goal of making them effective when the amendments to Rule 8003 go into effect.

(C) Recommendation of No Action Regarding Suggestion 20-BK-F (Valdislav Kachka) to Revise "Explanation of Discharge in a Chapter 7 Case"

Professor Bartell provided the report. Vladislav Kachka, an attorney in Pennsylvania, suggested changes to the language included in the section labelled "Explanation of Bankruptcy Discharge in a Chapter 7 Case" in Official Form 318 (Discharge of Debtor). The concern of Mr. Kachka is that under Pennsylvania law a civil judgment creates an automatic lien against real property that a defendant owns at the time of the judgment and property acquired by the defendant thereafter. If the defendant obtains a discharge of the judgment in bankruptcy after the judgment is entered, the lien no longer attaches to postpetition property of the defendant. However, an abstract of judgment entered against the defendant continues to appear on a title report and many underwriters will not certify that the property has clear title when the defendant attempts to obtain financing for a post-discharge property purchase because the underwriters fail to understand that the judgment lien does not attach to that property.

Mr. Kachka suggested that if the Explanation of Bankruptcy Discharge in a Chapter 7 Case includes language specifically stating that a discharged judgment does not create a lien on property acquired after the discharge, it will provide debtors something they can show the underwriters without having to embark on a detailed explanation of § 524 of the Bankruptcy Code.

The Subcommittee considered the substance of Mr. Kachka's suggestion, and language that might be added to Form 318 (and the other forms used for discharge under other chapters of the Code), and ultimately concluded not to recommend any change to the forms. There were two reasons for the Subcommittee's decision.

First, the Subcommittee does not think that an amendment to the language in the Explanation section of the discharge orders would alleviate the problem Mr. Kachka seeks to address. The Subcommittee believes that a title company or other party involved in a real estate

transaction would be unlikely to rely on language in the Explanation section of the discharge order, and would still demand a "comfort order" signed by the bankruptcy judge explicitly stating that the post-petition property is not subject to the lien before insuring title to that property.

Second, although Mr. Kachka is absolutely correct that a post-petition lien cannot attach to property obtained by a debtor after bankruptcy to secure a debt that has been discharged, putting language into the forms to that effect could open the door to further requests for specific language describing exactly what is and is not discharged and the effect of the discharge. The Subcommittee was not willing to start down the road of providing legal advice about the meaning and scope of § 524 of the Code, even when there is no dispute about its accuracy, especially where any benefit in doing so would be questionable.

For those reasons, the Subcommittee recommended no action be taken on this suggestion. The Advisory Committee concurred with the Subcommittee's recommendation.

8. Report by the Restyling Subcommittee

Judge Marcia Krieger, chair of the Subcommittee, and Professor Bartell provided the report. Judge Krieger began with an expression of gratitude to the members of the Subcommittee for their work. Professor Bartell thanked Judge Campbell for his leadership in this area, and those staff members at the Administrative Office who assisted with the programs to facilitate the process. She also thanked the style consultants for their contributions.

Professor Bartell provided a status report. The Subcommittee has almost completed its review of Part III of the Rules, after which its comments will be forwarded to the style consultants for their reaction. The Subcommittee will then begin its review of Part IV of the rules. It has two more meetings scheduled for mid-October. The Subcommittee expects to present both Parts to the Advisory Committee for its approval and submission to the Standing Committee for publication at the spring meeting.

9. Emergency Rules Subcommittee

Professor Gibson provided the report. The Subcommittee presented to the Advisory Committee a discussion draft of a proposed new Rule 9038 to address operation of the bankruptcy courts during an emergency. She explained that the Subcommittee, under the leadership of Judge Hoffman, had met five times since the middle of April and had concluded that an emergency rule that that would allow time periods in the Bankruptcy Rules to be extended when there is a declared emergency that adversely affects the operation of the bankruptcy courts would be desirable.

Professor Gibson drafted such a rule, trying to the extent possible to adopt a uniform approach to that pursued by the other advisory committees. Professor Capra has served as liaison between the committees to promote such uniformity. Although that uniformity has not yet been completely achieved, the current drafts of the bankruptcy, civil, and criminal rules have many elements in common. She then highlighted the issues in the proposed rule, and the extent to which they diverged from the approach of the other advisory committees.

The rule addresses what is an emergency (called a "rules emergency" in the draft). There are two requirements for a rules emergency: extraordinary circumstances and a resulting impairment of the court's ability to function in accordance with the rules. The extraordinary circumstances must relate to public health or safety or affect access to the court. Subsequently the criminal rules subcommittee decided to make the definition more restrictive, adding the requirement that "no viable alternative measures would eliminate such substantial impairment within a reasonable time." The current draft of the civil rule does not include the no-viable-alternative requirement. (The appellate rules have no comparable provision.)

Professor Capra said that probably no civil rule will be adopted for emergency situations because the Civil Advisory Committee thinks the existing rules are sufficiently flexible. Judge Goldgar said that he would change "viable" to "feasible." Professor Gibson thought that (a)(2) was not needed because there would be no substantial impairment if there was a feasible alternative. Judge Wu agreed and would delete (a)(2). Judge Goldgar thought that (a)(2) required an inappropriate decision by a judge. Judge Krieger wondered if we really have any need for an emergency rule. Mr. Mayer pointed out that the existing bankruptcy rules limit the flexibility of bankruptcy judges to modify deadlines and otherwise adopt local rules to deal with the emergency so an emergency rule is needed. The Advisory Committee agreed to drop (a)(2).

Judge Hoffman thought (a)(1) should not be limited to "impairing the ability of a court to perform its functions" but should include the parties. Professor Capra said that the only reason parties cannot perform their functions is because courts cannot function. Mr. Mayer supported the rule as drafted. Judge Campbell said that criminal defense attorneys currently can't get access to their clients because of lockdown and therefore cannot prepare for trial. In civil cases, parties cannot complete depositions or inspect properties. There are emergency situations in which the courts are not affected but the parties are prevented from doing what they need to do. Professor Capra thinks the language would operate in those situations because the court would be unable to perform its functions if the parties could not.

The proposed rule identifies who may declare an emergency. The various subcommittees are not in agreement about who should be authorized to declare a rules emergency. The civil and criminal drafts give this authority only to the Judicial Conference of the United States. The

appellate draft also authorizes the chief judge of a circuit to do so for the courts in that circuit. The Subcommittee thought it important to also provide authority at the bankruptcy court level because of the specialized nature of the Bankruptcy Rules and the belief that emergency action could be taken more swiftly and with greater knowledge of local conditions at that level.

Judge Goldgar asked why the chief district judge is omitted. Professor Gibson noted that the chief district judge is omitted in the civil and criminal rules. Professor Coquillette said that the executive committee of the Judicial Conference operates very quickly and can get the information it needs from individual districts. Judge Krieger said that after 9-11 the S.D.N.Y. routed its cases to the E.D.N.Y. and she supports including the chief bankruptcy judge in the district. Judge Wu asked about review of a determination by a bankruptcy judge; Professor Capra suggested that we could include language that allowed the Judicial Conference to overrule the determination. Judge Bates did not think the situation posed by Judge Krieger is unique to bankruptcy — district courts had the same problem for civil and criminal matters. He expressed his concern that allowing the bankruptcy judge to make the determination may be a move too far for Congress, which used a presidential declaration as the trigger during the current pandemic. Judge Goldgar said that the chief district judge in his district said she had no authority to give directions to the bankruptcy court during the current pandemic. Professor Capra said that this is a distinct issue from who makes the declaration. Mr. Hartley noted that someone needs to be able to act unilaterally quickly until someone higher up makes a decision. Judge Krieger said that she has encountered problems that no one else knows about — HVAC problems, or plumbing problems, for example—and that no one higher up is going to know what has happened in that court. Professor Capra said that this rule is not about the burst pipe problem. The rule is intended for major emergencies. Judge Bates said that current rules are flexible enough to deal with Judge Krieger's hypothetical situations. Deb Miller said it is important that there be a quick, uniform approach in the case of an emergency. Professor Gibson wondered if having three different potential decision-makers might create confusion. Judge Goldgar said he personally has access to a member of the Judicial Conference so he feels comfortable with that. Judge Campbell noted that the first draft of the CARES Act would have legislatively amended the rules. In light of that history, Congress is going to be looking for national emergency rules, and probably expects centralized decision-making. There would have to be a really good reason why bankruptcy judges need authority that district court judges do not need in criminal or civil cases. Judge Dow supports allowing the decision to be made by the chief bankruptcy judge, and points out that all we are talking about is extending deadlines. Judge Hoffman suggested eliminating the chief bankruptcy judge but including the chief circuit judge.

The Subcommittee voted on whether to limit decision-making to the Judicial Conference. That motion was defeated with only one vote — Judge Goldgar — in favor. The Subcommittee then voted on whether to allow either the Judicial Conference or chief judge of the circuit to declare a rules emergency. That motion was supported by five votes. The Subcommittee then

voted between two options: allowing the Judicial Conference or chief judge of the circuit to declare a rules emergency and second, allowing the chief bankruptcy judge also to make the declaration. The former option was supported by Judges Bernstein, Hoffman, Goldgar, and Oetken, and Mr. Retherford. The latter option, with three levels of decisionmakers, was supported by Ms. Miller, Mr. Mayer, Judge Wu, Judge Krieger, Mr. Hartley, and Judge Dow. Mr. Hubbert abstained. As a majority of the Advisory Committee supported that approach, the rule will continue to include the existing provisions allowing the chief bankruptcy judge to declare a rules emergency.

Professor Gibson will modify subpart (b)(4) (dealing with early termination of a rules emergency) to include the ability of the chief judge of the circuit or the Judicial Conference to overrule a decision of the chief bankruptcy judge as to the existence of a rules emergency.

The proposed rule provides for extensions of time limits set forth in the rules (other than those mandated by the Bankruptcy Code). As drafted, the authority to permit extensions of time limits on a district-wide basis is given to the chief bankruptcy judge, regardless of who made the declaration of the emergency. The Subcommittee thought this approach was appropriate because a local actor will be in the best position to assess conditions and determine the rule departures that are needed. Judge Campbell suggested revised language in (c)(1) to eliminate the requirement that the chief bankruptcy judge in a district has to authorize a bankruptcy judge to order extensions in a particular case. A conforming change will be made to (c)(3).

Judge Goldgar wants the ability not merely to extend time limits, but the ability to modify local rules. Professor Gibson suggested that this is not a matter for the federal rules. Professor Capra and Professor Struve also agreed. Professor Struve suggested that the reference to Bankruptcy Code in line 39 should be to any statute. Judge Bernstein asked whether the chief bankruptcy judge should be able to order extensions for specific cases as indicated by line 34 — the presiding judge is the one who would know about that. Everyone agreed that the language would so require.

An extended or tolled time period will terminate either 30 days after the rules emergency declaration terminates or when the original time period would have expired, whichever is later — unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, that date would be compared to the original termination date (and of course will be the later of the two dates since it is an extension). The court may provide an additional extension in a specific case or proceeding.

The draft rule left space for consideration of additional rules provisions that might be considered for inclusion in an emergency rule. The first is an authorization for remote hearings. Virtually all bankruptcy courts switched to remote means of conducting any hearings that could

not be postponed following the declaration of the Covid-19 emergency. Such action could be required in any type of emergency that endangers public health and safety or impairs access to the court. The Advisory Committee concluded that inserting such a provision in the emergency rule would suggest that existing local orders providing for remote hearings constitute a departure from the Bankruptcy Rules and are not authorized. Professor Capra agreed. The rule will eliminate the placeholder for remote hearings.

The other rules that the Subcommittee has identified for consideration are those requiring service or transmission by first class mail. It has been suggested that in some types of emergencies, the U.S. postal system might be disrupted, and thus compliance with mailing requirements in the rules might be difficult or impossible. Judge Dow does not know what we would propose as an alternative. The Advisory Committee concluded that no emergency provisions were needed for this situation.

Other procedures that the Subcommittee considered and decided not to address in an emergency rule are ones governing electronic filing by unrepresented parties, payment of filing fees online by unrepresented parties, and electronic signature requirements. The Subcommittee determined that the existing Bankruptcy Rules on these topics either contain sufficient flexibility to allow adjustments during an emergency or leave the issues to regulation by local rules or orders.

The final provision of the proposed draft, which is in brackets, is the last provision of the current criminal rule draft. This "soft landing" provision is intended in part to do what subdivision (c)(2) of the Subcommittee's draft aims for — to prevent unfairness in the transition period after the termination of an emergency declaration. Subdivision (c)(2) addresses only time period extensions and tolling, whereas the criminal rule provision applies to all types of rule departures authorized by the emergency rule. Given that the bankruptcy rule will now address only time extensions, this provision will not be necessary.

Judge Bates asked whether the Advisory Committee had determined that an emergency rule is necessary. The concern would be that adopting a rule dealing only with extensions of deadlines might create the implication that nothing else can be modified in an emergency. Professor Gibson thought that the emergency rule was indeed necessary because of all the deadlines included in the bankruptcy rules, and that this rule should be presented to the Standing Committee in January for its consideration. Judge Dow agreed that the rule is needed.

10. Future meetings

The spring 2021 meeting has tentatively been scheduled for April 8–9, 2021.

11. New Business

There was no new business.

12. Adjournment

The meeting was adjourned at 3:15 p.m.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee's meeting. No objections were presented, and all recommendations were approved by acclamation at the meeting.

1. Business Subcommittee.

   A. Recommendation of no action regarding Suggestion 20-BK-A from the Foundation for Defense of Democracies for proposed rulemaking concerning national security matters (Professor Bartell).

2. Consumer Subcommittee.

   A. Recommendation of referral of Suggestion 20-BK-B to make the court's database of electronic creditor notice addresses available to any case participant required to serve notices on creditors. (Professor Gibson).

3. Recommendation for technical changes to all versions of Official Form 309 to update PACER internet address, to amend national instruction to Form 309 to list all versions of the form, and to permit courts to update the internet links as needed on those forms in the future. (Scott Myers)

TAB 3

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of January 5, 2021

The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee or Committee) met by videoconference on January 5, 2021. The following members participated in the meeting:

Judge John D. Bates, Chair
Judge Jesse M. Furman
Daniel C. Girard, Esq.
Robert J. Giuffra, Jr., Esq.
Judge Frank Mays Hull
Judge William J. Kayatta, Jr.
Peter D. Keisler, Esq.
Professor William K. Kelley
Judge Carolyn B. Kuhl
Judge Patricia A. Millett
Judge Gene E.K. Pratter
Elizabeth J. Shapiro, Esq.*
Kosta Stojilkovic, Esq.
Judge Jennifer G. Zipps

The following attended on behalf of the advisory committees:

Advisory Committee on Appellate Rules –
Judge Jay S. Bybee, Chair
Professor Edward Hartnett, Reporter

Advisory Committee on Bankruptcy Rules –
Judge Dennis R. Dow, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Laura Bartell,
Associate Reporter

Advisory Committee on Criminal Rules –
Judge Raymond M. Kethledge, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King,
Associate Reporter

Advisory Committee on Civil Rules –
Judge Robert M. Dow, Jr., Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus,
Associate Reporter

Advisory Committee on Evidence Rules –
Judge Patrick J. Schiltz, Chair
Professor Daniel J. Capra, Reporter

Others providing support to the Committee included: Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Julie Wilson, Rules Committee Staff Counsel; Kevin P. Crenny, Law Clerk to the Standing Committee; Judge John S. Cooke, Director of the Federal Judicial Center (FJC); Dr. Emery G. Lee and Dr. Tim Reagan, Senior Research Associates at the FJC.

* Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Principal Associate Deputy Attorney General Richard P. Donoghue. Andrew Goldsmith and Jonathan Wroblewski were also present on behalf of the DOJ.

OPENING BUSINESS

Judge Bates called the meeting to order and welcomed everyone. He began by reviewing the technical procedures by which this virtual meeting would operate. He next acknowledged recent changes in the leadership of the Rules Committees. Judge Bates introduced himself, acknowledging that this was his first Standing Committee meeting as Chair, and thanked Judge David Campbell for his wonderful leadership and insight. Judge Bates next recognized new Advisory Committee Chairs: Judge Robert Dow is the new Chair of the Advisory Committee on Civil Rules, Judge Jay Bybee is the new Chair of the Advisory Committee on Appellate Rules, and Judge Patrick Schiltz is the new Chair of the Advisory Committee on Evidence Rules. Judge Bates noted next that Rebecca Womeldorf, Secretary to the Standing Committee, would be leaving the Rules Committee Staff to work as the Reporter of Decisions to the Supreme Court. Judge Bates thanked Ms. Womeldorf for her friendship and years of work with the Rules Committees.

Following one edit, upon motion by a member, seconded by another, and on voice vote: **The Committee approved the minutes of the June 23, 2020 meeting.**

Judge Bates reviewed the status of proposed rules and forms amendments proceeding through each stage of the Rules Enabling Act process and referred members to the tracking chart in the agenda book. The chart includes the rules that went into effect on December 1, 2020. Also included are the rules approved by the Judicial Conference in September 2020 and transmitted to the Supreme Court. These rules are set to go into effect on December 1, 2021, provided the Supreme Court approves them and Congress takes no action to the contrary. Other rules included in the chart are currently out for public comment. Julie Wilson of the Rules Committee Staff explained that a hearing on the proposed Supplemental Rules for Social Security Review Actions currently out for comment is scheduled for January 22, 2021.

JOINT COMMITTEE BUSINESS

Emergency Rules Project Pursuant to the CARES Act

Judge Bates introduced this agenda item, included in the agenda book beginning at page 91, which has been underway since the passage of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) in March 2020. He began by highlighting the fact that Chief Justice Roberts had recognized the role of the Rules Committees in his end of the year address on the state of the federal courts. The Chief Justice complimented their efforts thus far, particularly those members who had worked on the videoconferencing provisions included in the CARES Act. Judge Bates also thanked everyone who has worked on this project for their superb efforts. He noted the particular efforts of Professor Capra in coordinating the project across committees and of both him and Professor Struve in preparing the presentation of the advisory committees' suggestions for today's meeting.

Section 15002(b)(6) of the CARES Act directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency. At its June 2020 meeting, the

Committee heard preliminary reports and then tasked each advisory committee with: (1) identifying rules that might need to be amended to account for emergency situations; and (2) developing drafts of proposed rules for discussion at its fall 2020 meeting. In the intervening months, each advisory committee – except for the Evidence Rules Committee – developed draft rules for discussion at this Standing Committee meeting. The goal at this meeting was to present the draft rules and to seek initial feedback from the Standing Committee. Comments on details are welcomed, but the focus would primarily be on broader issues. Overarching questions for the members to keep in mind included what degree of uniformity across rules would be desirable and who should have authority to declare an emergency or enact emergency rules. At their spring 2021 meetings, the advisory committees will consider the feedback provided by members of the Standing Committee, and determine whether to recommend that the Standing Committee at its summer 2021 meeting approve proposed emergency rules for publication for public comment in August 2021. This schedule would put any emergency rules published for comment on track to take effect in December 2023 (if approved at each stage of the Rules Enabling Act process and if Congress takes no contrary action).

Professor Struve began the presentation of the emergency rules proposals. She echoed Judge Bates's thanks to all those who have brought the project to this stage, especially the advisory committee chairs, reporters, relevant subcommittee members, and Professor Capra. She explained the structure by which the day's discussion would proceed. The discussion would be segmented by topic. Professors Struve and Capra would introduce each topic and then advisory committees' reporters would be invited to summarize their committees' views on that topic. The topic would then be opened for general discussion among the Standing Committee members.

Professor Capra thanked the advisory committee members and reporters and described the history of the project. He explained that the Evidence Rules Committee would not be presenting a proposal. Its members determined early in the process that there was no need for an emergency rule because the Evidence Rules are already sufficiently flexible to accommodate emergencies.

"Who Decides" Issue. This first topic concerns what actor or actors decide whether an emergency is declared. The advisory committees' subcommittees decided early in the process that a rules emergency should not be tied to a declaration of a presidential emergency. Although the CARES Act relies on a presidential declaration of emergency, and instructed the Rules Committees to consider emergency rules in that context, the advisory committees all agreed that the judiciary would benefit from being able to respond to a broader set of emergencies, and that limiting the emergency rules to only a presidentially declared emergency would not make sense. The advisory committees agreed that the Judicial Conference should have the authority to declare a rules emergency, but they were not in agreement on whether other actors should share this authority. The draft amendment to Appellate Rule 2 grants such authority to "the court" as well, and provides that the chief circuit judge can exercise the same authority unless the court orders otherwise. Draft Bankruptcy Rule 9038 grants the authority first to the Judicial Conference either for all federal courts or for one or more courts, second to the chief circuit judge for one or more courts within the circuit, and third to the chief bankruptcy judge for one or more locations in the district.

Professor Gibson and Judge Dennis Dow summarized the position of the Bankruptcy Rules Committee. Professor Gibson explained that the Advisory Committee thought there could be emergencies of different scope – some might be on a national scale like the COVID-19 pandemic, others might be confined to a circuit, a state, or to one district or part of a district within a state. The Advisory Committee thought it was more efficient for local actors to be able to declare an emergency and to act more quickly to respond to a localized emergency. She noted that the Advisory Committee was not concerned that overeager judges would be too quick to declare an emergency, and pointed out that paragraph (b)(4) of draft Bankruptcy Rule 9038 would allow the Judicial Conference to review and revise any declaration. A majority of the Advisory Committee favored giving actors at all three levels the authority to declare an emergency. Judge Dow explained that his committee thought that in the case of a localized emergency, decisionmaking should be at the local level, where the effects of the situation would be felt. He thought this was similar to the proposal put forward by the Appellate Rules Committee. He emphasized the stakes of the issue – draft Rule 9038 only deals with procedural issues, not substantive rights. Finally, he noted that the bankruptcy draft rule balances the need for rapid response with the opportunity for modification after the fact by the Judicial Conference. Professor Capra added that because the draft rule allows a number of actors to declare an emergency, it had to be drafted differently from the other advisory committees' proposals, which introduced some additional lack of conformity.

Judge Bybee and Professor Hartnett explained the Appellate Rules Committee's proposal. Judge Bybee began by noting that Appellate Rule 2 already allows a court of appeals to "suspend any provision of" the appellate rules "in a particular case." The proposed appellate emergency rule would amend Appellate Rule 2 to allow the courts of appeals to make these kinds of changes across all cases. The Appellate Rules Committee thought it was important to allow the chief judge of a circuit or a court to make these changes. Most of the appellate rules, like the bankruptcy rules, are procedural, limiting any impact on substantive rights when the rules are suspended. Jurisdiction, for example, would never be affected. Further, Judge Bybee explained the Advisory Committee's view that courts of appeals are accustomed to having to deal collegially. This would provide a check on the judgment of a chief judge. He added that the Advisory Committee preserved the backup option of allowing the Judicial Conference authority to exercise the same rule-suspending powers. Professor Hartnett noted the long history of flexibility in the appellate rules. Rule 2 has existed since the Appellate Rules were first promulgated and the circuit courts' authority to suspend their rules predates the Appellate Rules. The nature of a court of appeals is that it speaks with one voice and its procedures are designed to that end. Finally, Professor Hartnett addressed the dignity of the courts of appeals, explaining that there is no right of appeal from these courts. They are courts of last resort and courts with that authority ought to be able to suspend the rules.

Judge Kethledge and Professors Beale and King spoke on behalf of the Criminal Rules Committee. That committee determined that the Judicial Conference was the ideal body to make emergency declarations because it has input from around the country and authority to act. The Criminal Rules Committee has long been the recipient of suggestions that the Criminal Rules be amended to allow for greater use of remote proceedings. The Criminal Rules Committee has historically resisted allowing virtual proceedings. Professor Beale noted the critical differences between the kinds of emergency rules being considered by each advisory committee. The need for gatekeeping is much greater when it comes to criminal proceedings because constitutional issues are implicated most directly by changes to the Criminal Rules. This makes it more important to

exercise restraint when suspending any rules. The Judicial Conference is better positioned to act in this manner. The Criminal Rules Committee believed there was no reason to think the Judicial Conference would suffer from a lack of information or that the Judicial Conference and its Executive Committee could not act with appropriate speed. Given the nature of the emergency rules and the values they protect, the Advisory Committee believed it was preferable to have a single gatekeeper deciding when to declare an emergency. Professor King added that the Advisory Committee had considered the concerns – expressed by other committees – that an emergency might be localized, but that their proposal accounted for this possibility. It requires the Judicial Conference to consider moving proceedings to another district or another courthouse before emergency rules can be enacted. Because there is always an obligation to move proceedings and to remain under the normal rules, there is less reason to think that a local decisionmaker is needed or that the Judicial Conference is not well situated to make the necessary decisions.

Judge Robert Dow and Professors Cooper and Marcus spoke on behalf of the Civil Rules Committee. Professor Cooper explained that their committee arrived at the same conclusion as the Criminal Rules Committee. The Civil Rules already allow broad discretion to the trial courts and they seem to be functioning well during the pandemic. Professor Marcus added that confusion could result if two courts or districts located near one another were both affected by the same emergency but chose to respond in different ways. The Judicial Conference would be able to coordinate efforts across districts and could better achieve consistency.

The discussion was then opened to the members of the Standing Committee. Judge Bates spoke first. Moving away from the particular proposals, he reminded the members of the overall goal of uniformity. To the extent that decisionmaking is dispersed, there would be a potential for undermining this uniformity in a way that is undesirable even in an emergency context. The CARES Act had envisioned emergency rules relating to a presidential emergency and some committees were now looking at very localized actors like a small district. The scale of the departure from what Congress originally suggested was worth keeping in mind. Judge Bates's understanding was that the Judicial Conference, and particularly its Executive Committee, was able to act quickly when necessary. He also suggested that he saw little reason to think that the speed of the emergency declaration would matter more for any one set of rules than for another. Speed is equally important for each type of rules and court proceedings. In response to the Appellate Rules Committee's suggestion that the courts of appeals can and should "speak with one voice," Judge Bates thought this could be an argument for keeping the authority at that level rather than at the district level, but did not think it was an argument against giving the authority to the Judicial Conference.

An attorney member spoke in favor of uniformity with respect to 'who decides.' This member thought that in creating emergency rules for the first time, it was preferable to be cautious and incremental and to create a single gatekeeper rather than a complex multitiered system. This member also thought that the challenges created during the current emergency were greatest in the criminal context and thought that there was something to be said for choosing the gatekeeper that makes the most sense for that set of rules.

Another attorney member agreed that uniformity in 'who decides' makes sense. If the reasons for decentralization are increased nimbleness and ability to accommodate geographical

differences, and the reasons for centralization are the substantive issues raised by the Criminal Rules Committee, then substantive issues should win out. This is particularly so if the Judicial Conference can act with sufficient nimbleness and precision.

One judge member noted that, by definition, an emergency creates an atmosphere of unease. Having the authority to declare an emergency reside in one place – with the Judicial Conference – suggests authority and promotes trust. It makes sense to focus on a single identifiable body that is designed to be sensitive to lots of issues. A member agreed that substantive protections are most important. This member thought that the authority to declare an emergency should be tailored to the kind of nationwide issue – like the pandemic – that Congress had in mind when it suggested emergency rules. Local issues, like floods, hurricanes, or power outages, have been dealt with in the past without an emergency rule and have not prompted Congressional action.

Another judge member also spoke in favor of uniformity and argued that the benefits of uniformity outweigh those of localization.

Another judge member noted that the consideration of emergency rules happens infrequently and that we should consider the types of emergencies that are possible. This member suggested that a situation where the country's communications infrastructure is damaged might make it infeasible to communicate nationally and might make local control desirable.

One judge member expressed that she was impressed with the drafts and had originally been comfortable with different decisionmakers for different sets of rules, but was now thinking that uniformity was more desirable in light of the scope of the proposed changes. As an alternative means of balancing the values at stake, this member suggested that perhaps the Judicial Conference could be the default decisionmaker but that others could be permitted to determine that the Judicial Conference is unreachable and – in those situations – to act on their own.

Professor Coquillette echoed Judge Bates's view that the Executive Committee of the Judicial Conference can act very quickly and has done so in the past.

A judge member asked about the extent to which the bankruptcy rules are already sufficiently flexible to allow judges to toll and extend deadlines in particular cases. Professor Gibson responded that there is already a rule that allows flexibility with regard to some deadlines (Bankruptcy Rule 9006(b)), but that, because there are limits on the authority granted and some deadlines are exempt, the subcommittee thought an emergency rule would be helpful. This same committee member then explained his view that although the Bankruptcy Rules Committee's reasons for allowing emergency declarations at the bankruptcy court level made sense, the other committees' arguments to the contrary were also compelling. This member also suggested that there was an appearance benefit favoring an Article III over an Article I decisionmaker that might tilt the balance in favor of giving the Judicial Conference sole authority.

Another judge member supported having a different decisionmaker for the appellate rules, but found today's arguments in favor of uniformity compelling. This member thought that the courts of appeals were very different from trial courts – there are fewer substantive rights at stake and they are sufficiently nimble. Circuit-wide orders have been used in the past in order to

immediately protect rights when, for example, major weather events necessitate the extension of filing deadlines.

An attorney member thought that perceptions of what constitutes an emergency may vary throughout the country and was initially inclined to favor some devolution of power to regional courts. However, he was persuaded by the flexibility of the existing rules and the need for uniformity and now favored keeping the decisionmaking power in the Judicial Conference, and thought it was important that a uniform federal authority be identifiable in emergencies.

Definition of a Rules Emergency. Professor Capra introduced questions concerning what ought to qualify as a "rules emergency." There was at least some uniformity across advisory committees on this issue. The advisory committees agreed there must be "extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court" which "substantially impair[s] the court's ability to perform its functions in compliance with the[] rules." One early issue was whether there should be a requirement that the parties, as well as the courts, are unable to operate under the normal rules. This possibility was rejected because the courts, and particularly the Judicial Conference, would be unlikely to have information about the parties' access. Further, a problem for the parties is necessarily a problem for the courts so – to the extent the information is available – it makes no difference. The remaining point of inconsistency across committees is that the Criminal Rules Committee, and no other committee, included a requirement (in draft Criminal Rule 62(a)(2)) that before the Judicial Conference declares a Criminal Rules emergency it must determine that "no feasible alternative measures would eliminate the impairment within a reasonable time."

Judge Kethledge explained this additional requirement. First, he explained that the "extraordinary circumstances" finding under paragraph (a)(1) of the proposed criminal rule – the finding the other committees also require – is a substantive impairment requirement. The additional requirement in paragraph (a)(2) is an exhaustion requirement. These are not redundant. Judge Kethledge emphasized that the committees have thought about different kinds of proceedings and have focused on different things. Procedurally, the Criminal Rules are the only rules the CARES Act directly amended. The Criminal Rules Committee gave intensive consideration to how the rules ought to be abrogated in light of this kind of emergency. They thought it was important that the rules not be abrogated unless doing so proves absolutely necessary. The Criminal Rules protect core substantive interests with a long history in the law. Given how carefully these rules have been crafted in the first place, all feasible alternatives should be explored before any rules are suspended. There might be ways of adapting that cannot be foreseen right now but which the Judicial Conference might be able to learn about in the moment from local actors on the ground. Judge Kethledge thought any remaining disuniformity was worth allowing. Professor Beale added that uniformity on this point was not essential – the Criminal Rules Committee was not asking the other advisory committees to adopt the additional exhaustion requirement. She suggested that it might be fine for a Bankruptcy Rules emergency to be declared at the local level while extra protections are afforded the substantive rights at issue in the criminal context. Professor King agreed that the Criminal Rules Committee feels very strongly about including the exhaustion requirement.

Professor Cooper spoke on behalf of the Civil Rules Committee. That committee was comfortable with the "no feasible alternative" requirement being included in a criminal emergency rule but not in the civil rule. It did not think it was necessary for the Civil Rules and, in light of the different rights being protected in the criminal context, was not concerned with the disuniformity. Professor Marcus agreed that Civil and Criminal Rules are very different so having a difference on this point made sense.

Professor Gibson said the Bankruptcy Rules Committee felt similarly to the Civil Rules Committee and had decided against including the "no feasible alternative" language. They were not concerned with the disuniformity.

Judge Bybee observed that the only "friction points" for the courts of appeals in an emergency were the filing of briefs and the holding of oral arguments. Neither of these implicated the kinds of values at stake in the Criminal Rules, and the Appellate Rules Committee was therefore also not concerned by the possibility of allowing the additional requirement in the proposed criminal rule to remain in place.

Judge Bates thought the Criminal Rules Committee made a strong argument but he had two points to add. First, he wanted to be sure that the exhaustion requirement was not redundant. He asked whether it might be said that before it could find a "substantial impairment" the Judicial Conference would necessarily have to have considered alternatives? Second, if the Judicial Conference were put in the position of declaring a rules emergency across all the rules sets, was there anything to be said for having the same standard for all the rules? If the rule were to state that declaring a Criminal Rules emergency required consideration of feasible alternatives, might this imply that there was no obligation to consider alternatives outside of the criminal context? What would be the implications of leaving the requirement out for the other sets of rules?

A judge member reminded the Committee of the existing authority of the courts of appeal under Appellate Rule 2 to suspend the Appellate Rules in particular cases and asked whether the proposed amendment to Appellate Rule 2 could be seen as constraining this existing authority to a narrower set of circumstances. This member noted that courts of appeal have been able to respond to emergencies in the past and would not want to see their existing power limited.

An attorney member suggested adding "or set of cases" to Appellate Rule 2(a) in order to avoid constraining the current authority of the courts of appeals. This would make it clear that the courts of appeal could issue suspensions of rules across cases without declaring an emergency. Professor Hartnett thought the Appellate Rules Committee would be receptive to such a change because they did not want the existing authority of the courts of appeals to be constrained. Professor Capra asked whether the issuance of orders under such an authority might start to look like local rulemaking. Professor Hartnett responded that the language "a set of cases" would imply that orders suspending rules cannot be applied to all cases. Professor Struve asked for clarification on the suggestion that subdivision (a) be modified in a way that would apply even outside of emergency situations.

A judge member thought the higher standard for declaring a Criminal Rules emergency was appropriate. Although the inclusion of the higher standard in only one of four emergency rules

would imply that alternatives did not need to be considered in other contexts, this member did not think the drawbacks of this implication outweighed the benefits of the heightened standard for a Criminal Rules emergency.

Another judge member asked whether this language was added in response to any particular situation that had come to the Criminal Rules Committee's attention. Professor King explained that the Criminal Rules' Emergency Rules Subcommittee had held a miniconference and consulted with a broad group of actors. The input received through these avenues influenced the Criminal Rules Committee's thinking. One circumstance that distinguished its approach was the possibility of a hurricane or other major catastrophe rendering all the courthouses in a district not useable. Other advisory committees would consider this a substantial impairment but history had shown – in Puerto Rico and Louisiana – that criminal proceedings could be moved to a different courthouse in another area. Judge Kethledge added that the Emergency Rules Subcommittee had canvassed chief judges around the country. In response to Judge Bates's questions, Judge Kethledge thought that the required determinations were not redundant because paragraph (a)(1) of draft Criminal Rule 62 only looked for an impairment and did not imply any evaluation of alternatives. In a situation like the aftermath of Hurricane Katrina, court proceedings were moved pursuant to 28 U.S.C. § 141. If an option like this is available, courts would be obligated to use it to hold criminal proceedings under the existing rules while an emergency might be declared under the Appellate, Bankruptcy, and Civil rules.

An attorney member said that he had been somewhat confused by the language because it seemed that the "substantial impairment" finding would take into account the possibility of moving court functions. However, this member now thought that a court moving its functions would be "substantially impaired" because relocated proceedings do not constitute normal court operations. The member suggested that it might be worth adding an adverb to modify "eliminate" in paragraph (a)(2) – possibly "sufficiently." This would indicate that the alternative must be sufficiently effective to mitigate the disruption of court operations.

Ms. Shapiro expressed the DOJ's support for Judge Kethledge's reasoning and for including the additional requirement for the Criminal Rules.

Judge Bates suggested that while the Criminal Rules Committee's reasoning was compelling, it might be worth reevaluating the value of uniformity. He also wanted to be sure that, just as the Criminal Rules Committee had considered dropping the requirement, the other advisory committees had considered adopting it.

Open-ended Appellate Rule Structure. Professor Capra explained that the proposed appellate emergency rule sets almost no limit on the range of Appellate Rules that are subject to suspension in a rules emergency. Nor does it state what the substitute rule (if any) must be when a rule is suspended. The appellate emergency rule proposal does not specify what provisions need to be included in an emergency rules declaration. It imposes no particular time limits on a rules emergency declaration. These and other limitations are found in the other three emergency rules.

Judge Bybee reiterated that the two "friction points" for the courts of appeal operating under emergency situations are filing deadlines and oral argument scheduling. Given the flexibility

already available under the current Appellate Rules, the Appellate Rules Committee did not think it made sense to have a more detailed rule for adjusting the timing of these events during emergencies. The Advisory Committee would prefer having no emergency rule to adding more constraints to their proposal because without an emergency rule the courts of appeal can just rely on the flexibility they already have.

Professor Hartnett added that the current Appellate Rule 2 can be thought of as the Appellate Rules' equivalent to Civil Rule 1, which states that the Civil Rules should be interpreted to preserve justice and efficiency. Professor Hartnett understood that the proposed amendment to Appellate Rule 2 was particularly open-ended and did not identify alternative rules but noted that rule-suspension provisions during the pandemic have often not provided alternatives. For example, an order waiving a paper-filing requirement does not have to include all the details of online filing. Professor Hartnett also suggested that subdivision (a) – the current Appellate Rule 2 – would carry over into an appellate rules emergency and would then authorize courts to create whatever alternatives they might need to operate. In addition, the Appellate Rules Committee did not set timing deadlines for emergency declarations, opting instead for the open-ended instruction that the emergency-declarer "must end the suspension" of rules "when the rules emergency no longer exists." Finally, he noted that he was not aware of anyone having suggested that Rule 2 had been abused historically.

Judge Bates suggested that the courts of appeals' normal modification of deadlines and oral argument timing was not quite comparable to the suspension of rules during an emergency. The ability to alter deadlines and scheduling is not unique to the courts of appeal. The distinguishing feature of the courts of appeals might be that there is not much at stake when deadlines and schedules are changed. He said it did not seem to him that this was what the committees were concerned with here. Judge Bates also asked whether there is a downside to not setting out replacement rules. If nothing is set out, it will be left to someone – the chief circuit judge, a panel, the circuit as a whole – to describe specifics.

Judge Bates then pointed out that subdivision (a) says the court "may suspend and order proceedings as it directs" while subdivision (b), the emergency rule, only says the court "may suspend" and does not mention ordering proceedings. He asked whether paragraph (b) needs something about the authority to order proceedings, or whether the omission was intentional. Professor Hartnett explained that the Appellate Rules Committee had assumed that the authority in paragraph (a) was implicit in (b), but he agreed that it should probably be made explicit.

A judge member made a similar drafting note. In paragraph (b)(2) the suspension of rules within a circuit is allowed, but sometimes the rule only needs to be suspended in part of a circuit. The member suggested that perhaps the rule should refer to "all or part of that circuit."

Another judge member did not think it was a problem for the courts of appeals to have a different structure to their emergency rules, but this member thought that a sunset provision – maybe ninety days – would be an appropriate and important safeguard. Professor Capra added that if the Judicial Conference was, ultimately, the only authority declaring emergencies across all the rule sets, it would be particularly odd for there to be a time limit on the other three types of rules emergencies but not on an appellate rules emergency.

An attorney member had a question about language in paragraph (b)(2) that identifies "time limits imposed by statute and described in Rule 26(b)(1)-(2)" as those that cannot be set aside in an emergency and whether this referred to time limits both "imposed by statute" *and* "described in Rule 26" and about the extent to which these categories overlapped. Professors Hartnett and Struve indicated that they were not aware of any time limits in the Appellate Rules imposed by statute but not covered in Rule 26(b), but recommended keeping the references to both because some requirements covered in Rule 26(b) are not set by statute.

Judge Bybee thought it made sense to add "and order proceedings" to subdivision (b) for consistency with subdivision (a), and he did not have any objection to a ninety-day time limit for an emergency declaration. He agreed with Professor Capra's point that this would be a particularly good idea if the Judicial Conference were in the position of declaring rules emergencies across rules sets. He also agreed with the proposal to add "or set of cases" and expressed his view that the Appellate Rules Committee would likely be amenable to these suggestions.

Some relatively brief comments rounded out this discussion. One judge member noted that if a ninety-day sunset provision is introduced there should be an option to extend the emergency past the ninety days. Another judge member thought it would be helpful for paragraph (b)(2) to reference both deadlines imposed by statute and Rule 26(b) because it was helpful to the reader to include both, noting that, in this judge's court, there exists a practice of including sunset provisions when issuing emergency-type orders. Another judge member suggested that paragraph (b)(3) be amended to limit the Judicial Conference's review authority to review of decisions under subdivision (b) as opposed to all of Rule 2, which would include subdivision (a). Judge Bybee pointed out that the draft committee note addressed some issues that had been raised and that he expected the Advisory Committee would be open to including additional clarifications.

Authority. Professor Struve introduced an issue raised in the Appellate Rules Committee meeting, regarding whether rules allowing the Judicial Conference or other actors to declare an emergency might run afoul of the Rules Enabling Act. She framed the issue in this way: a judge presiding over individual cases is generally understood to have authority over her own docket. In the draft emergency rules, the advisory committees give authority to the Judicial Conference. That authority would not be limited to cases on its members' own dockets. Nor does 28 U.S.C. § 331 – which establishes and lays out the powers of the Judicial Conference – give the Judicial Conference the authority to declare emergencies or suspend rules of procedure. Would there be a problem if rules of procedure enacted through the Rules Enabling Act process gave the Judicial Conference such authority?

Professor Struve reported that the general consensus after discussion among the reporters was that there was not an issue under the Rules Enabling Act. One way of thinking about it was that there are a variety of decisionmakers that exist outside of the courts that make determinations that are incorporated by reference to the ways the courts function. For example, a state can declare a legal holiday and have that decision incorporated into a time-counting provision, giving that holiday declaration a legal effect in the rules. In the draft criminal, civil, and bankruptcy rules, the Judicial Conference would choose from a menu of options and could choose to implement some or all of them. There is less structure to the proposed appellate emergency provisions but as

discussed, they already have more flexibility to suspend their rules, and the stakes are somewhat lower.

Professor Capra thought the issue was simple. He pointed out that making a declaration that an existing rule comes into effect is different from making a rule. The rule is preexisting, and triggering it is not rulemaking. Professor Hartnett looked at the question differently. He thought the concern was not that the federal rules cannot incorporate other law by reference, but rather the source of the authority for another body to act in the first place: Where does the Judicial Conference get the authority to declare the emergency? The other way to think about it is that perhaps the rule promulgated under the Rules Enabling Act can itself be the source of the Judicial Conference's authority, but this requires thinking through the implications. Can a rule promulgated under the Rules Enabling Act create authority for a body that did not have such authority already?

Professor Coquillette did not think this presented a practical problem. He added that Congress instructed the Rules Committees to make rules that solve this problem, and he did not think it was likely that anyone would challenge it.

A judge member asked whether paragraph (b)(3) of the draft amendment should refer to a "declaration" under paragraph (b)(1) rather than a "determination," because the word "determination" would seem to suggest that the Judicial Conference can review and revise the rules modifications put in place as well as the emergency declaration. It did not seem to this member that the Judicial Conference should necessarily be reviewing the modifications.

Professor Marcus thought it was very peculiar to suggest that there was an authority problem when Congress had instructed the Rules Committees to do something like this and when Congress would be reviewing the rule before it went into effect.

Professor Cooper thought that it was a very good idea for the Judicial Conference to be the actor empowered to act and that there was therefore likely a way to find authority under either the Rules Enabling Act or 28 U.S.C. § 331.

Professor Beale thought that the Rules Enabling Act provides the necessary authority if such authority did not exist otherwise. If there is a statutory gap – and, in her opinion, one does not appear to exist – she thought that the Rules Enabling Act's supersession could bridge that gap. If the Judicial Conference is the logical place to lodge the power to declare an emergency and if the Rules Committees, the Judicial Conference, the Supreme Court, and Congress affirm that by approving the emergency rules – that ought to be enough to alleviate any lingering concerns.

Professor Gibson noted that although the section of the Rules Enabling Act that applies specifically to Bankruptcy Rules, 28 U.S.C. § 2075, does not include a supersession clause, she nevertheless agreed that it provided sufficient authority.

Professor Cooper said that the Civil Rules had embraced things prescribed by the Judicial Conference in the past. For example, electronic filing was originally permitted according to standards developed by the Judicial Conference. Local rules numbering and the maintenance of district court records were similar examples.

An attorney member asked if there was a gap between the current rule proposals and the CARES Act's focus on presidentially declared emergencies. Is there anything to be pointed to other than the later ratification process? Professor Capra thought that this was only a problem if the CARES Act were relied on for authority to promulgate the emergency rules. Instead the Rules Enabling Act could be relied on as the statutory authority. Judge Bates clarified that the authority question here is different from the statutory authorization.

Criminal Rules Provisions. The next topic for discussion was some of the substantive provisions of draft Criminal Rule 62, particularly subdivisions (c) and (d). Subdivision (c) lays out specific substantive changes for emergency circumstances that were developed based on feedback the committee received from participants in the miniconference. Judge Kethledge and Professors Beale and King invited any thoughts from the Standing Committee on these proposals.

Judge Bates had a question concerning paragraph (c)(3), which would allow the court to conduct a bench trial without the government's consent when it finds that doing so "is necessary to avoid violating the defendant's constitutional rights." He asked why the Criminal Rules Committee had limited this to constitutional rights instead of allowing the same procedure when a statutory right was at stake. Judge Kethledge thought the main reason was to avoid any questions under *Singer v. United States*, 380 U.S. 24 (1965), in which the Supreme Court held that a defendant has no constitutional right to waive trial by jury. Professor Beale noted also that the DOJ was opposed to too much of a deviation from the norm and that the subcommittee had taken these views into account. Originally, the rule would have allowed a bench trial without the government's consent whenever doing so would be "in the interest of justice." The Advisory Committee ultimately determined that this provision should be a narrow one. Judge Kethledge noted that there was division over this provision among advisory committee members and that it had not been put forward with unanimous support.

A judge member questioned the extent to which the situation envisioned by paragraph (c)(3) could ever actually arise. Presumably the constitutional right at issue would be a speedy trial right, and evaluating whether an additional delay would violate that right requires a fairly complicated multi-factor decision. If, under the rule as drafted, a judge has to go through all of that analysis and get it right, subject to an interlocutory appeal by the government, in practice it could be very difficult to ever actually order a bench trial over a government objection. The member was not opposed to the provision though because criminal defendants sitting in jail while proceedings are delayed has been a major problem during the current pandemic. Professor Beale thought that as a practical matter the provision could be used. The member asked whether looking at the statutory speedy trial test rather than the constitutional one might make the provision more likely to actually come into play. Professor King noted that *Singer* concerned the method of trial; it did not involve speedy trial rights. The consensus of the Advisory Committee was to not limit the provision to speedy trial rights because we cannot predict all future emergency circumstances and what constitutional rights they might somehow implicate.

Another judge member expressed the view that this would likely be a null set provision if the government's veto can only be overridden based on constitutional concerns, and that it was not worth writing a rule for a circumstance that would not happen.

A member asked for clarification on whether the rules and statutes normally allow a bench trial without the government's consent. Professor Capra and others confirmed that they do not. This member then asked whether this was a substantive change. Judge Kethledge thought there might be a question there.

An attorney member thought the emergency setting could pit the defendant and government against one another in a new way. In an emergency, the choice between a jury and a bench trial also might implicate a very long incarceration. Judge Kethledge agreed these are serious concerns. Professor King said there had been mixed reports regarding whether the government had been withholding consent to bench trials in situations like these.

Professor Coquillette noted that the Supreme Court routinely approves the Standing Committee's recommendations but that the bench trial provision was the kind of thing that had historically attracted more attention from the Court. Judge Bates agreed. On the other hand, Judge Bates thought members of Congress might want statutory speedy trial rights protected as well as constitutional rights. Accordingly, he thought it important to be very careful.

A judge member appreciated that the proposed rule addressed the issue of extended detention while trials are delayed. This member was not aware of this issue arising but thought there might be a need to think about defendants who want to have a jury trial but are not able to get one for an extended period of time.

Mr. Wroblewski said that the DOJ shared the concerns with delayed trials, especially for detained defendants. It had urged U.S. Attorneys to offer bench trials, and some offices had made blanket offers. Many defendants have not taken this offer. There have been some situations where the government has not consented to a bench trial, but those have been few. While the DOJ does not anticipate that paragraph (c)(3) will have much impact in the end, it is sensitive to concerns about what the Supreme Court will think. It supports the current proposal as a compromise rule.

As a final point on the bench trial issue, a member wondered why this rule was necessary. If constitutional rights are at stake, this member asked, isn't the government always obligated to agree or to drop the case? Frequently the government must choose to prosecute a case in a manner it would not prefer in order to avoid violating a defendant's constitutional rights.

A judge member offered a view on paragraph (c)(1) which, as currently drafted, would establish that "[i]f emergency conditions preclude in-person attendance by the public at a public proceeding, the court must provide reasonable alternative access to that proceeding." This member felt that the word "preclude" was too strong. At times in the past year, public attendance was severely limited but not totally unavailable. It would be better to encourage or require allowing alternative public access when in-person access is seriously limited but not precluded.

Discussion then proceeded to subdivision (d), which addresses remote proceedings. In general, subdivision (d) is more restrictive than the CARES Act's remote proceedings provisions. It carries over some aspects but has additional prerequisites that must be met before proceedings may be held remotely.

Judge Bates asked whether subparagraph (d)(2)(A) should refer to "in-person proceedings" rather than "*an* in-person proceeding." The latter formulation, which is in the current draft, would seem to suggest a case-specific finding, which Judge Bates did not think was the Criminal Rules Committee's intent.

A judge member asked about subparagraph (d)(3)(B), which requires that – in conjunction with other things – a defendant make a written request that proceedings be conducted by videoconference. The member wanted to know what the Criminal Rules Committee had in mind here. Professor King explained that there are two goals behind this requirement. First, it helps guarantee that the gravity of the waiver is well-understood by both the defendant and counsel. Second, it helps to create a record. The Advisory Committee did envision that the required writing would be filed with the court. An additional provision in paragraph (c)(2) provides for obtaining the defendant's signature, written consent, or written waiver under emergency circumstances.

A judge member agreed with Judge Bates about subparagraph (d)(2)(A). This member said that there had been concerns among judges regarding whether one judge in a district holding in-person proceedings undermined findings by other judges that in-person proceedings could not be held. This member also asked about the timing requirement in subparagraph (d)(2)(A) and suggested it be mirrored in subparagraph (d)(3)(A).

Professor Capra asked whether there was inconsistency regarding the use of the word "court," in draft Criminal Rule 62, but he thought it was clear enough in each provision whether the word referred to a single judge or to a court in the sense of a district or courthouse. He observed that the Criminal Rules already use the word "court" in both senses. Professor Beale said this was something each advisory committee should review for consistency and clarity. Professor Garner added that "court" is used to refer to an individual judge throughout the rules and that this was generally not a problem.

Miscellaneous Emergency Rules Issues. Professors Cooper and Marcus briefly explained how the Civil Rules Committee's CARES Act Subcommittee had identified the Civil Rules that might warrant emergency changes. It conducted a thorough review of all the rules and identified only a few that were not sufficiently flexible. These were the rules that are in subdivision (c) of draft Civil Rule 87.

A judge member suggested that if the Judicial Conference is going to be the decisionmaker in all instances, it would be more uniform to rephrase Rule 87 in the same way as the others. Currently draft Bankruptcy Rule 9038 and Criminal Rule 62 default to enacting all the emergency provisions unless the emergency-declarer says otherwise, while draft Civil Rule 87 requires that the emergency-declarer affirmatively identify which emergency rules will go into effect. Professor Capra agreed that consistency would be good here.

Professor Capra next raised the issue of what happens if the Judicial Conference is unable to meet and declare an emergency? Should the rules account for such a situation? He said he didn't think such a provision was needed because if events were so dire that the Judicial Conference or its Executive Committee couldn't communicate for a significant amount of time that the Federal

Rules of Practice and Procedure would not be a particularly high priority. There would be bigger problems to deal with. Further, the Executive Committee of the Judicial Conference is a smaller body and that smaller group is the one that would be deciding. The judge member who had raised this issue in the first place found Professor Capra's reasoning was persuasive.

Another judge member thought it was worth considering an emergency in which communications are seriously disrupted. This member suggested that a judge or chief judge who cannot communicate with the Judicial Conference should be able to act. This member thought the fact that the situation was extreme did not mean it was not worth considering.

Finally, Professor Capra raised the issue of the termination of a declared rules emergency. Draft Bankruptcy Rule 9038, Civil Rule 87, and Criminal Rule 62 say that if the emergency situation on the ground ends before the declared rules emergency ends, there is a provision by which the rules emergency may be terminated. The Bankruptcy and Civil Rules Committees' draft rules provide that the rules emergency "may" be terminated; the Criminal Rules Committee's proposal said that it "must" be terminated. Professor Capra suggested that the termination should be permissive, not mandatory because imposing a mandate on the Judicial Conference seems extreme.

One judge member disagreed and thought that the mandatory language was preferable. These emergency rules should be preserved for extreme situations where there are no alternatives. The sunset provisions limit the damage somewhat but still if the emergency is resolved it is important to return to normal court operations. This member was not concerned about the possibility that someone would have a cause of action if the Judicial Conference was required to terminate the emergency but failed to do so. Professor Capra asked whether this would mean the initial emergency-declaring authority should also say "must" instead of "may." This member did not think so, and Professor Capra agreed.

An attorney member agreed that any rules emergency should not last any longer than the actual emergency, but this member thought that it was necessary to allow discretion. The relevant question at the end of an emergency would be how to terminate, not whether to terminate. Suggesting a mandatory obligation at the instant the emergency ends could distort the discussion because, at the end of the day, the Judicial Conference would have to determine the reasonable means of winding down the emergency operations.

A member expressed concern about writing a rule that forces the Judicial Conference to do anything. If – as it seemed – any mandatory language would not be enforceable, then maybe precatory language of some kind would be sufficient.

Judge Bates had one final question concerning proposed draft Bankruptcy Rule 9038. As currently drafted, paragraph (c)(1) provides that certain actions could be taken district-wide "[w]hen an emergency is declared" but paragraph (c)(2) which addresses actions that could be taken in a specific case or proceeding did not include that same phrase. Judge Bates asked whether paragraph (c)(2) should also say "when an emergency is declared." Professor Gibson explained that the style consultants had thought the current phrasing was clear – that yes, paragraph (c)(2)

also requires that an emergency must have been declared, but she and Judge Bates agreed that perhaps it did need to be clarified.

Other Matters Involving Joint Subcommittees

Judge Bates briefly addressed two ongoing joint subcommittee projects: the E-filing Deadline Joint Subcommittee, formed to consider a suggestion that the electronic filing deadlines in the federal rules be changed from midnight to an earlier time of day; and the Appeal Finality After Consolidation Joint Civil-Appellate Subcommittee, which is considering whether the Appellate and Civil Rules should be amended to address the effect (on the final-judgment rule) of consolidating separate cases. Both subcommittees have asked the FJC to gather empirical data to assist in determining the need for rules amendments.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett delivered the report of the Appellate Rules Advisory Committee, which last met via videoconference on October 20, 2020. The Advisory Committee presented four information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 195.

Information Items

Proposed Amendments Published for Public Comment. Judge Bybee explained that at the June 2020 Standing Committee meeting the Appellate Rules Committee had received some feedback concerning proposed Rule 42, which would address voluntary dismissals. The committee addressed the concern and would be seeking final approval of this proposed rule change in the spring of 2021. There was no present action to be taken. Professor Hartnett noted that the concerns raised at the Standing Committee related to how the requirement that parties agree to dismissal of an appeal might interact with local rules requiring the defendant's consent before dismissal. Judge Bates, who had raised this concern, stated that he was happy with the adjustments that the Appellate Rules Committee had made to proposed Rule 42.

Comprehensive Review of Rule 35 (En Banc Determination) and Rule 40 (Petition for Panel Rehearing). The Appellate Rules Committee is still considering combining Rules 35 and 40. It was thought that consolidating these rules might eliminate some confusion in the Appellate Rules. This issue remains under careful study.

Suggestions Related to In Forma Pauperis *Relief.* Various suggestions relating to *in forma pauperis* relief had been submitted to the Appellate Rules Committee. Judge Bybee explained that it was not clear that the problems identified were problems with the Appellate Rules. The issues are under consideration, but may be put off.

Relation Forward of Notices of Appeal. The relation forward of notices of appeal was still under discussion by the committee.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Dennis Dow and Professors Gibson and Bartell provided the report of the Bankruptcy Rules Advisory Committee, which last met via videoconference on September 22, 2020. The Advisory Committee presented four action items and two information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 241.

Action Items

Retroactive Approval of Official Form 309A–I (Notice of Bankruptcy Case). Judge Dow explained this action item concerning a series of forms that are used to notify recipients of the time and place of the first meeting of creditors and certain other deadlines. The information on these forms includes the web address of the PACER system. This web address had been changed, so the forms needed to be updated to reflect the new address. The change has already been made pursuant to the Bankruptcy Rules Advisory Committee's authority to make technical changes subject to retroactive approval by the Standing Committee and notice to the Judicial Conference, and the Advisory Committee now sought that retroactive approval. Upon motion, seconded by a member, and on a voice vote: **The Committee decided to retroactively approve the changes to the Official Form 309A–309I.**

Proposed Amendments for Publication. An amendment to Rule 3011(Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases), was brought up in connection with a project on unclaimed funds and is intended to reduce the amount of such funds and clerks' offices' liabilities with regard to them. The Bankruptcy Rules Advisory Committee asked for a modification of Rule 3011 in order to achieve a wider circulation of information about unclaimed funds. The modification proposed by the Bankruptcy Rules Committee would add a new subdivision (b) that would require court clerks to provide searchable access on court websites to data about unclaimed funds on deposit with the clerk. The Bankruptcy Rules Committee added a proviso that would allow the clerk to limit access to this information in specific cases for cause shown (e.g., to protect sealed information). The Advisory Committee sought publication of this proposed amendment.

Related Amendments to Bankruptcy Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) and Form 417A (Notice of Appeal and Statement of Election) were proposed in order to maintain uniformity with recent amendments to the Federal Rules of Appellate Procedure. Rule 8003 would be amended to conform to pending amendments to Appellate Rule 3. The amendments would clarify that the designation in a notice of appeal of a particular interlocutory order does not preclude appellate review of all other orders that merge into that judgment or order. Form 417A, the Bankruptcy Notice of Appeal Form, would be amended to conform to the wording changes in Rule 8003. Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication the proposed amendments to Rule 3011, Rule 8003, and Form 417A.**

Information Items

Changes to Instructions for Official Form 410A (Proof of Claim, Attachment A). Judge Dow explained that a bankruptcy judge had pointed out a problem with Form 410A to the Bankruptcy Rules Committee. The Form is an attachment to a Proof of Claim Form that is filed in bankruptcy cases for mortgage-related claims. The problem related to how total debt is calculated when the underlying mortgage claim has been reduced to judgment and has merged into that judgment. A question can arise as to what governs the claim at that point in jurisdictions that have judicial foreclosure. Judge Dow said that the Advisory Committee added a paragraph to the instructions to Form 410A clarifying that the "principal balance" in this situation is the amount due on the judgment along with any other charges that may have been added to the claim by applicable law. Judge Dow explained that because only the instructions were changed, and not the form itself, that no Standing Committee action was required.

Bankruptcy Rules Restyling. Professor Bartell explained that the style consultants have been doing great work making the rules more comprehensible. Parts one and two of the restyled rules had been published, consideration of parts three and four were proceeding on schedule, and the style consultants had just given the committee a draft of part five. An official draft of part six was scheduled to be ready in February. Professors Garner and Kimble expressed their appreciation to the Bankruptcy Rules Committee.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Robert Dow and Professors Cooper and Marcus provided the report of the Civil Rules Committee, which last met via videoconference on October 16, 2020. The Advisory Committee presented three action items and four information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 297.

Action Items

Proposed Amendment to Rule 7.1 (Disclosure Statement). The Civil Rules Committee first sought final approval of a proposed amendment to Rule 7.1 which was presented at the Standing Committee's June 2020 meeting and remanded to the Civil Rules Committee for further consideration in light of the feedback provided by the Standing Committee. Proposed paragraph (a)(1) and subdivision (b) have not changed since the June 2020 meeting. These provisions deal with adding nongovernmental corporate intervenors to the requirement for filing disclosure statements. Proposed paragraph (a)(2) has been revised since the June 2020 meeting.

Proposed Rule 7.1(a)(2) seeks to require timely disclosure of information necessary to determine diversity of citizenship for jurisdictional purposes. Often this is not complicated, and citizenship is settled when the case is initially filed in federal court or removed from state court. However, determining citizenship is complicated in a number of cases, especially considering the proliferation of LLCs. The Civil Rules Committee thought it was worth amending Rule 7.1 because the consequences of failing to spot a jurisdictional problem early can be severe. As the committee's report explains, the committee came up with two ways to address the issues raised by

the Standing Committee at the June meeting – one more detailed than the other. The Advisory Committee prefers the more detailed version but presented an alternative version for the Standing Committee's consideration.

Professor Cooper described the alternatives. As published, the rule would have required disclosure of citizenship at the time the action was filed in federal court, with the idea that this would apply equally to cases removed from state court because the time at which the case is removed is the time at which it is first filed in federal court. Public comments suggested that the rule would be clearer if it referred to the time at which an action is "filed in or removed." Proposed subparagraph (a)(2)(A) was revised and now reflects these suggestions. In committee discussion, it was noted that diversity may need to be evaluated at other times as well. Subparagraph (a)(2)(B) was added to account for this and required filing "at another time that may be relevant to determining the court's jurisdiction." Last June, some Standing Committee members were concerned that the language of this subparagraph was too open-ended. The proposal was remanded to the Advisory Committee for further consideration.

After extensive discussion, the Advisory Committee concluded again that it would be worthwhile to draw judges' and practitioners' attention to the complexity of the diversity rules and to the fact that diversity jurisdiction is not permanently fixed at the moment when the case first arrives in federal court. This led to the proposed revision of subparagraph (a)(2)(B)'s language presented at this meeting. The proposal would now require the filing of disclosures when "any subsequent event occurs that could affect the court's jurisdiction." The Advisory Committee recognized that this was still somewhat nonspecific, but felt that the alternative of trying to spell out all the events that could affect diversity jurisdiction as an action progresses was simply not feasible. The Advisory Committee also suggested that the Standing Committee could approve a version that simply omits subparagraphs (a)(2)(A) and (B) (and dropping the word "when" from the end of paragraph (a)(2)), but Professor Cooper explained that the Advisory Committee did not recommend this course of action.

Judge Bates wondered whether there was still ambiguity in the word "when" in paragraph (a)(2). He was concerned that someone could be confused as to whether this refers to the time for filing or the time the citizenship is attributed. Professor Cooper said that, in the Civil Rules, the word "when" is often used to mean "at the time." He said that it was possible to add a few more words if it would help to clarify, but the Advisory Committee believed it was not necessary and was better to avoid unnecessary verbiage. Judge Bates noted that the second alternative proposed would avoid the problem by dropping subparagraphs (A) and (B).

A judge member offered a number of suggested alterations to the text of the proposed amendment. First, this member noted that no matter whether "when" or "at the time" was used, it was unlikely that practitioners would assume that the filing had to be made immediately. It might be helpful to provide a time limit to ensure prompt filing. This particular suggestion was later withdrawn. The member also asked whether the word "or" might be preferable to "and" at the end of subparagraph (A). Professor Cooper explained that "and" was used because the filing under subparagraph (A) would have to be made in every case and would often be sufficient to resolve questions. If something happens after that, having fulfilled the subparagraph (A) requirement in the past does not make the subparagraph (B) filing unnecessary. The member then suggested

moving the word "when" from before the colon to, instead, the start of both of subparagraphs (A) and (B). This same member suggested that the reference to a party that "seeks to intervene" in paragraph (a)(1) ought to be reflected in paragraph (a)(2) which currently refers only to an "intervenor." Professor Cooper did not recall this issue having been raised before the Advisory Committee. For paragraph (2), though, Professor Cooper thought it might make sense to wait for intervention to be granted under some circumstances. Judge Bates noted that, if implemented in paragraph (a)(2), this change should also be made in subdivision (b). The committee member also suggested subparagraph (2)(B)'s reference to "any subsequent event . . . that could affect the court's jurisdiction," might be too broad. If, for example, a case arguably became moot, this would be an event that could affect the court's jurisdiction. But this is not a circumstance where the re-filing of disclosures would be necessary or desirable. Professor Cooper agreed that an amendment to narrow the filing requirement could be added.

Professor Kimble said that although moving the word "when" to both (A) and (B) would not change the meaning, the current draft was consistent with what the style consultants would typically recommend. He said that the style consultants would typically change "at that time" to "when."

Professor Hartnett asked if it would be helpful to break paragraph (a)(2) into two sentences. (". . . a party or intervenor must, unless the court orders otherwise, file a disclosure statement. The statement must . . . .") Professor Cooper thought this was a good idea. Judge Dow wondered whether "intervenor or proposed intervenor" would be an appropriate way to refer to the party seeking to intervene, and he endorsed the suggestion that (a)(2) be split into two sentences.

Another attorney member asked why paragraph (a)(1) referred to "*A* nongovernmental corporate party" but to "*any* nongovernmental corporation that seeks to intervene," rather than using "any" in both places. Professor Cooper thought it should be changed to whichever conforms to the Appellate and Bankruptcy Rules, and Judge Bates agreed. Professor Garner suggested that the style consultants would normally change "any" to "a" and that if other rules were phrased differently, those rules were inconsistent with the style guidelines.

Judge Bates reviewed and summarized the changes under consideration. A judge member pointed out that revisions to the committee note might also be necessary. Judge Bates determined that it was better to circulate the proposed amendment incorporating the changes made during the meeting via email, with an opportunity for discussion, followed by a vote by email. This was done later in the week. There was no call for discussion and, upon a motion that was seconded, the Standing Committee voted unanimously to **recommend for approval the proposed amendment to Rule 7.1.** The agenda book has been updated to reflect the final version of the proposed amendment that the committee approved.

Proposed Amendment to Rule 15(a)(1). Judge Dow presented a proposed amendment to Rule 15(a)(1), with a request that it be approved for publication for public comment. The proposed amendment is intended to remove the possibility for a literal reading of the existing rule to create an unintended gap. Paragraph (a)(1) currently provides, in part, that "[a] party may amend its pleading once as a matter of course *within* (A) 21 days after serving it or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21

days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." A literal reading of "within . . . 21 days after service of a responsive pleading or [pre-answer motion]" would suggest that the Rule 15(a)(1)(B) period does not commence until the service of the responsive pleading or pre-answer motion – with the unintended result that there could be a gap period (prior to service of the responsive pleading or pre-answer motion) within which amendment as of right is not permitted. The proposed amendment would preclude this interpretation by replacing the word "within" with "no later than." **The Committee approved for publication the proposed amendment to Rule 15(a)(1).**

Proposed Amendment to Rule 72(b)(1). Judge Dow next presented a proposed amendment to Rule 72(b)(1), with a request that it be published for public comment. The rule currently directs that the clerk "must promptly mail a copy" of a magistrate judge's recommended disposition. This requirement is out of step with recent amendments to the rules that recognize service by electronic means.

The proposed amendment to Rule 72(b)(1) would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be "immediately served" on the parties as provided in Rule 5(b). In determining how to amend the rule to bring it in line with current practice, the Advisory Committee referred to Rule 77(d)(1) which was amended in 2001 to direct that the clerk serve notice of entry of an order or judgment "as provided in Rule 5(b)." In addition, Criminal Rule 59(b)(1) includes a provision analogous to Civil Rule 72(b)(1), directing the magistrate judge to enter a recommendation for disposition of described motions or matters, and concluding: "The clerk must immediately serve copies on all parties." Criminal Rule 49, like Civil Rule 5, contemplates service by electronic means. Professor Kimble asked why the word "promptly" had been changed to "immediately." Professor Cooper said this change was made for conformity with Criminal Rule 59(b)(1). Upon motion, seconded by a member, and on a voice vote: **The Committee approved for publication the proposed amendment to Rule 72(b)(1).**

Information Items

Subcommittee on Multidistrict Litigation. Judge Dow provided the report of the Multidistrict Litigation (MDL) Subcommittee. The first topic, formerly called "early vetting" is now called "initial census." In three of the largest MDLs going on right now, a form of initial census has occurred over the past year. Judge Dow had spoken with the judges overseeing two of these three cases. Rather than have lengthy fact sheets, the judges in these cases have relied on the basic information on the first few pages of the fact sheets. The judges in these cases have used this basic information to organize the plaintiffs' steering committee, to organize discovery, and to dismiss certain plaintiffs. The subcommittee has been very happy with how this has been developing in the big MDLs. It remains on the study agenda because a rule may be helpful, but it is also possible that these practices may just be circulated as best practices and could belong in the *Manual on Complex Litigation* or spread as a model by discussion at conferences. A rule may not be necessary.

An attorney member wanted to share their view. In this member's experience, courts and the plaintiffs' bar think there is little need for change and the defense bar does think there is a need

for change. This makes rulemaking difficult. On paper, the rules seem to suggest that defendants could have a number of cases that they might want to join together into an MDL. In practice, though, the existence of an MDL can lead to more cases against a defendant because there is less of a hurdle to additional plaintiffs joining – and in fact the plaintiffs' bar wants more plaintiffs. Additionally, MDLs are perceived on both sides as settlement vehicles. A lot of work goes into them, but they nearly always settle. This member understood that the Advisory Committee was not inclined toward allowing interlocutory appeals, but thought that it was worth looking at the initial census option as a way of avoiding the multiplicity problem.

Another attorney member thought there might be an opportunity to craft a flexible rule that would allow the courts to craft an initial census tailored to the particular case. Judge Dow agreed that this was what the Advisory Committee had in mind – something prompting the lawyers and the judge to consider an initial census in every case.

Judge Dow next explained that the subcommittee had also been very focused on interlocutory appeals. The subcommittee had held a conference of judges and lawyers working on MDLs, including a particularly good representation of non–mass tort MDLs. The conference had had a large influence on the subcommittee's thinking and in the recommendation that an interlocutory appeal rule should not be pursued at this time. Some feel that the current interlocutory appeal options (and mandamus) are sufficient. Other interested persons think that even if there are some gaps, there is no need for new rules or rules amendments because the current rules are good enough and any delays caused by interlocutory appeals would not be worth it. As an example of one problem that could arise if interlocutory appeals were permitted, Judge Dow explained that state courts might not be willing to wait around while a federal Court of Appeals takes up a case. At the end of the day, the members of the subcommittee all thought that an interlocutory appeal rule was not worth pursuing at this time. Professor Marcus added that there had also been definitional issues concerning what kinds of cases to which such a rule would apply.

Finally, Judge Dow explained that equity and fairness and the role of the court in the endgame of settlements of large MDLs was the area that the subcommittee would likely be focused on in the near term. There are obvious similarities between MDLs and class actions, and for class actions the rules require that courts approve settlements. This is not the case for MDLs unless they are resolved through a class action mechanism. Questions can arise about whether all parties are treated the same and about what the court's role should be. Professor Cooper drafted a memo on these issues. At the last subcommittee meeting it was resolved that a conference convening stakeholders would be useful to help determine whether action should be taken on this issue.

An attorney member thought that it might be worth considering whether the attorneys with the most clients or client with the largest interest ought to be lead counsel, or at least whether this ought to be a factor in determining lead counsel. One criticism of MDLs is that they are lawyer-driven litigation and hinging lead counsel assignments on characteristics of the clients might ameliorate this somewhat (as opposed to giving prominence to the lawyer who files first or who is best-known in the district).

Another judge member suggested that in preparation for the conference, it might be worth asking the Federal Judicial Center to survey clients who received settlements in MDLs. An

attorney member said he feared the proposal of rewarding the lawyers who aggregated the most clients. This would incentivize lawyers to form coalitions and would undermine the courts' control overall. In securities litigation, there are policy reasons to put institutional shareholders in the lead, but those reasons don't necessarily carry over to MDLs across all kinds of subject areas. This member agreed it was worth investigating what happens with money that ends up in common benefit funds. Lawyers applying to be lead counsel could be questioned regarding what has happened to funds they have won or overseen in the past. The member cautioned these issues might not be appropriately resolved through a civil rule.

Items Carried Forward or Removed from the Advisory Committee's Agenda. Judge Dow briefly summarized items on the Advisory Committee's agenda. He explained that the Civil Rules Committee is continuing to consider an amendment to Rule 12(a) that would clarify the time to file where a statute sets time to serve responsive pleadings but that the Advisory Committee had not yet come to an agreement on that issue. The Advisory Committee was also interested in investigating a potential ambiguity lurking in Rule 4(c)(3)'s provision for service by a U.S. Marshal in *in forma pauperis* cases. This investigation had not proceeded recently because the Marshals Service had been preoccupied with pandemic-related security concerns and the committee did not want to bother them at this time. There had been suggestions that the Advisory Committee look into amending Rules 26(b)(5)(A) and 45(e)(2) to revise how parties provide information about materials withheld from discovery due to claims of privilege. The Civil Rules Committee plans to create a new Discovery Subcommittee to look into these issues. An Advisory Committee member submitted a suggestion to amend Rule 9(b), on pleading special matters – this would be discussed at the Advisory Committee's next meeting. Finally, Judge Dow explained that the Advisory Committee had removed from its agenda suggestions to amend Rule 17(d) (regarding the naming of defendants in suits against officers in their official capacity) and Rule 45 (concerning nationwide subpoena service).

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Kethledge presented the report of the Criminal Rules Committee, which met via videoconference on November 2, 2020. The Advisory Committee presented two information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 395.

Information Items

Rule 6 Subcommittee. Judge Kethledge reported that the Advisory Committee was continuing to consider suggestions to amend the grand jury secrecy provisions in Rule 6. Since the last meeting, the Advisory Committee has received a third suggestion from the DOJ seeking an amendment that would authorize the issuance of temporary orders blocking disclosure of grand jury subpoenas under certain circumstances. The Rule 6 Subcommittee plans to hold a virtual miniconference in the spring of 2021 to gather a wide range of perspectives based on first-hand experience. Invitees will include historians, archivists, and journalists who wish to have access to grand jury materials, as well as individuals who can represent the interests of those who could be affected by disclosure (e.g., victims, witnesses, and prosecutors). The subcommittee will also invite participants who can speak specifically to the DOJ's proposal that courts be given the

authority to order that notification of subpoenas be delayed (e.g., technology companies that favor providing immediate notice to their customers). The Advisory Committee anticipates having more to report at the June 2021 meeting.

Items Removed from the Advisory Committee's Agenda. A number of items had been removed from the Advisory Committee's agenda. Discussion of these items is in the committee's report.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz and Professor Capra provided the report of the Evidence Rules Advisory Committee, which last met via videoconference on November 13, 2020. The Advisory Committee presented three information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 441.

Information Items

Amendment to Rule 702 (Testimony by Expert Witnesses). Judge Schiltz explained that the committee was looking at two issues relating to testimony by expert witnesses. The first was what standard a judge should apply when considering whether to allow expert testimony. It is clear that a judge should not allow expert testimony without determining that all requirements of Rule 702 are met by a preponderance of the evidence. The requirements are that the testimony will assist the trier of fact, that it is based on sufficient facts or data, that it is the product of reliable principles and methods, and that the expert reasonably applied those principles and methods to the facts at hand. It is not appropriate for these determinations to be punted to the jury, but judges often do so. For example, in many cases expert testimony is permitted because the judge thinks that a reasonable jury *could* find the methods are reliable. There is unanimous support in the Evidence Rules Committee for moving forward with an amendment to Rule 702 that would clarify that expert testimony should not be permitted unless the judge finds by a preponderance of the evidence that each of the prerequisites are met. This would not be a change in the law, but rather would consolidate information available in two different rules and two Supreme Court opinions.

The second expert testimony issue being considered by the Evidence Rules Committee is the problem of overstatement. Judge Schiltz explained that this refers to the problem of experts overstating the strength of the conclusions that can reasonably be drawn by the application of their methods to the facts. For example, an expert will testify that a fingerprint "was the defendant's" or that a bullet did come from a gun, with no qualification or equivocation. Experts will make these claims with certainty when the science does not support such strong conclusions. The defense bar has been asking for an amendment that would not permit such overstatements. The Evidence Rules Committee was divided on this suggestion from the defense bar. Only the DOJ, however, was opposed to a more modest proposed amendment that would draw attention to the need for every expert conclusion to meet the standard set under Rule 702. Judge Schiltz anticipates that the Advisory Committee will present something related to Rule 702 at the Standing Committee's June 2021 meeting, once he has received input from new members who recently joined the Advisory Committee.

Proposed Amendment to Rule 106 (Remainder of or Related Writings or Recorded Statements). The "rule of completeness" requires that if at trial one party introduces part of a writing or recorded statement, the opposing party can introduce other parts of that statement if in fairness those other parts should also be considered. Judge Schiltz explained that there are a couple of problems with this rule in practice. One is that the circuits are split on whether the "completing portion" can be excluded as hearsay. This can arise, for example, when a prosecutor misleadingly introduces only part of a statement and the defendant wants the jury to hear the completing portion. Some courts will exclude the completing portion under the hearsay rule out of a concern that the jury will overweight it. Other courts will allow the completing portion in but will instruct the jury not to consider it for the truth of the matter but only as providing context. Other courts just let it all in with no limit. The Evidence Rules Committee plans to draft an amendment to Rule 106 that would say that a judge cannot exclude the completing portion for hearsay, but that a judge may issue a limiting instruction.

Another problem with Rule 106 is that it only applies to written or recorded statements. If the statement was made orally, the common law governs and there is a lot of inconsistency in how it is applied. This is one of few areas of evidence law where the Evidence Rules are not considered to preempt the field. It is an odd area for that to be the case because generally this issue arises at trial and must be addressed on the fly, with minimal time for a judge to research the common law. The Evidence Rules Committee plans to draft an amendment rule that would apply to oral statements and supersede the common law.

The Evidence Rules Committee agreed to proceed with both changes to Rule 106. The Department of Justice opposed both changes.

Proposed Amendment to Rule 615 (Excluding Witnesses). Judge Schiltz explained that Rule 615 is, on its face, quite simple. It says that a judge must exclude witnesses from the courtroom during trial if the opposing side asks the judge to do so. These requests are common. There is confusion, though, over whether the ruling granting such a request only keeps the witness out of the courtroom or whether it also implies that the witness may not learn about what has been said in court – through conversations, reading a transcript, reading a newspaper, etc. Some circuits have said that the order automatically prevents the excluded witness from learning through these other avenues, while other circuits view the order as only effecting the physical exclusion. Because of this confusion, it can be very easy for witnesses to accidentally violate the order and find themselves in contempt of court. The Evidence Rules Committee unanimously agreed to draft an amendment retaining the part of Rule 615 that requires the court to exclude witnesses if any party asks but making clear that courts can also go further to prevent witnesses from learning about in court testimony. This should clarify that any additional restrictions must be made explicit.

A judge member noted that it was worth thinking about the implications of Rule 615 during trials held over videoconference or otherwise remotely. Additionally, this member noted that in bench trials direct testimony can be taken by affidavit and that it might be worth referring to that sort of testimony in the rule as well. Professor Capra thought the rule would help with these situations because it draws attention to methods of hearing about other witnesses' testimony beyond simply sitting in the courtroom while the witness testifies.

OTHER COMMITTEE BUSINESS

The meeting concluded with a series of reports on other committee business. First Judge Bates addressed the 2020 *Strategic Plan for the Federal Judiciary*. The agenda book contains material concerning the strategic plan, beginning at page 471. Judge Bates explained that the Judicial Conference committees – including this one – were asked to provide input on what strategies and goals reflected in the *Plan* should receive priority in the next two years. Those recommendations would be reviewed at the upcoming meeting of the Executive Committee of the Judicial Conference. Committee members were instructed to send any suggestions to Judge Bates and to Shelly Cox of the Rules Committee Staff.

Julie Wilson delivered a report on the Judiciary's Response to the COVID-19 pandemic. Judge Campbell had discussed this at the Standing Committee's June meeting. The Administrative Office's COVID-19 Task Force was established early last year and continues to meet bi-weekly. The Task Force remains focused on safely expanding face-to-face operations at the AO and in the courts. Notably, the Task Force has formed a Virtual Judiciary Operations Subgroup, which will recommend technical standards along with policies and procedures regarding the operation of remote communications, including with defendants in detention. Another big part of their work will be to standardize virtual operations throughout the judiciary. In the Administrative Office, guidelines, data, and information are being posted regularly on the JNet website, including information about the resumption of jury proceedings. These materials are available to judges and their staff. The only Judicial Conference activity relating to COVID-19 that has occurred since the last meeting was the extension of the CJRA reporting period from September 30 to November 30.

Ms. Wilson also delivered a legislative report. She explained that the Administrative Office had requested supplemental appropriations from Congress to address various needs within the judiciary due to the pandemic. These appropriations were not made. The Administrative Office also submitted 17 legislative proposals. These were not taken up by the recently concluded 116th Congress. One notable law enacted last year was the Due Process Protections Act. This was introduced in the Senate in May 2019 and had been tracked by the Rules Committee Staff. It was passed quickly and unanimously in 2020. The Act statutorily amended Criminal Rule 5 (Initial Appearance) to require that judges issue an oral and written order confirming prosecutors' disclosure obligations under *Brady* and its progeny. The Act required the creation of model orders for each district. Judge Campbell and Judge Kethledge had sent a letter to the leadership of the House Judiciary Committee expressing the Rules Committees' preference for amending the rules through the Rules Enabling Act process, but the Act passed regardless. The 117th Congress was sworn in on January 3, 2021, just a few days before the Committee met. Some legislation that has been of interest to the Rules Committees in the past had already been reintroduced. Representative Andy Biggs reintroduced the Protect the Gig Economy Act. It would expand Civil Rule 23 to require that the prerequisites for a class action be amended to include a requirement that the claim does not concern misclassification of workers as independent contractors as opposed to employees. Representative Biggs also introduced the Injunctive Authority Clarification Act. This would prohibit the issuance of nationwide injunctions. Other familiar pieces of legislation will likely also be introduced in the coming weeks. The Rules Committee Staff will continue to monitor any legislation introduced that would directly or effectively amend the federal rules.

CONCLUDING REMARKS

Before adjourning the meeting, Judge Bates thanked the Committee members and other attendees for their preparation and contributions to the discussion. The Committee will next meet on June 22, 2021. The hope is that the meeting will be in person in Washington, D.C. if doing so is safe and feasible at that time.

TAB 3A2

Agenda E-19 (Summary)
Rules
March 2021

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

Approve the proposed amendment to Civil Rule 7.1 and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law..... pp. 9-10

The remainder of the report is submitted for the record and includes the following for the information of the Judicial Conference:

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:

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on January 5, 2021. Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the meeting was held by videoconference. All members participated.

Representing the advisory committees were Judge Jay Bybee, Chair, and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Dennis Dow, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robert M. Dow Jr., Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, Advisory Committee on Civil Rules; Judge Raymond M. Kethledge, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Patrick J. Schiltz, Chair, and Professor Daniel J. Capra, Reporter, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Rebecca A. Womeldorf, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Julie Wilson, Rules Committee Staff Counsel; Kevin Crenny, Law Clerk to the Standing Committee; and John S.

Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, of the Federal Judicial Center (FJC). Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Andrew Goldsmith, National Coordinator of Criminal Discovery Initiatives, and Jonathan Wroblewski, Director of the Office of Policy and Legislation, Criminal Division, represented the Department of Justice (DOJ) on behalf of Principal Associate Deputy Attorney General Richard P. Donoghue.

In addition to its general business, including a review of the status of pending rules amendments in different stages of the Rules Enabling Act process and pending legislation affecting the rules, the Committee received and responded to reports from the five advisory committees and two joint subcommittees. The Committee also discussed the Rules Committees' work on developing rules for emergencies as directed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281. Additionally, the Committee discussed an action item regarding judiciary strategic planning and was briefed on the judiciary's ongoing response to the COVID-19 pandemic.

IMPACT OF THE COVID-19 PANDEMIC ON JURY OPERATIONS

The Committee considered a proposal from the jury subgroup of the judiciary's COVID-19 Task Force addressing the impact of COVID-19 on jury operations in criminal proceedings. In August 2020, the Executive Committee referred the proposal to this Committee, the Committee on Court Administration and Case Management, the Committee on Criminal Law, and the Committee on Defender Services, to consider whether rules amendments or legislation should be pursued that would allow grand juries to meet remotely during the pandemic. The chairs of the four committees discussed the proposal after consulting with their respective committees and, in a letter dated August 28, 2020, advised the Executive Committee that they did not recommend pursuing efforts to authorize remote grand juries. The letter

explained that although the pandemic has impacted the ability of courts around the country to assemble grand juries, courts have found solutions to the problem including using large spaces in courthouses, masks, social distancing, and other protective measures. Such measures protect public health to the greatest extent possible without compromising the secrecy and integrity of grand jury proceedings, and they have allowed investigations and indictments to proceed where needed.

EMERGENCY RULES

Section 15002(b)(6) of the CARES Act directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency. A significant portion of the Committee's meeting was dedicated to reviewing the draft rules developed by the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules in response to that directive. The advisory committees began their work by soliciting public comments on challenges encountered during the COVID-19 pandemic in state and federal courts by lawyers, judges, parties, or the public, and on solutions developed to deal with those challenges. The committees were particularly interested in hearing about situations that could not be addressed through the existing rules or in which the rules themselves interfered with practical solutions. The advisory committees also formed subcommittees to begin work on the issue. At its June 2020 meeting, the Committee heard preliminary reports and then tasked each advisory committee with:
(1) identifying rules that might need to be amended to account for emergency situations; and
(2) developing drafts of proposed rules for discussion at each advisory committee's fall 2020 meeting.

In the intervening months, the subcommittees collectively invested hundreds of hours to develop draft emergency rules for consideration at the fall 2020 advisory committee meetings.

At its January 2021 meeting, the Committee was presented with a report describing this process and was asked to provide initial feedback on the draft rules. The report reached several preliminary conclusions; among the most important was that an emergency rule was not needed for all rule sets. Early on, the Evidence Rules Committee concluded that its rules are already flexible enough to accommodate an emergency. And, although both the Appellate and Civil Rules Committees drafted emergency rules for consideration, they have left open the possibility that no emergency rule is needed in their rule sets.

The advisory committees also concluded that the declaration of a rules emergency should not be tied to a presidential declaration. Although § 15002(b)(6) directs the Judicial Conference to consider emergency measures that may be taken by the federal courts "when the President declares a national emergency under the National Emergencies Act," the reality is that the events giving rise to such an emergency declaration may not necessarily impair the functioning of all or even some courts. Conversely, not all events that impair the functioning of some or all courts will warrant the declaration of a national emergency by the President. The advisory committees concluded that the judicial branch itself is best situated to determine whether existing rules of procedure should be suspended. Their initial consensus was that the Judicial Conference in particular (or the Executive Committee, acting on an expedited basis on behalf of the Judicial Conference) is the most appropriate judicial branch entity to make such determinations, in order to promote consistency and uniformity in declaring rules emergencies. In addition, the advisory committees concluded that any emergency rules should only be invoked for emergencies that are likely to be lengthy and serious enough to substantially impair the courts' ability to function under the existing rules.

A guiding principle in the advisory committees' work was uniformity. Considerable effort was devoted to drafting emergency rules that are uniform to the extent reasonably

practicable, given that each advisory committee also sought to develop the best rule possible to promote the policies of its own set of rules. Notably, in the following respects, the proposed draft rules are uniform. First, the term "rules emergency" is used in each rule set to highlight the fact that not every emergency will trigger the emergency rule. Second, the basic definition of a rules emergency is largely uniform among the four rule sets. A rules emergency is found when "extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules." (Draft Criminal Rule 62 contains an additional element discussed below). Third, the draft rules were reviewed in a side-by-side analysis by the Standing Committee's style consultants with a view toward implementing style guidelines and eliminating differences that are purely stylistic.

Much of the Standing Committee's discussion addressed the advisory committees' request for input on substantive differences among the draft rules and whether those differences were justified. For example, in addition to the basic definition of a rules emergency, draft new Criminal Rule 62 (Criminal Rules Emergency) includes the requirement that "no feasible alternative measures would eliminate the impairment within a reasonable time." As another example, all of the draft rules provide that the Judicial Conference can declare a rules emergency and subsequently terminate that declaration; however, the draft amendment to Appellate Rule 2 (Suspension of Rules) also gives that authority to the court of appeals (acting directly or through its chief judge), and draft Bankruptcy Rule 9038 (Bankruptcy Rules Emergency) includes emergency-declaring authority for both the chief bankruptcy judge in a district where an emergency occurs and the chief judge of a court of appeals.

At their spring 2021 meetings, the advisory committees will consider the feedback provided by members of the Standing Committee, and determine whether to recommend that the

Standing Committee at its summer 2021 meeting approve proposed emergency rules for publication for public comment in August 2021. This schedule would put any emergency rules published for comment on track to take effect in December 2023 (if approved at each stage of the Rules Enabling Act process and if Congress takes no contrary action). At this time, it remains to be seen which, if any, of the advisory committees will recommend publication of draft rules.

FEDERAL RULES OF APPELLATE PROCEDURE

Information Items

The Advisory Committee on Appellate Rules met by videoconference on October 20, 2020. In addition to discussion of the emergency rules project and possible related amendments to existing rules, agenda items included a review of previously-published proposed amendments. In addition, the Advisory Committee reviewed the criteria for granting in forma pauperis status, including potential revisions to Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis). In response to a recent suggestion, the Advisory Committee also discussed a proposed amendment to Rule 4 (Appeal as of Right—When Taken) to deal with premature notices of appeal. The issue was considered by the Advisory Committee ten years ago, but it is reviewing the issue again to determine if conditions have changed to justify an amendment. Finally, the Advisory Committee continued its comprehensive review of Rules 35 (En Banc Determination) and 40 (Petition for Panel Rehearing) regarding hearings and rehearings en banc and panel rehearings. Several options for amendment are under consideration in an attempt to align the two rules more closely.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Official Rules and Form Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 3011 and 8003, and Official Form 417A, with a request that they be published for public

comment in August 2021. The Standing Committee unanimously approved the Advisory Committee's request.

Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases)

The proposed amendment, which was suggested by the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), redesignates the existing text of Rule 3011 as subdivision (a) and adds a new subdivision (b) that requires the clerk of court to provide searchable access on the court's website to data about funds deposited pursuant to § 347 of the Bankruptcy Code (Unclaimed Property). The rule change would mirror a pending amendment to the *Guide to Judiciary Policy*, Vol. 13, Ch. 10, § 1050.10(c), which would require courts to provide notice of unclaimed funds on their websites (pursuant to that Committee's efforts to reduce the balance of unclaimed funds and limit the potential statutory liability imposed on clerks of court for their record-keeping and disbursement of unclaimed funds). The Bankruptcy Committee suggested an accompanying rules amendment because the *Guide* is not publicly available and Bankruptcy Rules are often the first place an attorney or pro se claimant looks to determine how to locate and request disbursement of unclaimed funds; a rule change would therefore inform the public where to access unclaimed funds data.

Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal)

The proposed amendment revises Rule 8003(a) to conform to the pending amendment to Appellate Rule 3. The Appellate Rules amendment (which is on track to take effect on December 1, 2021 if adopted by the Supreme Court and Congress takes no contrary action) revises requirements for the notice of appeal in order to reduce the inadvertent loss of appellate rights. The proposed amendment to Bankruptcy Rule 8003(a) takes a similar approach and will help to keep the Part VIII Bankruptcy Rules parallel to the Appellate Rules.

Official Form 417A (Notice of Appeal and Statement of Election)

Parts 2 and 3 of Official Form 417A would be amended to conform to the wording of the proposed amendment to Rule 8003.

Retroactive Approval of Technical Conforming Amendments to Official Form 309A - I

The Rules Committee Staff was notified that the web address for PACER (Public Access to Court Electronic Records) was changed from pacer.gov to pacer.uscourts.gov. Because the PACER address is incorporated in several places on the eleven versions of the "Meeting of Creditors" forms (Official Forms 309A - I), the forms needed to be updated with the new web address.

Although the old PACER address is currently redirecting users to the new address, the Advisory Committee shared the Rules Committee Staff's concern that users will experience broken links in the year or so it would take to update the forms via the normal approval process. Accordingly, the Advisory Committee approved changing the web addresses on the forms using the delegated authority given to it by the Judicial Conference to make non-substantive, technical, or conforming changes to the Bankruptcy Official Forms, subject to later approval by the Standing Committee and notice to the Judicial Conference. JCUS-MAR 2016, p. 24. The Standing Committee unanimously approved the form changes.

Information Item

The Advisory Committee met by videoconference on September 22, 2020. In addition to its recommendations discussed above, discussion items included an update on the restyling of the Bankruptcy Rules. Notably, the 1000 and 2000 series of the restyled Bankruptcy Rules were published for comment in August 2020, and the Advisory Committee will be reviewing the comments on those rules at its spring 2021 meeting.

The Restyling Subcommittee has completed its initial review of restyled versions of the 3000 and 4000 series of rules, and received feedback from the Standing Committee's style consultants on the subcommittee's proposed changes. The subcommittee received an initial draft of the 5000 series of restyled rules from the style consultants at the end of December 2020, and it expects to receive the initial draft of the 6000 series of restyled rules from the consultants by February 2021.

At its upcoming spring 2021 meeting, the Advisory Committee will consider recommending for publication in August 2021 the 3000 and 4000 series of restyled rules, along with the 5000 and 6000 series of restyled rules if those rules are ready. The Advisory Committee plans to continue work on the remaining rules (the 7000, 8000, and 9000 series) with the intent of recommending them for publication in August 2022, so that final approval of all the Restyled Bankruptcy Rules can be considered by the Standing Committee at its summer 2023 meeting, and by the Judicial Conference at its fall 2023 session.

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed amendment to Rule 7.1 (Disclosure Statement) for final approval. An amendment to subdivision (a) was published for public comment in August 2019. As a result of comments received during the public comment period, a technical conforming amendment was made to subdivision (b). The conforming amendment to subdivision (b) was not published for public comment.

The proposed amendment to Rule 7.1(a)(1) would require the filing of a disclosure statement by a nongovernmental corporation that seeks to intervene. This change would conform the rule to the recent amendments to Appellate Rule 26.1 (effective December 1, 2019) and Bankruptcy Rule 8012 (effective December 1, 2020).

The proposed amendment to Rule 7.1(a)(2) would create a new disclosure aimed at facilitating the early determination of whether diversity jurisdiction exists under 28 U.S.C. § 1332(a), or whether complete diversity is defeated by the citizenship of a nonparty individual or entity because that citizenship is attributed to a party. The proposal published for public comment identified the time that controls whether complete diversity exists as "the time the action was filed." In light of public comments received, as well as discussion at the Committee's June 2020 meeting, the Advisory Committee made clarifying and stylistic changes to the proposal to further develop the rule's reference to the times that control for determining complete diversity. As approved by the Standing Committee at its January 2021 meeting, paragraph (a)(2) would require that a disclosure statement be filed "when the action is filed in or removed to federal court" and "when any later event occurs that could affect the court's jurisdiction under § 1332(a)."

The Standing Committee unanimously approved the Advisory Committee's recommendation that the proposed amendment to Rule 7.1 be approved and transmitted to the Judicial Conference.

> **Recommendation:** That the Judicial Conference approve the proposed amendment to Civil Rule 7.1 as set forth in the Appendix, and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

Rules Approved for Publication and Comment

The Advisory Committee submitted proposed amendments to Rule 15 and Rule 72, with a request that they be published for public comment. The Standing Committee unanimously approved the Advisory Committee's request.

Rule 15(a)(1) (Amendments Before Trial – Amending as a Matter of Course)

The proposed amendment to Rule 15(a)(1) is intended to remove the possibility for a literal reading of the existing rule to create an unintended gap. Paragraph (a)(1) currently

provides, in part, that "[a] party may amend its pleading once as a matter of course *within* (A) 21 days after serving it or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier" (emphasis added).

The difficulty lies in the use of the word "within." A literal reading of "within . . . 21 days after service of a responsive pleading or [pre-answer motion]" would suggest that the Rule 15(a)(1)(B) period *does not commence until* the service of the responsive pleading or pre-answer motion – with the unintended result that there could be a gap period (prior to service of the responsive pleading or pre-answer motion) within which amendment as of right is not permitted. The proposed amendment seeks to preclude this interpretation by replacing the word "within" with "no later than."

Rule 72(b)(1) (Dispositive Motions and Prisoner Petitions – Findings and Recommendations)

Rule 72(b)(1) directs that the clerk "mail" a copy of a magistrate judge's recommended disposition. This requirement is out of step with recent amendments to the rules that recognize service by electronic means. The proposed amendment to Rule 72(b)(1) would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be served on the parties as provided in Rule 5(b).

Information Item

The Advisory Committee met by videoconference on October 16, 2020. In addition to the action items discussed above, the Advisory Committee spent a majority of the meeting hearing the report of its CARES Act Subcommittee and discussing its draft Rule 87 (Procedure in Emergency). Other agenda items included an update on the Multidistrict Litigation (MDL) Subcommittee's ongoing consideration of suggestions that rules be developed for MDL proceedings.

The MDL Subcommittee reported on the status of its three remaining areas of study:

1. Screening claims in mass tort MDLs – whether by using plaintiff fact sheets and defendant fact sheets or by using a "census" approach that employs a simplified version of a plaintiff fact sheet;

2. Interlocutory appellate review of district court orders in MDL proceedings; and

3. Settlement review, attorney's fees, and common benefit funds.

At the Advisory Committee's meeting, the MDL Subcommittee reported its conclusion that the second area of study – interlocutory appellate review – should be removed from the study agenda. The original suggestion was for a rule that would create a right to immediate review. Such a route would bypass the discretion that 28 U.S.C. § 1292(b) currently provides to the district court (whether to certify that § 1292(b)'s criteria are met) and to the court of appeals (whether to accept the appeal). The idea of creating a right to immediate review was quickly disfavored, with the subcommittee focusing instead on whether some other type of expanded interlocutory review might be worth pursuing. The subcommittee reviewed submissions from proponents and opponents of expanding appellate review. Subcommittee representatives attended multiple conferences addressing the topic, including a June 2020 meeting that included lawyers and judges with extensive experience in MDL proceedings beyond the mass tort context. The subcommittee found insufficient evidence to justify proposing an expansion of appellate review, especially in light of the many difficulties that would be involved in crafting such a proposal.

The Advisory Committee agreed with the subcommittee's recommendation that expanded interlocutory review be removed from the list of topics under consideration; the remaining two topics continue to be studied by the subcommittee. It is still to be determined whether this work will result in any recommendation for amendments to the Civil Rules.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Item

The Advisory Committee on Criminal Rules met by videoconference on November 2, 2020. The meeting focused on the emergency rules project and the Advisory Committee's draft Rule 62 (Criminal Rules Emergency). The agenda also included a report from the Rule 6 Subcommittee.

At its May 2020 meeting, the Advisory Committee formed a subcommittee to consider two suggestions to amend the grand jury secrecy provisions in Rule 6 (The Grand Jury), an issue last on the Advisory Committee's agenda in 2012. As previously reported to the Conference in September 2020, the suggestions seek to add additional exceptions to the secrecy provisions in Rule 6(e). A group of historians and archivists seeks, in part, an amendment adding records of "historical importance" to the list of exceptions to the secrecy provisions. Another group comprised of media organizations urges that Rule 6 be amended "to make clear that district courts may exercise their inherent supervisory authority, in appropriate circumstances, to permit the disclosure of grand jury materials to the public." The question of inherent authority has also been raised in recent Supreme Court cases. First, in a statement respecting the denial of certiorari in *McKeever v. Barr*, 140 S. Ct. 597 (2020), Justice Breyer pointed out a conflict among the circuit courts regarding whether the district court retains inherent authority to release grand jury materials in "appropriate cases" outside of the exceptions enumerated in Rule 6(e). *Id.* at 598 (statement of Breyer, J.). He stated that "[w]hether district courts retain authority to release grand jury material outside those situations specifically enumerated in the Rules, or in situations like this, is an important question. It is one I think the Rules Committee both can and should revisit." *Id.* Second, the respondent in *Department of Justice v. House Committee on the*

Judiciary, No. 19-1328 (cert. granted July 2, 2020), has relied on the courts' inherent authority as an alternative ground for upholding the lower court's decision.

The Advisory Committee has now received a third suggestion from the DOJ seeking an amendment that would authorize the issuance of temporary orders blocking disclosure of grand jury subpoenas under certain circumstances.

The Rule 6 Subcommittee plans to hold a virtual miniconference in the spring of 2021 to gather a wide range of perspectives based on first-hand experience. Invitees will include historians, archivists, and journalists who wish to have access to grand jury materials, as well as individuals who can represent the interests of those who could be affected by disclosure (e.g., victims, witnesses, and prosecutors). The subcommittee will also invite participants who can speak specifically to the DOJ's proposal that courts be given the authority to order that notification of subpoenas be delayed (e.g., technology companies that favor providing immediate notice to their customers).

FEDERAL RULES OF EVIDENCE

Information Items

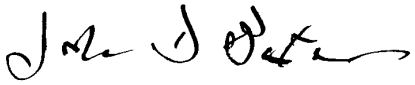
The Advisory Committee on Evidence Rules met by videoconference on November 13, 2020. Discussion items included possible amendments to Rule 106 (Remainder of or Related Writings or Recorded Statements) to exempt the "completing" portion of a statement from the hearsay rule and to extend the rule of completeness to oral as well as written statements; possible amendments to Rule 615 (Excluding Witnesses) to clarify the application of sequestration orders to out-of-court communications to sequestered witnesses; and possible amendments to Rule 702 (Testimony by Expert Witnesses) to clarify that the admissibility requirements must be found by a preponderance of the evidence, and to prohibit "overstatement" by forensic experts.

OTHER ITEMS

An additional action item before the Standing Committee was a request by Chief Judge Jeffrey R. Howard, Judiciary Planning Coordinator, that the Committee review the 2020 *Strategic Plan for the Federal Judiciary* and submit suggestions regarding prioritization of strategies and goals. The agenda materials included a copy of the *Plan* for Committee members to review prior to the meeting. After opportunity for discussion, the Standing Committee did not identify any particular strategies or goals to recommend for priority treatment over the next two years. This was communicated to Chief Judge Howard by letter dated January 11, 2021.

The Committee was also updated on the work of two joint subcommittees: the E-filing Deadline Joint Subcommittee, formed to consider a suggestion that the electronic filing deadlines in the federal rules be changed from midnight to an earlier time of day; and the Appeal Finality After Consolidation Joint Civil-Appellate Subcommittee, which is considering whether the Appellate and Civil Rules should be amended to address the effect (on the final-judgment rule) of consolidating separate cases. Both subcommittees have asked the FJC to gather empirical data to assist in determining the need for rules amendments.

Respectfully submitted,



John D. Bates, Chair

Richard P. Donoghue	William K. Kelley
Jesse M. Furman	Carolyn B. Kuhl
Daniel C. Girard	Patricia A. Millett
Robert J. Giuffra Jr.	Gene E.K. Pratter
Frank M. Hull	Kosta Stojilkovic
William J. Kayatta Jr.	Jennifer G. Zipps
Peter D. Keisler	

Appendix – Federal Rules of Civil Procedure (proposed amendment and supporting report excerpt)

TAB 4

TAB 4A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: EMERGENCY RULE SUBCOMMITTEE

SUBJECT: FEEDBACK FROM STANDING COMMITTEE ON EMERGENCY RULE DRAFT AND SUBCOMMITTEE RECOMMENDATION

DATE: MARCH 10, 2021

The following draft of a proposed bankruptcy emergency rule was presented to the Standing Committee at its January meeting:

Rule 9038. Bankruptcy Rules Emergency

(a) CONDITIONS FOR AN EMERGENCY. A Bankruptcy Rules emergency may be declared when extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) DECLARING AN EMERGENCY.

(1) *By Whom.* An emergency may be declared by:

(A) the Judicial Conference of the United States, for all federal courts or for one or more courts;

(B) the chief circuit judge, for one or more courts within the circuit; or

(C) the chief bankruptcy judge, for one or more locations in the district.

(2) *Content*. The declaration must identify:

(A) the courts or locations affected;

(B) any restrictions on the authority granted in (c) to modify the rules; and

(C) a date, no later than 90 days from the date of the declaration, when it will terminate.

(3) *Additional Declarations.* The Judicial Conference, the chief circuit judge, or the chief bankruptcy judge may issue additional declarations if emergency conditions change or persist.

(4) *Early Termination.* A chief judge who declared an emergency must terminate a declaration before its stated termination date in one or more courts or locations if the judge finds that an emergency no longer affects those courts or locations. The Judicial Conference may exercise the

same power to terminate, and may review and revise any determination by a chief judge under this rule.

(c) TOLLING AND EXTENDING TIME LIMITS.

(1) *In an Entire District.* When an emergency is declared and remains in effect for a court, the chief bankruptcy judge may—for all cases and proceedings in the district:

(A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a specified deadline, to take an action, commence a proceeding, file or send a document, or hold or conclude a hearing, despite any other Bankruptcy Rule, local rule, or order; or

(B) order that when a Bankruptcy Rule, local rule, or order requires that action be taken "promptly," "forthwith," "immediately," or "without delay," that it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding.

(2) *In a Specific Case or Proceeding.* Any bankruptcy judge in the district may take the action described in (1) in a specific case or proceeding.

(3) *When an Extensions or Tolling Ends*. A time period extended or tolled under (1) or (2) terminates on the later of:

(A) the last day of the time period as extended or tolled or 30 days after the rules-emergency declaration terminates, whichever is earlier; or

(B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was the subject of the extension or tolling.

(4) *Further Extensions or Shortenings*. A presiding judge may lengthen or shorten the duration of an extension or tolling in a specific case or proceeding. The judge may do so only on its own motion or on motion of a party in interest or the United States trustee, and for good cause, after notice and a hearing.

(5) *Exception.* A time period imposed by statute may not be extended or tolled.

Standing Committee Discussion

The emergency rule drafts of the Civil, Criminal, Appellate, and Bankruptcy Rules Committees were presented to the Standing Committee, along with a side-by-side comparison and a memo by Professors Struve and Capra that discussed the differences among the drafts. Committee members were invited to provide feedback on issues for which there were differences

and to discuss whether there was a desire for uniformity on those points. No formal votes were taken, but it was expected that the views expressed would be taken back to the advisory committees and given consideration in the development of the final drafts of the rules. Below is a discussion of the views expressed regarding issues that affect the bankruptcy emergency rule.

Authority to declare a rules emergency. The bankruptcy rule was an outlier on this issue. The civil and criminal rules authorized only the Judicial Conference of the United States ("JCUS") to declare a rules emergency, and the appellate rule authorized the JCUS and the courts of appeals. Only the bankruptcy rule extended this authority to a trial-level judge (a chief bankruptcy judge of a district).

There seemed to be a consensus among Standing Committee members that this authority should be limited to the JCUS. It was said that such a limitation would ensure uniformity in assessing the existence of a rules emergency and would represent a more cautious approach. It was pointed out that the CARES Act provision that prompted the consideration of emergency court rules had been directed to presidentially declared emergencies. It was therefore questioned whether Congress would support an authority not tied to presidentially declared emergencies being exercised by numerous trial-level judges. It was further noted that the JCUS can act promptly through its executive committee.

Because this was the issue on which there was the most discussion and probably the greatest consensus, the Subcommittee recommends that the authority to declare a bankruptcy rules emergency be limited to the JCUS. Making that change will also permit greater organizational uniformity with the civil and criminal emergency rules. For those rules, the style consultants organized into a single subsection—(a)—provisions about who can declare an emergency and the circumstances under which such authority can be exercised. Because of the

more complex provision in the bankruptcy draft about who can declare an emergency, that consolidation was not possible. With authority limited to the JCUS, subdivision (a) of the bankruptcy rule could track the other rules and read as follows:

> (a) CONDITIONS FOR AN EMERGENCY. The Judicial Conference of the United States may declare a Bankruptcy Rules emergency when it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court's ability to perform its functions in compliance with these rules.

The Emergency Rule Subcommittee of the Advisory Committee on Appellate Rules is also recommending that its rule limit to the JCUS the authority to declare a rules emergency.

Requirements for an emergency. The bankruptcy rule draft presented to the Standing Committee, like the civil rule draft, has a two-part requirement for a rules emergency: (1) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, and (2) substantial impairment of the court's ability to perform its functions in compliance with the rules. The criminal rule draft included an additional requirement: that no feasible alternative measures would eliminate such substantial impairment within a reasonable time.

Members of the Standing Committee that spoke on the issue generally accepted that the criminal rule might be different in this regard because deviation from those rules can present weightier concerns regarding the protection of constitutional rights. Thus, a higher standard for a criminal emergency rule might be justified. Judge Bates, while agreeing that the criminal rules are different, nevertheless requested the other advisory committees to consider whether a "no feasible alternative" requirement should be added as a requirement for a rules emergency.

At our fall meeting, the Advisory Committee discussed this issue. After considerable discussion, the Committee decided not to include the additional requirement in the bankruptcy

rule. Members thought that the requirement for a rules emergency was sufficiently stringent without it and that in any event the assessment of alternatives might be part of a determination of impairment. It was also agreed that a higher standard for the criminal rule might be appropriate. The Subcommittee continues to agree with that decision and therefore recommends that the requirements for a bankruptcy rules emergency remain as they are.

Use of the term "court." All of the emergency rule drafts presented at the Standing Committee meeting refer to emergencies in one or more courts. In the various sets of federal rules, however, "court" usually means the judge presiding over a case. Bankruptcy Rule 9001(4), for example, provides that "court" as used in the rules means "the judicial officer before whom a case or proceeding is pending." That meaning, however, is not what is intended in the emergency rules when they refer to "the court or courts affected" by an emergency.

This issue was briefly discussed at the Standing Committee meeting, and some members said that they did not think it was a problem because the meaning of "court" seemed clear in context. The advisory committees, however, were asked to consider whether "court" should be changed to "district." All of the other emergency rule subcommittees will be recommending that no change be made.

This Subcommittee agrees that the use of "court" does not cause ambiguity in the bankruptcy emergency rule. However, to avoid inconsistency with the Rule 9001 definition, it recommends that "bankruptcy court" be substituted for "court" in Rule 9038.

A related issue concerns the bankruptcy draft's use of the word "location." Subdivision (b)(1)(C) authorizes a chief bankruptcy judge to declare a rules emergency for "one or more locations in the district." None of the other rule drafts refers to locations. If (b)(1)(B) and (C) are

deleted, leaving only the JCUS with authority to declare a bankruptcy rules emergency, the issue disappears.

Mandatory or permissive early termination. All of the emergency rules presented to the Standing Committee provide for early termination of a declaration. There is a lack of uniformity, however, as to whether early termination is mandatory or permissive. The civil rule says that a declaration "may be terminated before the end of the stated period." The criminal rule says that the "Judicial Conference must terminate a declaration for one or more courts before its stated termination date if it determines that a rules emergency no longer affects those courts." The appellate rule says that a court of appeals "must end the suspension when the rules emergency no longer exists" and that the JCUS "may exercise this power." Like the appellate rule, the bankruptcy rule uses both must and may: "A chief judge who declared an emergency must terminate a declaration before its stated termination date in one or more courts or locations if the judge finds that an emergency no longer affects those courts or locations. The Judicial Conference may exercise the same power to terminate, and may review and revise any determination by a chief judge under this rule."

The Standing Committee discussed whether early termination when an emergency no longer exists should be mandatory or permissive. Opinions were divided, with some believing that a rule should not mandate what the JCUS must do, and others believing that once an emergency ceases, there is no longer a reason to depart from the normal rules and so an emergency declaration should be terminated.

The Criminal and Appellate Rules Subcommittees have reconsidered their views and will be recommending that "must" be changed to "may." This Subcommittee agrees that the JCUS should have discretion and prefers the approach of the civil rule draft that confers that

authority without limiting it to when an emergency ceases. It just says that a declaration "may be terminated before the end of the stated period." That open-ended authorization allows for termination under circumstances that may not be anticipated in advance. It also is consistent with the permissive nature of the JCUS's authority to declare a rules emergency in the first place.

A rule for doomsday. A question raised at the Standing Committee meeting was what would happen if all communication and internet services were disrupted and the JCUS or even its executive committee was unable to act. Should the emergency rules provide for that situation? Only one member of the Standing Committee spoke in favor of having the rules provide for such a possibility. Others thought that, should there be a disaster of that magnitude, there would be bigger problems to deal with than, for example, extensions of time periods in bankruptcy cases.

The Subcommittee agrees and believes that any sort of doomsday planning is better left to the JCUS itself rather than being addressed in procedural rules.

New Draft of Rule 9038

Starting on the following page is a draft of the bankruptcy emergency rule that limits the authority to declare a rules emergency to the JCUS and reorganizes subdivision (a) to include both the requirements for a rules emergency and the authority to declare one. It includes "bankruptcy" before "court" in several places and makes permissive rather than mandatory the authority to terminate an emergency declaration early.

The Subcommittee recommends that the Advisory Committee approve the new draft for publication.

Rule 9038. Bankruptcy Rules Emergency[1]

(a) CONDITIONS FOR AN EMERGENCY. The Judicial Conference of the United States may declare a Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) DECLARING AN EMERGENCY.

(1) *Content*. The declaration must:

(A) designate the bankruptcy court or courts affected;

(B) state any restrictions on the authority granted in (c) to modify the rules; and

[1] Subdivisions (a) and (b) of this draft include changes that were suggested by the style consultants and agreed to by the reporters for all the advisory committees. Subdivision (c) includes changes suggested by the style consultants after the Subcommittee met.

(C) be limited to a stated period of no more than 90 days.

(2) *Early Termination.* The Judicial Conference may terminate a declaration for one or more bankruptcy courts before the termination date.

(3) *Additional Declarations.* The Judicial Conference may issue additional declarations under this rule.

(c) TOLLING AND EXTENDING TIME LIMITS.

(1) *In an Entire District.* When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and proceedings in the district:

(A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a specified deadline, to file or send a document,

hold or conclude a hearing, or take any other action, despite any other Bankruptcy Rule, local rule, or order; or

(B) order that, when a Bankruptcy Rule, local rule, or order requires that an action be taken "promptly," "forthwith," "immediately," or "without delay," it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding.

(2) *In a Specific Case or Proceeding.* When an emergency is in effect for a bankruptcy court, any bankruptcy judge in the district may take the action described in (1) in a specific case or proceeding.

(3) *When an Extension or Tolling Ends*. A period extended or tolled under (1) or (2) terminates on the later of:

(A) the last day of the time period as extended or tolled or 30 days after the

emergency declaration terminates, whichever is earlier; or

(B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was extended or tolled.

(4) *Further Extensions or Shortenings*. A presiding judge may lengthen or shorten an extension or tolling in a specific case or proceeding. The judge may do so only on the judge's own motion or on motion of a party in interest or the United States trustee and for good cause, after notice and a hearing.

(5) *Exception.* A time period imposed by statute may not be extended or tolled.

Committee Note

The rule is new. It provides authority to extend or toll the time limits in these rules during times of major emergencies affecting the bankruptcy courts. The continuing operation of the bankruptcy courts during the COVID-19 pandemic showed that the existing rules are

flexible enough to accommodate remote proceedings, service by mail, and electronic transmission of documents. Nevertheless, it appeared that greater flexibility than Rule 9006(b) provides might be needed to allow the extension of certain time periods in specific cases or any extension on a district-wide basis in response to an emergency.

[Emergency rule provisions have also been added to the Civil, Criminal, and Appellate Rules. Along with the Bankruptcy Rule, these rules have been made as uniform as possible. But each set of rules serves distinctive purposes, shaped by different origins, traditions, functions, and needs. Different provisions were compelled by these different purposes.][2]

Subdivision (a) specifies the limited circumstances under which the authority conferred by this rule may be exercised. The Judicial Conference of the United States has the exclusive authority to declare a Bankruptcy Rules emergency, and it may do so only under extraordinary circumstances. Those circumstances must relate to public health or safety or affect physical or electronic access to a bankruptcy court. And, importantly, the court's ability to operate in compliance with the Bankruptcy Rules must be substantially impaired.

Under subdivision (b)(1), a Bankruptcy Rules emergency declaration must specify the bankruptcy courts to which it applies because, instead of being nationwide, an emergency might be limited to one area of the country or even to a particular state. The declaration must also specify a termination date that is no later than 90 days from the declaration's issuance. Under subdivisions (b)(2) and (b)(3),

[2] This paragraph has been suggested by the reporter for the Civil Rules Committee. It has not been reviewed by the Subcommittee.

however, that time period may be extended by the issuance of additional declarations or reduced by early termination if circumstances change. The declaration must also specify any limitations placed on the authority granted in subdivision (c) to modify time periods.

Subdivisions (c)(1) and (c)(2) grant the authority, during declared Bankruptcy Rules emergencies, to extend or toll deadlines to the chief bankruptcy judge of a district on a district-wide basis or to the presiding bankruptcy judge in specific cases. Unless limited by the emergency declaration, this authority extends to all time periods in the rules that are not also imposed by statute. It also applies to directives to take quick action, such as rule provisions that require action to be taken "promptly," "forthwith," "immediately," or "without delay."

Subdivision (c)(3), which addresses the termination of extensions and tolling, provides a "soft landing" upon the termination of a Bankruptcy Rules emergency. It looks to three possible dates for a time period to expire. An extended or tolled time period will terminate either 30 days after the rules-emergency declaration terminates or when the original time period would have expired, whichever is later—unless the extension or tolling itself expires sooner than 30 days after the declaration's termination. In that case, the extended expiration date will apply.

Subdivision (c)(4) allows fine tuning in individual cases of extensions of time or tollings that have been granted.

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: APPELLATE SUBCOMMITTEE

SUBJECT: REVISIONS TO RULE 8023

DATE: MAR. 9, 2021

At the meeting of the Standing Committee on June 25, 2019, the Advisory Committee on Appellate Rules presented proposed amendments to Appellate Rule 42(b) dealing with voluntary dismissals. The amended version is intended to make dismissal mandatory upon agreement by the parties, as the rule stated prior to its restyling. It also intends to clarify that a court order is required for any action other than a simple dismissal. The rule does not change applicable law requiring court approval of settlements, payments, or other consideration. The revised Appellate Rule 42(b) was published for comment in August 2019 and will be presented to the Standing Committee for final approval at the June 2021 meeting.

Bankruptcy Rule 8023 was modeled on Rule 42(b), and at its meeting in June 2020 the Standing Committee approved for publication proposed amendments to Rule 8023 to make changes conforming Rule 8023 to the amended Appellate Rule 42(b). The amended rule reads as follows:

Rule 8023. Voluntary Dismissal.

(a) STIPULATED DISMISSAL. The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.

(b) APPELLANT'S MOTION TO DISMISS. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.

(c) OTHER RELIEF. A court order is required for any relief under Rule 8023(a) or (b) beyond the dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.

(d) COURT APPROVAL. This rule does not alter the legal requirements governing court approval of a

15 settlement, payment, or other consideration.

Advisory Committee Note

The amendment is intended to conform the rule to the revised version of Federal Rule of Appellate Procedure 42(b) on which it was modelled. It clarifies that the fees that must be paid are court fees, not attorney's fees. The Rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration. See, e.g., Fed. R. Bankr. P. 9019 (requiring court approval of compromise or settlement). The amendment clarifies that any order beyond mere dismissal—including approving a settlement, vacating or remanding— requires a court order.

We received no comments on the proposed amendments to Rule 8023. Therefore, the **Subcommittee recommends that the Advisory Committee approve the amended rule and recommend the amended rule to the Standing Committee for final approval.**

TAB 6

TAB 6A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SBRA RULES PUBLISHED IN AUGUST

DATE: MARCH 10, 2021

The interim rules that the Advisory Committee issued in response to the enactment of the Small Business Reorganization Act ("SBRA") took effect as local rules or standing orders on February 19, 2020, the effective date of the Act. As part of the process of promulgating national rules governing cases under subchapter V of chapter 11, the amended and new rules were published for comment last summer, along with the SBRA form amendments.

The following rules were published:

- **Rule 1007** (Lists, Schedules, Statements, and Other Documents; Time Limits),
- **Rule 1020** (Small Business Chapter 11 Reorganization Case),
- **Rule 2009** (Trustees for Estates When Joint Administration Ordered),
- **Rule 2012** (Substitution of Trustee or Successor Trustee; Accounting),
- **Rule 2015** (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status),
- **Rule 3010** (Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13),
- **Rule 3011** (Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13),
- **Rule 3014** (Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case),
- **Rule 3016** (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case),
- **Rule 3017.1** (Court Consideration of Disclosure Statement in a Small Business Case),
- **new Rule 3017.2** (Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement),
- **Rule 3018** (Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), and
- **Rule 3019** (Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case).

No comments were submitted on the SBRA rules in response to publication. Therefore, **the Subcommittee recommends that the Advisory Committee give final approval to the rules as published.**

It should be noted that one of the interim SBRA rules, Rule 1020, was amended—also on an interim basis—in response to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which took effect on March 27, 2020. The CARES Act modified the definition of "debtor" in § 1182(1) for determining eligibility to proceed under subchapter V of chapter 11. The CARES Act also amended § 103(i) to provide that subchapter V of chapter 11 applies to a "debtor (as defined in section 1182(1))" who elects such treatment, rather than a "small business debtor" who so elects. These changes necessitated amending Interim Rule 1020 to add references to "a debtor as defined in § 1182(1) of the Code."

Under the CARES Act, the definition of "debtor" in § 1182(1) will revert to its prior version one year after the effective date of the CARES Act, that is, on March 27, 2021. For that reason, the pre-CARES Act version of Interim Rule 1020 was published for comment. Even if the sunset date in the CARES Act gets extended by a year (there is apparently an effort going on to get such an extension), the published version of Rule 1020 is the appropriate one to be finally approved because by the time it goes into effect—December 1, 2022—the CARES Act definition will likely have expired.

Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3017.2, 3018, and 3019, published in response to the Small Business Reorganization Act of 2019.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

* * * * *

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the

[1] New material is underlined in red; matter to be omitted is lined through.

information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. ~~The~~ This duty to file a supplemental schedule ~~in accordance with this subdivision~~ continues even after the case is closed, except for property acquired after an order is entered: ~~notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order~~

(1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or

(2) discharging the debtor in a chapter 12 case, ~~or~~ a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b). * * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, subdivision (b)(5) of the rule includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

Subdivision (h) is amended to provide that the duty to file a supplemental schedule under the rule terminates upon confirmation of the plan in a subchapter V case, unless the plan is confirmed under § 1191(b), in which case it terminates upon discharge as provided in § 1192.

Rule 1020. ~~Small Business~~ Chapter 11 Reorganization Case for Small Business Debtors

(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. ~~Except as provided in subdivision (c), the~~ The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. ~~Except as provided in subdivision (c), the~~ The United States trustee or a party in interest may file an objection to the debtor's

statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

~~(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a~~

~~determination at any time as to whether the committee has been sufficiently active and representative.~~

(~~d~~c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if ~~any~~ a committee has been appointed under § 1102(a)(3), the committee or its authorized agent~~, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d)~~; and any other entity as the court directs.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019 ("SBRA"), Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to include that option and to require a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is

entered in an involuntary case, whether it elects to proceed under subchapter V. The rule does not address whether the court, on a case-by-case basis, may allow a debtor to make an election to proceed under subchapter V after the times specified in subdivision (a) or, if it can, under what conditions.

Former subdivision (c) of the rule is deleted because the existence or level of activity of a creditors' committee is no longer a criterion for small-business-debtor status. The SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Code.

Former subdivision (d) is redesignated as subdivision (c), and the list of entities to be served is revised to reflect that in most small business and subchapter V cases there will not be a committee of creditors.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases*. * * * * *

(2) *Chapter 11 Reorganization Cases*. If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

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Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. In a case under that subchapter, § 1183 of the Code requires the United States trustee to appoint a trustee, so there will be no election. Accordingly, subdivisions (a) and (b) of the rule are amended to except cases under subchapter V from their coverage. Subdivision (c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, is amended to make it applicable to cases under subchapter V.

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

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Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (a) of the rule is amended to include any case under that subchapter in which the debtor is removed as debtor in possession under § 1185 of the Code.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made

during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph

terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)–(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).

(~~b~~c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the

United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this ~~paragraph~~ subdivision (c).

(~~c~~d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the

duties prescribed by clause (2) of subdivision (a) of this rule.

(d~~d~~e) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(e~~e~~f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) is amended to prescribe the duties of a debtor in possession, trustee, and debtor in a subchapter V case. Those cases are excepted from subdivision (a) because, unlike other chapter 11 cases, there will generally be both a trustee and a debtor in possession. Subdivision (b) also reflects that § 1187 of the Code prescribes reporting duties for the debtor in a subchapter V case.

Former subdivisions (b), (c), (d), and (e) are redesignated (c), (d), (e), and (f) respectively.

Rule 3010. Small Dividends and Payments in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

* * * * *

(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13 ~~CASES~~. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, ~~case~~ no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. To avoid the undue cost and inconvenience of distributing small payments, the title and subdivision (b) are amended to include subchapter V cases.

Rule 3011. Unclaimed Funds in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The rule is amended to include such cases because § 347(a) of the Code applies to them.

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is amended to provide a deadline for making an election under § 1111(b) in such cases that is set by the court.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

* * * * *

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small

business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) of the rule is amended to reflect that under § 1181(b) of the Code, § 1125 does not apply to subchapter V cases (and thus a disclosure statement is not required) unless the court for cause orders otherwise. Subdivision (d) is amended to include subchapter V cases as ones in which Official Forms are available for a reorganization plan and, when required, a disclosure statement.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to cover such cases when the court orders that § 1125 of the Code applies.

Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall:

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a date on which an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan;

(c) fix a date for the hearing on confirmation; and

(d) fix a date for transmitting the plan, notice of the time within which the holders of claims and interests may accept or reject it, and notice of the date for the hearing on confirmation.

Committee Note

The rule is added in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter

V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is added to authorize the court in such a case to act at a time other than when a disclosure statement is approved to set certain times and dates.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause~~,~~ after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an

amount which the court deems proper for the purpose of accepting or rejecting a plan.

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Committee Note

Subdivision (a) of the rule is amended to take account of the court's authority to set times under Rules 3017.1 and 3017.2 in small business cases and cases under subchapter V of chapter 11.

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

* * * * *

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and

any other entity designated by the court, and shall be transmitted to the United States trustee.

(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (c) is added to the rule to govern requests to modify a plan after confirmation in such cases under § 1193(b) or (c) of the Code.
remanding—requires a court order.

Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3017.2, 3018, and 3019, published in response to the Small Business Reorganization Act of 2019.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

* * * * *

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the

[1] New material is underlined in red; matter to be omitted is lined through.

information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. ~~The~~ This duty to file a supplemental schedule ~~in accordance with this subdivision~~ continues even after the case is closed, except for property acquired after an order is entered: ~~notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order~~

(1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or

(2) discharging the debtor in a chapter 12 case, ~~or~~ a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b). * * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, subdivision (b)(5) of the rule includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

Subdivision (h) is amended to provide that the duty to file a supplemental schedule under the rule terminates upon confirmation of the plan in a subchapter V case, unless the plan is confirmed under § 1191(b), in which case it terminates upon discharge as provided in § 1192.

Rule 1020. ~~Small Business~~ Chapter 11 Reorganization Case for Small Business Debtors

(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. ~~Except as provided in subdivision (c), the~~ The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. ~~Except as provided in subdivision (c), the~~ The United States trustee or a party in interest may file an objection to the debtor's

statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

~~(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a~~

~~determination at any time as to whether the committee has been sufficiently active and representative.~~

(~~d~~c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if ~~any~~ a committee has been appointed under § 1102~~(a)(3)~~, the committee or its authorized agent~~, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d)~~; and any other entity as the court directs.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019 ("SBRA"), Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to include that option and to require a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is

entered in an involuntary case, whether it elects to proceed under subchapter V. The rule does not address whether the court, on a case-by-case basis, may allow a debtor to make an election to proceed under subchapter V after the times specified in subdivision (a) or, if it can, under what conditions.

Former subdivision (c) of the rule is deleted because the existence or level of activity of a creditors' committee is no longer a criterion for small-business-debtor status. The SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Code.

Former subdivision (d) is redesignated as subdivision (c), and the list of entities to be served is revised to reflect that in most small business and subchapter V cases there will not be a committee of creditors.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases*. * * * * *

(2) *Chapter 11 Reorganization Cases*. If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. In a case under that subchapter, § 1183 of the Code requires the United States trustee to appoint a trustee, so there will be no election. Accordingly, subdivisions (a) and (b) of the rule are amended to except cases under subchapter V from their coverage. Subdivision (c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, is amended to make it applicable to cases under subchapter V.

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (a) of the rule is amended to include any case under that subchapter in which the debtor is removed as debtor in possession under § 1185 of the Code.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made

during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph

terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)–(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).

(~~b~~c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the

United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this ~~paragraph~~ subdivision (c).

(~~c~~d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases*. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the

duties prescribed by clause (2) of subdivision (a) of this rule.

(d~~e~~) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(e~~f~~) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) is amended to prescribe the duties of a debtor in possession, trustee, and debtor in a subchapter V case. Those cases are excepted from subdivision (a) because, unlike other chapter 11 cases, there will generally be both a trustee and a debtor in possession. Subdivision (b) also reflects that § 1187 of the Code prescribes reporting duties for the debtor in a subchapter V case.

Former subdivisions (b), (c), (d), and (e) are redesignated (c), (d), (e), and (f) respectively.

Rule 3010. Small Dividends and Payments in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

* * * * *

(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13 ~~CASES~~. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, ~~case~~ no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. To avoid the undue cost and inconvenience of distributing small payments, the title and subdivision (b) are amended to include subchapter V cases.

Rule 3011. Unclaimed Funds in Cases Under Chapter 7 ~~Liquidation~~, Subchapter V of Chapter 11, Chapter 12 ~~Family Farmer's Debt Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment Cases~~

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The rule is amended to include such cases because § 347(a) of the Code applies to them.

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is amended to provide a deadline for making an election under § 1111(b) in such cases that is set by the court.

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

* * * * *

(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small

business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (b) of the rule is amended to reflect that under § 1181(b) of the Code, § 1125 does not apply to subchapter V cases (and thus a disclosure statement is not required) unless the court for cause orders otherwise. Subdivision (d) is amended to include subchapter V cases as ones in which Official Forms are available for a reorganization plan and, when required, a disclosure statement.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

* * * * *

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. The title and subdivision (a) of the rule are amended to cover such cases when the court orders that § 1125 of the Code applies.

Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall:

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a date on which an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan;

(c) fix a date for the hearing on confirmation; and

(d) fix a date for transmitting the plan, notice of the time within which the holders of claims and interests may accept or reject it, and notice of the date for the hearing on confirmation.

Committee Note

The rule is added in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter

V of chapter 11. Because there generally will not be a disclosure statement in a subchapter V case, *see* § 1181(b) of the Code, the rule is added to authorize the court in such a case to act at a time other than when a disclosure statement is approved to set certain times and dates.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an

amount which the court deems proper for the purpose of accepting or rejecting a plan.

* * * * *

Committee Note

Subdivision (a) of the rule is amended to take account of the court's authority to set times under Rules 3017.1 and 3017.2 in small business cases and cases under subchapter V of chapter 11.

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

* * * * *

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and

any other entity designated by the court, and shall be transmitted to the United States trustee.

(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.

Committee Note

The rule is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. Subdivision (c) is added to the rule to govern requests to modify a plan after confirmation in such cases under § 1193(b) or (c) of the Code.
remanding—requires a court order.

TAB 6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: BUSINESS SUBCOMMITTEE

SUBJECT: 19-BK-D – PROPOSAL REGARDING RULE 7004(h)

DATE: MAR. 8, 2021

In June 2020 the Standing Committee authorized publication of a proposed amendment to Rule 7004(h) which clarifies that service under Rules 7004(b)(3) or Rule 7004(h) may be made on an officer, managing or general agent or other agent by use of their titles rather than names. No comments were submitted in response to publication. The amended rule is as follows:

(i) SERVICE OF PROCESS BY TITLE. This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3), or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.

Advisory Committee Note

New Rule 7004(i) is intended to reject those cases interpreting Rule 7004(b)(3) and Rule 7004(h) to require service on a named officer, managing or general agent, or other agent, rather than use of their titles. Service on a corporation or partnership, unincorporated association, or insured depository institution at its proper address directed to the attention of the "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer," or "Agent" (or other similar titles) is sufficient.

The Subcommittee recommends that the Advisory Committee give final approval to the amended rule and forward it to the Standing Committee.

TAB 6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: BUSINESS SUBCOMMITTEE

SUBJECT: RULE 5005 (TRANSMITTAL TO U.S. TRUSTEE)

DATE: MAR. 9, 2021

The proposed amended version of Fed. R. Bankr. Pro. 5005 was published for comment in August, 2020. Unfortunately, the word "verified" in existing Rule 5005(b), which should have been indicated as deleted in the redlined version, did not have a strike-out through it. However, the Advisory Committee Note clearly indicated that it was intended to be deleted. The only comment on the amendments was from the National Bankruptcy Conference pointing out the error on the redlined version. The amended version follows:

Rule 5005. Filing and Transmittal of Papers

* * * * *

(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE.

(1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee ~~by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending~~ may be sent by filing with the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court's electronic-filing system shall promptly file as proof of such transmittal a ~~verified~~ statement identifying the paper and stating the

manner by which and the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

Committee Note

Subdivision (b)(1) is amended to authorize the clerk or parties to transmit papers to the United States trustee by electronic means in accordance with Rule 9036, regardless of whether the United States trustee is a registered user with the court's electronic-filing system. Subdivision (b)(2) is amended to recognize that parties meeting transmittal obligations to the United States trustee using the court's electronic-filing system need not file a statement evidencing transmittal under Rule 5005(b)(2). The amendment to subdivision (b)(2) also eliminates the requirement that statements evidencing transmittal filed under Rule 5005(b)(2) be verified.

The Subcommittee recommends that the Advisory Committee give final approval to amended Rule 5005 and forward it to the Standing Committee.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: PROPOSED AMENDMENTS TO RULE 3002.1

DATE: MARCH 10, 2021

For the last two years, the Subcommittee has been considering amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) in response to suggestions submitted by the National Association of Chapter Thirteen Trustees (18-BK-G) and the American Bankruptcy Institute's Commission on Consumer Bankruptcy (18-BK-H). The Subcommittee presented a draft of the proposed amendments to the Advisory Committee at last fall's meeting and received helpful feedback. It now presents a revised draft that it recommends for publication.

Attached to this memo is a red-line draft of the proposed rule and an accompanying Committee Note. The rule refers in several places to Official Forms. These implementing forms are being proposed by the Forms Subcommittee and appear elsewhere in the agenda book.

Explanation of Proposed Amendments

The rule is proposed for amendment to encourage a greater degree of compliance with its

provisions and to provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. It also would provide for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred.

Subdivision (a), which describes the rule's applicability, would remain largely unchanged. However, the word "installment" in the phrase "contractual installment payment" was deleted here and throughout the rule in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) would be amended to add provisions about the effective date of late payment change notices and to provide more detailed provisions about notice of payment changes for home equity lines of credit ("HELOCs"). Subdivision (b)(2) would provide that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There would be no delay, however, in the effective date of an untimely notice of a payment decrease.

The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under proposed subdivision (b)(3), a HELOC claimant would only need to file annual payment change notices—including a reconciliation figure (net over- or underpayment for the past year)—unless the payment change in a single month was for more than $10. This provision would also ensure at least 21 days' notice before a payment change took effect.

Only stylistic changes are proposed for subdivisions (c) and (d). Stylistic changes would also be made to subdivision (e). In addition, the court would be given authority, upon motion of

a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Proposed subdivisions (f) and (g) are new. They would provide the procedure for a midcase assessment of the status of the mortgage, which would allow the debtor to be informed of any deficiencies in payment while there was still time in the chapter 13 case to become current before the case was closed. The procedure would begin with the trustee providing notice of the status of the mortgage. An Official Form has been proposed for this purpose. The mortgage claim holder would then have to respond (subdivision (g)), again using an Official Form to provide the required information. If the claim holder failed to respond, a party in interest could seek an order compelling a response. A party in interest could also object to the claim holder's response. If an objection was made, the court would determine the status of the mortgage claim.

As under the existing rule, there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure would be changed, however, from a notice to a motion procedure that would result in a binding order, and time periods for the trustee and claim holder to act would be lengthened.

Under subdivision (h), the trustee would begin the procedure by filing—within 45 days after the last plan payment was made—a motion to determine the status of the mortgage. Two Official Forms have been drafted for this purpose—one for cases in which the trustee made ongoing postpetition payments to the claim holder and the other for cases in which the debtor made those payments directly to the claim holder. The claim holder would then have to respond within 28 days after service of the motion, again using an Official Form to provide the required information (subdivision (*i*)). If the claim holder failed to respond, a party in interest could seek

an order compelling a response. A party in interest could also object to the response. This process would end with a court order detailing the status of the mortgage (subdivision (j)). If the claim holder failed to respond to an order compelling a response, the court could enter an order stating that the debtor was current on the mortgage. If there was a response and no objection to it was made, the order could accept as accurate the amounts stated in the response. If there was both a response and an objection, the court would determine the status of the mortgage. Subdivision (j)(4) specifies the contents of the order.

Subdivision (k) was previously subdivision (*i*). The provision would be amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes would also be made to the subdivision.

Recommendation

The Subcommittee recommends that the Advisory Committee request the Standing Committee to publish the proposed amendments for comment.

Rule 3002.1. ~~Notice Relating to~~ Chapter 13—Claims Secured by a Security Interest in the Debtor's Principal Residence

(a) IN GENERAL. This rule applies in a chapter 13 case to a claim~~s (1)~~ that ~~are~~ is secured by a security interest in the debtor's principal residence~~,~~ and ~~(2)~~ for which the plan ~~provides that~~ requires either the trustee or ~~the~~ debtor ~~will~~ to make contractual ~~installment~~ payments. Unless the court orders otherwise, the ~~notice~~ requirements of this rule cease ~~to apply~~ when an order terminating or annulling the automatic stay ~~becomes effective with respect~~ related to ~~the~~ that residence ~~that secures the claim~~ becomes effective.

(b) ~~NOTICE OF~~ PAYMENT CHANGE~~S~~ NOTICE; EFFECT OF UNTIMELY NOTICE; HOME EQUITY LINE OF CREDIT; OBJECTION.

(1) *Notice by Claim Holder*. The claim 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 resulting ~~that results~~ from an interest-rate or escrow-account adjustment~~,~~. ~~no later than~~ At least 21 days before ~~a payment in the new amount~~ payment in the changed amount is due~~.~~, the notice must be filed and served on:

- the debtor;
- the debtor's attorney; and
- the trustee.~~If the claim arises from a home-equity line of credit, this requirement may be modified by court order.~~

(2) *Effect of an untimely notice.* If the claim holder fails to timely file and serve the notice required by (b)(1), the effective date of the payment change is as follows:

(A) *Payment Increase*. When the notice concerns an increase in the payment amount, the payment change will take effect

on the first payment due date that is at least 21 days after the date the notice is filed.

(B) *Payment Decrease.* When the notice concerns a decrease in the payment amount, the payment change will take effect on the date stated in the notice.

(3) *Home equity line of credit.* If the claim arises from a home equity line of credit, the notice shall be filed and served no later than one year after the petition was filed and at least annually thereafter.

(A) *Contents.* The annual notice shall state the payment amount due for the month in which the notice is filed. It shall also include a reconciliation amount to account for any over- or underpayment during the prior year. The first payment due after the effective date of the notice shall be

increased or decreased by the reconciliation amount.

(B) *Effective date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) shall be effective on the first payment due date that is at least 21 days after the annual notice is filed and shall remain effective until a new notice filed with the court becomes effective.

(C) *Payment changes greater than $10.* If the monthly payment increases or decreases by more than $10 in any month, the holder shall file and serve, in addition to the annual notice, a notice under (b)(1) for that month.

(~~2~~4) *Party in Interest's Objection*. A party in interest who objects to the payment change may file

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

(c) ~~NOTICE OF~~ FEES, EXPENSES, AND CHARGES INCURRED AFTER THE CASE WAS FILED; NOTICE BY THE CLAIM HOLDER. The claim holder ~~of the claim~~ shall file ~~and serve on the debtor, debtor's counsel, and the trustee~~ a notice itemizing all fees, expenses, ~~or~~and charges ~~(1) that were~~ incurred ~~in connection with the claim~~ after the ~~bankruptcy~~ case was filed~~, and (2)~~ that the holder asserts are recoverable against the debtor or ~~against~~ the debtor's principal residence. ~~The notice shall be served within~~Within 180 days after ~~the date on which~~

the fees, expenses, or charges are incurred, the notice shall be served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

(d) FORM AND CONTENT. A notice filed and served under ~~subdivision~~ (b) or (c) ~~of this rule~~ shall be prepared as prescribed by the appropriate Official Form~~,~~ and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) ~~DETERMINATION OF~~ DETERMINING FEES, EXPENSES, OR CHARGES. On ~~motion of~~ a party in interest's motion ~~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~~ paying 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~~ under § 1322(b)(5) of the Code. The motion shall be filed

within one year after the notice under (c) was served, unless the court grants a party in interest's motion to impose a shorter period for filing.

(f) MIDCASE NOTICE OF THE STATUS OF THE MORTGAGE CLAIM. Between 18 and 24 months after the petition was filed, the trustee shall file a notice regarding the status of the mortgage claim. The notice shall be prepared as prescribed by the appropriate Official Form and shall be served on:

- the debtor;
- the debtor's attorney; and
- the claim holder.

(g) RESPONSE TO THE NOTICE OF THE STATUS OF THE MORTGAGE CLAIM; MOTION TO COMPEL A RESPONSE; OBJECTION TO THE RESPONSE; COURT DETERMINATION.

(1) *Claim Holder's Response.* The claim holder shall file a response to the trustee's notice under (f) within 21 days after the notice is served.

The response shall be prepared as prescribed by the appropriate Official Form and shall be served on:

- the debtor;
- debtor's counsel; and
- the trustee.

(2) *Motion for an Order Compelling a Response.* If the claim holder fails to timely file a response, a party in interest may move for an order compelling a response.

(3) *Objection.* A party in interest may file an objection to the claim holder's response.

(4) *Court Determination.* If a party in interest objects to the response, the court shall, after notice and hearing, determine the status of the mortgage claim and enter an appropriate order.

(~~f~~h) ~~NOTICE OF FINAL CURE PAYMENT~~END-OF-CASE MOTION TO DETERMINE THE STATUS OF THE MORTGAGE CLAIM.

(1) *Trustee's Motion.* Within ~~30~~ 45 days after the debtor completes all payments under ~~the~~ a chapter 13 plan, the trustee shall file a motion to determine the status of the mortgage claim, including whether any prepetition arrearage has been cured. ~~and serve~~ The motion shall be served on:

- the claim holder; ~~of the claim,~~
- the debtor~~,~~; and
- debtor's counsel. ~~a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the~~

~~notice required by this subdivision, the debtor may file and serve the notice.~~

(2) *Contents of the Motion.* The motion shall be prepared as prescribed by the appropriate Official Form.

(~~g~~*i*) RESPONSE TO ~~NOTICE OF FINAL CURE PAYMENT~~THE MOTION TO DETERMINE THE STATUS OF THE MORTGAGE CLAIM; MOTION TO COMPEL A RESPONSE; OBJECTION TO THE RESPONSE.

(1) *Claim Holder's Response.* Within ~~21~~ 28 days after service of the ~~notice~~ motion under ~~subdivision (f~~h~~) of this rule~~, the claim holder shall file ~~and serve~~ a response to the motion. The response shall be served on:

- the debtor~~,~~;
- debtor's counsel~~,~~; and

- the trustee. ~~a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).~~

(2) *Contents of the Response*. The response shall be prepared as prescribed by the appropriate Official Form.

(3) *Motion for an Order Compelling a Response*. If the claim holder fails to timely file a

response, a party in interest may move for an order compelling a response.

(4) *Objection*. Within 14 days after service of a response, a party in interest may file an objection to the response.

(j) ORDER DETERMINING THE STATUS OF THE MORTGAGE CLAIM.

(1) *No Response*. If the claim holder fails to comply with an order under (*i*)(3) to respond to the trustee's motion, the court may enter an order determining that, as of the date of the motion, the debtor is current on all payments required by the plan to be paid to the holder—including all escrow amounts—and that all postpetition legal fees, expenses, and charges imposed by the holder are satisfied in full.

(2) *No Objection*. If the claim holder timely responds under (*i*)(1) and no objection is filed under (*i*)(4), the court may enter an order determining that the amounts

stated in the holder's response reflect the status of the claim as of the filing of the response.

(3) *Contested Motion.* If an objection is filed under (*i*)(4), the court shall, after notice and hearing, determine the status of the mortgage claim and enter an appropriate order.

(4) *Contents of the Order.*

(A) *Under (j)(2) or (j)(3).* An order entered under (j)(2) or (j)(3) shall include the following information, current as of the date of the holder's response under subdivision (*i*)(1) or such other date as the court may determine:

- the principal balance owed;
- the date that the next payment from the debtor is due;
- the amount of the next payment—separately identifying the amount due for principal, interest,

mortgage insurance, taxes, and other escrow amounts, as applicable;

- the amounts held in any escrow, suspense, unapplied funds, or similar accounts; and
- the amount of any fees, expenses or charges properly noticed under (c) that remain unpaid.

(B) *Under (j)(1).* An order entered under (*j*)(1) may include any of the information described in (A) and may address the treatment of any payments that become delinquent before the court enters an order granting the debtor a discharge.

~~(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing,~~

~~determine whether the debtor has cured the default and paid all required postpetition amounts.~~

(~~i~~k) CLAIM HOLDER'S FAILURE TO NOTIFY OR RESPOND. If the claim holder ~~of a claim~~ fails to provide any information ~~as~~ required of it by ~~subdivision (b), (c), or (g) of~~ this rule, the court may, after notice and hearing, take either or both of the following actions—in addition to any other actions authorized by this rule:

(1) preclude the holder from presenting the omitted information~~,~~ in any form~~,~~ as evidence in any contested matter or adversary proceeding in the case~~,~~—unless the court determines that the failure was substantially justified or is harmless; ~~or~~and

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. It also provides for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred.

Subdivision (a), which describes the rule's applicability, remains largely unchanged. However, the word "installment" in the phrase "contractual installment payment" was deleted here and throughout the rule in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended to add provisions about the effective date of late payment change notices and to provide more detailed provisions about notice of payment changes for home equity lines of credit ("HELOCs"). Subdivision (b)(2) now provides that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There is no delay, however, in the effective date of an untimely notice of a payment decrease.

The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(3), a HELOC claimant only needs to file annual payment change notices—including a reconciliation figure (net over- or underpayment for the past year)—unless the payment change in a single month is for more than $10. This

provision also ensures at least 21 days' notice before a payment change takes effect.

Only stylistic changes are made to subdivisions (c) and (d). Stylistic changes are also made to subdivision (e). In addition, the court is given authority, upon motion of a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Subdivisions (f) and (g) are new. They provide the procedure for a midcase assessment of the status of the mortgage, which allows the debtor to be informed of any deficiencies in payment while there is still time in the chapter 13 case to become current before the case is closed. The procedure begins with the trustee providing notice of the status of the mortgage. An Official Form has been adopted for this purpose. The mortgage claim holder then has to respond (subdivision (g)), again using an Official Form to provide the required information. If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the claim holder's response. If an objection is made, the court determines the status of the mortgage claim.

As under the former rule, there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure is changed, however, from a notice to a motion procedure that results in a binding order, and time periods for the trustee and claim holder to act have been lengthened.

Under subdivision (h), the trustee begins the procedure by filing—within 45 days after the last plan

payment is made—a motion to determine the status of the mortgage. An Official Form has been adopted for this purpose. The claim holder then must respond within 28 days after service of the motion, again using an Official Form to provide the required information (subdivision (*i*)). If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the response. This process ends with a court order detailing the status of the mortgage (subdivision (j)). If the claim holder fails to respond to an order compelling a response, the court may enter an order stating that the debtor is current on the mortgage. If there is a response and no objection to it is made, the order may accept as accurate the amounts stated in the response. If there is both a response and an objection, the court must determine the status of the mortgage. Subdivision (j)(4) specifies the contents of the order.

Subdivision (k) was previously subdivision (*i*). The provision has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes have also been made to the subdivision.

TAB 7B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

SUBJECT: 19-BK-F – Rule 3002(c)(6)

DATE: MAR. 9, 2021

The Advisory Committee received a suggestion from George Weiss of Potomac, MD, 19-BK-F, with respect to Fed. R. Bankr. P. 3002(c)(6)(A). Rule 3002 requires creditors to file proofs of claim for their claims to be allowed, and specifies, in Rule 3002(c), the deadline for filing those proofs of claim in cases filed under chapter 7, 12 and 13. Rule 3002(c) then provides certain exceptions, including for domestic creditors, in clause (1), when "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)." Mr. Weiss noted that this would not permit an extension of the deadline for creditors who actually did not get notice either because they were omitted from the matrix or were listed with an improper address.

The Advisory Committee accepted the recommendation of the Subcommittee that the Rule be amended to create a uniform standard for extensions with respect to notices mailed to domestic or foreign addresses ("insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim"). The language of the proposed amendment follows:

Rule 3002. Filing Proof of Claim or Interest

*** * * * ***

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under

that chapter is entered. But in all these cases, the following exceptions apply:

* * * * *

(6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that~~:~~

~~(A)~~ the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim ~~because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or~~

~~(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address~~.

* * * * *

Committee Note

Rule 3002(c)(6) is amended to provide a single standard for granting motions for an extension of time to file a proof of claim, whether the creditor has a domestic address or a foreign address. If the notice to such creditor was "insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim," the court may grant an extension.

The proposed amendment was published for comments in August 2020. No comments were received. Therefore, the Subcommittee recommends the amended rule to the Advisory Committee for final approval.

TAB 7C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTIONS FOR SEEKING TURNOVER BY MOTION

DATE: MARCH 10, 2021

On January 14, 2021, the Supreme Court decided in *City of Chicago v. Fulton*, 141 S. Ct. 585, that a creditor's continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3). In so ruling, the Court found that a contrary reading of § 362(a)(3) would render largely superfluous § 542(a)'s provisions for the turnover of estate property. In a concurring opinion, Justice Sotomayor noted that under current procedures turnover proceedings "can be quite slow" because they must be pursued by an adversary proceeding. *Id.* at 594. She stated, however, that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned." *Id.* at 595.

Acting on Justice Sotomayor's comment, 45 law professors have submitted a suggestion (21-BK-B) for rule amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding. They offered specific language for the amendment of several rules, which was later revised in one respect by a suggestion (21-BK-C) submitted by Professors Ralph Brubaker, Bruce Markell, and Bob Lawless—the organizers and drafters of the original suggestion.

The Subcommittee began considering these suggestions during its meeting on February 19. Following the discussions below of the *Fulton* decision, Justice Sotomayor's concurrence,

and the two suggestions, the Subcommittee presents issues on which it would like the Advisory Committee's input.

I. *City of Chicago v. Fulton*

The City of Chicago impounded the respondents' vehicles for failure to pay fines for traffic violations. Thereafter the respondents filed bankruptcy petitions under chapter 13 and demanded the return of their vehicles. The City refused, and the bankruptcy court in each case found that the City violated the automatic stay by continuing "to exercise control over property of the estate."[1] The Seventh Circuit affirmed, and the Supreme Court granted *certiorari* to resolve a conflict among the circuits over the meaning of § 362(a)(3).

Justice Alito, writing for a unanimous Court, held that merely retaining property of the estate without altering the status quo does not violate § 362(a)(3). He wrote that the wording of the provision—including the words "stay," "act," and "exercise control"—are most naturally read as requiring some affirmative action that disturbs the status quo as of the time the petition is filed. This reading, he said, was confirmed by consideration of § 542, which expressly governs the turnover of estate property. He identified two problems that would be caused by reading the stay provision as preventing mere retention. First, it would render § 542(a) largely superfluous, and second, § 542(a) contains exceptions not referred to in § 362(a)(3).[2] Furthermore, Justice Alito noted, the language "exercise control over property of the estate" was a later addition to the

[1] Section 362(a)(3) of the Bankruptcy Code stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

[2] Section 542(a) provides: "Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless the property is of inconsequential value or benefit to the estate."

provision, and when it was added, no cross-reference was made to § 542, thus suggesting that it was not intended to be an enforcement mechanism for the turnover provision.

Justice Sotomayor joined the Court's opinion but wrote separately "to emphasize that the Court has not decided whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property." 141 S. Ct. at 592. She went on to address the importance to a chapter 13 debtor of promptly regaining possession of a seized car so that the debtor could travel to work and continue to earn money to fund his or her plan. "Bankruptcy courts," she commented, "are not powerless to facilitate the return of debtors' vehicles to their owners. Most obviously, the Court leaves open the possibility of relief under § 542(a)." *Id.* at 594. But because such relief currently requires bringing an adversary proceeding, which on average lasts over 100 days,[3] Justice Sotomayor raised the possibility of a statutory or rule change to facilitate prompter action. Although some courts had tried to resolve turnover actions promptly, she concluded with the following suggestion:

> Ultimately, however, any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned. Congress, too, could offer a statutory fix, either by ensuring that expedited review is available for § 542(a) proceedings seeking turnover of a vehicle or by enacting entirely new statutory mechanisms that require creditors to return cars to debtors in a timely manner. *Id.*

II. Suggestions 21-BK-B and 21-BK-C

The law professors' suggestion follows up and expands on Justice Sotomayor's invitation for rulemaking to expedite the turnover of property essential for a chapter 13 debtor. As the

[3] For the 100-day average, Justice Sotomayor cited Administrative Office of the United States Courts, Time Intervals in Months From Filing to Closing of Adversary Proceedings Filed Under 11 U.S.C. § 542 for the 12-Month Period Ending June 30, 2020, Washington, DC: Sept. 25, 2020.

suggestion explains, "Although the pressing policy issues in consumer chapter 13s highlighted by Fulton are the impetus for the proposal, we suggest an expansion beyond chapter 13 to allow turnover actions by motion in all circumstances. Where there is no dispute, there is no reason a party holding estate property should be able to hide behind an adversary proceeding to delay doing the party's statutory duty that sections 521(a)(4), 542, or 543 require." Suggestion 21-BK-B at 1. Under their proposal, then, turnover relief under the three listed sections would be sought by motion in all chapters and for all types of property.

The suggestion proposes amendments to do the following:

- Rule 7001(1) (Scope of the Rules of Part VII) – To the requirement that the recovery of money or property be sought by an adversary proceeding, add exceptions for § 542 (Turnover of Property to the Estate), § 543 (Turnover of Property by a Custodian), and § 521(a)(4) (duty of a debtor to surrender to a trustee all property of the estate and any documents and records relating to estate property).
- New Rule 6012 – Create a new rule providing the procedure for seeking turnover under § 542(a). This procedure would be similar to the procedure for a movant seeking permission to use cash collateral under Rule 4001(b). The motion would have to provide information about the property being sought and any other interests in it, as well as any adequate protection being offered. The entity holding the property would have seven days to respond and would have to provide its own estimate of the property's value and any adequate protection demanded. In a chapter 13 case, the court would have to hold a hearing within 10 days and in all other cases within 21 days. At the hearing, the court could order turnover of the property, the provision of adequate protection, or order further proceedings, including discovery and an evidentiary hearing. The provision

would also specify circumstances under which a chapter 13 debtor could obtain *ex parte* relief.

- Rule 4001(d) (Agreement Relating to . . . Providing Adequate Protection) – Add turnover agreements to the list of agreements that can be approved.
- Rules 4001(a)(3), 6003(b), and 6004(h)[4] – To these rules governing stays of certain orders or limitations on how early in a case certain orders can be granted, add an exception for turnover orders.

Attached to this memo is the law professors' proposed draft of these amendments (as revised by Suggestion 21-BK-C).

III. Considerations for the Advisory Committee

The most basic issue the suggestions present is whether any change is needed to the existing turnover procedure. Ever since the current Bankruptcy Rules were adopted in 1983, Rule 7001(1) has required turnover to be sought by an adversary proceeding. Unfortunately, the existing Committee Notes, Committee minutes, reports, and agenda books do not reveal why this decision was made, but it might be thought that the longevity of the practice is entitled to some weight.

Nevertheless, the requirement that turnover be sought by adversary proceeding rather than by motion has not gone unquestioned. The recent report of the ABI Commission on Consumer Bankruptcy recommended that Rule 7001(1) be amended so that turnover of property securing a consumer debt could be sought by motion. The report explained that "proceeding by motion would allow a debtor to proceed more quickly and less expensively." FINAL REPORT OF

[4] Although Suggestion 21-BK-B refers to amending Rule 6004(h), that rule is not included in the draft that was submitted.

THE ABI COMM'N ON CONSUMER BANKRUPTCY at 48 (2019).[5] And some bankruptcy courts have acted on their own, despite Rule 7001(1), to adopt local rules or procedures that allow certain turnover orders to be sought by motion.

Now that a Supreme Court justice has made a similar suggestion to the Advisory Committee, the Subcommittee believes that serious consideration should be given to allowing turnover by motion. The *Fulton* opinion indicates that four circuits—the Second, Seventh, Eighth, and Ninth—have interpreted § 362(a)(3) in the way that the Court rejected. That means that without a rule change the cost and time for seeking turnover may now increase for litigants in the bankruptcy courts of those circuits. And as Justice Sotomayor noted, an average duration of 100 days for adversary proceedings to obtain turnover can impose a substantial burden on a consumer debtor who needs the return of a car or other property in order to succeed in making plan payments.

The law professors' suggestions, however, raise the question whether creating an exception to Rule 7001(1) for turnover proceedings should go beyond circumstances like those in *Fulton*. Should it apply to any type of property and to any type of debtor? Suggestion 21-BK-B (pp.1-2) makes the case for an across-the-board change as follows:

> Where there is no dispute, there is no reason a party holding estate property should be able to hide behind an adversary proceeding to delay doing the party's statutory duty that sections 521(a)(4), 542, or 543 require. Under the Bankruptcy Act of 1898, a court could order turnover as a summary proceeding where there was no substantial dispute that a party held estate property. The court simply used its injunctive powers to exercise in rem jurisdiction over the estate and order return of estate property. A plenary proceeding was instead appropriate when there were substantial issues about ownership that drew into question whether the item was within the court's in rem jurisdiction. The abstract jurisdictional distinctions also contained very practical distinctions regarding the appropriate

[5] The Commission also recommended that § 362(a)(3) be amended to explicitly require the return of estate property, subject to certain conditions and exceptions. Under the ABI proposal, a refusal to turn over property securing a consumer debt could be addressed only by a turnover order and not by sanctions for a stay violation. REPORT § 2.01.

> procedure for summary versus plenary matters. The Bankruptcy Code and the new rules adopted contemporaneously abandoned the summary-plenary distinction. In doing so, however, we lost the practical distinctions about how turnover operates in the world, as Fulton illustrates.

As the suggestion points out, adoption of a motion procedure would still allow for discovery and evidentiary hearings in situations in which the right to turnover was disputed.

Several members of the Subcommittee expressed a desire for a rule change with a narrower scope than the law professors have proposed. The challenge, however, comes in deciding in what way to limit the situations in which turnover may be sought by motion. Should it be limited to only certain types of property (e.g., cars, property necessary for an effective reorganization, etc.); to certain bankruptcy chapters (e.g., chapters 11, 12, and 13); to certain types of debtors (e.g., consumer rather than commercial); by the value of the property sought (e.g., small versus large amount); by the type of turnover sought (e.g., only tangible property under § 542(a))?

Because a number of bankruptcy courts have already made decisions to allow turnover by motion in certain situations, the Subcommittee thought it would be useful to examine the limits imposed in those rules and procedures. Ken Gardner has solicited information about local practices from court clerks, and Deb Miller has done the same from chapter 13 trustees.

The Subcommittee also seeks guidance from the full Committee about whether some turnover proceedings should be sought by motion and, if so, how broadly that authority should extend. It looks forward to a discussion of these issues at the spring meeting.

Attachment

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

. . . .

(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Motion; Service.*

(A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(i) an agreement to provide adequate protection;

(ii) an agreement to prohibit or condition the use, sale, or lease of property;

(iii) an agreement to modify or terminate the stay provided for in §362;

(iv) an agreement to use cash collateral; ~~or~~

(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property~~.~~; or

(vi) an agreement to pay, deliver or account for money, property or recorded information under §521(a)(4), §542 or §543 of the Code.[6]

. . . .

(4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule or Rule 6012 or §521(a)(4), §542 or §543 of the Code was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

[6] Suggestion 21-BK-C revised the original draft submitted by the law professors by adding the words "pay" and "money."

Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following:

. . . .

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 or Rule 6012 or §521(a)(4), §542 or §543 of the Code; or
. . . .

Rule 6012. Turnover of Property

(a) MOTION. A motion to enforce an entity's obligation to deliver and account for property under §542(a) of the Code must be made in accordance with Rule 9014.

(b) CONTENTS. The motion shall state:

(1) the property the entity must deliver or for which it must account,

(2) the value of the property,

(3) the name of each entity with an interest in the property and the nature of that interest,

(4) for any entity whose interest is a lien, the amount of the entity's claim, and

(5) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the property.

(c) SERVICE. The movant shall serve the motion on:

(1) any entity with an interest in the property;

(2) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and

(3) any other entity the court directs.

(d) RESPONSE. Within seven days after service of the motion, any entity against whom relief is sought must file and serve a response that states:

(1) the nature of the entity's interest in the property,

(2) the value of the property,

(3) if the interest is a lien, the amount of the entity's claim, and

(4) whether the entity requests the court to order adequate protection under §363(e). Any such request must state with particularity the adequate protection the entity requests including, if applicable, the amount of any cash payments or the amount or type of insurance protecting the interest of the entity.

(e) HEARING.

(1) *Timing.*

(A) For a motion brought by a debtor in a case under chapter 13, the court must hold a hearing within 10 days after service of the motion.

(B) In all other cases, the court must hold a hearing within 21 days after service of the motion.

(2) *Action.* At the hearing, the court may enter any appropriate orders including:

(A) ordering the entity to deliver or account for the property;

(B) ordering the debtor or trustee to provide adequate protection to the entity; or

(C) directing further hearings, briefing, pleadings, discovery, or other proceedings consistent with Rule 9014.

(f) EX PARTE RELIEF. Relief may be granted to a debtor in a case under chapter 13 without prior notice only if (A) the motion is verified, (B) it clearly appears from specific facts shown by affidavit or by the verified motion that in the absence of relief the debtor will suffer immediate and irreparable harm to the debtor's prospects for effective reorganization before the adverse party or the attorney for the adverse party can be heard in opposition, and (C) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief without prior notice shall immediately give oral notice thereof to the adverse party and forthwith mail or otherwise transmit to the adverse party a copy of the order granting relief. On two days notice to the debtor or on shorter notice as the court may prescribe, the adverse party may appear and move for reconsideration of the relief granted or to prohibit or condition the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(g) NO STAY OF TURNOVER ORDER. Notwithstanding Rule 4001(a)(3) and Rule 6004(h), an order entered under this rule or §521(a)(4), §542 or §543 of the Code is effective immediately, unless the court orders otherwise.

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding ~~to compel the debtor to deliver property to the trustee, or a proceeding~~ under §521(a)(4), §542, §543, §554(b), or §725 of the Code, or Rule 2017, or Rule 6002;

. . . .

TAB 8

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: SBRA FORMS THAT WERE PUBLISHED IN AUGUST

DATE: MARCH 10, 2021

The new and amended forms that the Advisory Committee promulgated in response to the enactment of the Small Business Reorganization Act ("SBRA") took effect on February 19, 2020, the effective date of the Act. Unlike the interim SBRA rules, the forms were officially issued under the Advisory Committee's delegated authority to make conforming and technical amendments to Official Forms, subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. Nevertheless, the Advisory Committee asked the Standing Committee to publish them for comment last August, along with the SBRA rule amendments, in order to ensure that the public had a thorough opportunity to review them.

The existing SBRA Official Forms consist of the following:

- Official Form 101 (*Voluntary Petition for Individuals Filing for Bankruptcy*),
- Official Form 201 (*Voluntary Petition for Non-Individuals Filing for Bankruptcy*),
- Official Form 309E1 (*Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)*),
- Official Form 309E2 (*Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors under Subchapter V)*),
- Official Form 309F1 (*Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships)*),
- Official Form 309F2 (*Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships under Subchapter V)*),
- Official Form 314 (*Ballot for Accepting or Rejecting Plan*),
- Official Form 315 (*Order Confirming Plan*), and
- Official Form 425A (*Plan of Reorganization for Small Business Under Chapter 11*).

In addition to those forms, an amendment to Official Form 122B (*Chapter 11 Statement of Your Current Monthly Income*) was published in order to correct an instruction at the

beginning of the form. It currently begins, "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11." That statement is incorrect for individuals filing under subchapter V of chapter 11. Therefore, the proposed amendment states, "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11 (other than under subchapter V)."[1] The accompanying Committee Note provides as follows:

> Official Form 122B is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, the initial instruction in the form includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

One other legislative development needs to be mentioned. The CARES Act, which went into effect on March 27, 2020, made a temporary change to the Bankruptcy Code that affected two SBRA forms. It modified the definition in § 1182 of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. To reflect this statutory change, the Advisory Committee used its delegated authority to amend Official Forms 101 and 201.

The CARES Act provides that the amended Code provision will revert to its prior version one year after the effective date of the Act, that is, on March 27, 2021. Accordingly, the SBRA forms that were published in August included the pre-CARES Act versions of Official Forms 101 and 201, not the temporarily amended ones.

As of the writing of this memo, it is uncertain whether Congress will extend the sunset date for the amendments to § 1182 or whether it will allow the amended provision to expire. In

[1] A similar change was needed for the instruction booklet—Bankruptcy Forms for Individuals. Because those instructions are issued by the Administrative Office of the Courts outside the rulemaking process, Scott Myers has made that correction.

either event, the Advisory Committee will know by its meeting on April 8 which version of Official Forms 101 and 201 is the correct one after March 27, 2021.

No comments were submitted on the SBRA forms in response to publication. Therefore, **the Subcommittee makes the following recommendation to the Advisory Committee:**

- **That it seek final approval of the amendment to Official Form 122B as published; and**
- **That it make no changes to the existing forms listed on page 1.**

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

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

Case number _____
(If known)

❒ Check if this is an amended filing

Official Form 122B

Chapter 11 Statement of Your Current Monthly Income

12/21

You must file this form if you are an individual and are filing for bankruptcy under Chapter 11 (other than under Subchapter V). If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.

   ❑ **Not married.** Fill out Column A, lines 2-11.

   ❑ **Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.

   ❑ **Married and your spouse is NOT filing with you.** Fill out Column A, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result.
Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

	Column A **Debtor 1**	*Column B* **Debtor 2**
2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).	$_____	$_____
3. **Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.	$_____	$_____
4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.	$_____	$_____

5. **Net income from operating a business, profession, or farm**	**Debtor 1**	**Debtor 2**			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from a business, profession, or farm	$_____	$_____	**Copy here** ➔	$_____	$_____

6. **Net income from rental and other real property**	**Debtor 1**	**Debtor 2**			
Gross receipts (before all deductions)	$_____	$_____			
Ordinary and necessary operating expenses	– $_____	– $_____			
Net monthly income from rental or other real property	$_____	$_____	**Copy here** ➔	$_____	$_____

	Column A **Debtor 1**	*Column B* **Debtor 2**
7. **Interest, dividends, and royalties**	$_____	$_____
8. **Unemployment compensation**	$_____	$_____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:..... ↓		
For you ..... $_____		
For your spouse..... $_____		
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act; payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+ $_____	+ $_____
11. **Calculate your total current monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____
		Total current monthly income

Part 2: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

COMMITTEE NOTE

Official Form 122B is amended in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11. As amended, the initial instruction in the form includes an exception for subchapter V cases. Because Code § 1129(a)(15) is inapplicable to such cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: FORMS TO IMPLEMENT RULE 3002.1 AMENDMENTS

DATE: MARCH 10, 2021

As discussed elsewhere in the agenda book, the Consumer Subcommittee is recommending for publication amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) in response to suggestions submitted by the National Association of Chapter Thirteen Trustees and the American Bankruptcy Institute's Commission on Consumer Bankruptcy. The proposed amendments to Rule 3002.1 call for the use of new Official Forms. Subdivisions (f), (g), (h), and (*i*) of the amended rule require the notice, motion, and responses that a chapter 13 trustee and a holder of a mortgage claim must file to conform to the appropriate Official Forms. New forms therefore need to be created for this purpose.

Following this memo in the agenda book are drafts of five Official Forms to implement the proposed rule provisions. The first form—*Trustee's Midcase Notice of the Status of the Mortgage Claim*—is to be used by a trustee to provide the notice required by Rule 3002.1(f). This notice is filed midway through a chapter 13 case (18-24 months after the petition was filed), and it requires the trustee to report on the status of payments to cure any prepetition arrearages and, if the trustee makes the ongoing postpetition mortgage payments, the amount and date of the next payment.

Within 21 days after service of the trustee's notice, the holder of the mortgage claim must file a response using the second Official Form—*Response to Trustee's Midcase Notice of the Status of the Mortgage Claim*. *See* Rule 3002.1(g)(1). The claim holder must indicate whether it

agrees with the trustee's statements about the cure of any prepetition arrearage, and it must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period.

The third and fourth Official Forms—*Motion to Determine the Status of the Mortgage Claim*—implement Rule 3002.1(h). One is used if the trustee made the ongoing postpetition mortgage payments (as a conduit), and the other is used if those payments were made by the debtor directly to the holder of the mortgage claim (nonconduit). This motion is filed at the end of a chapter 13 case when the debtor has completed all plan payments, and it seeks a court order determining the status of the mortgage claim. The trustee informs the court about the payments the trustee has made to the claim holder for the cure of any pre- and postpetition arrearages and for any postpetition fees, expenses, and charges. If the trustee made the ongoing postpetition mortgage payments, the trustee must also state the total amount paid and the amount and date of the next mortgage payment.

As required by Rule 3002.1(*i*)(1) and (2), the holder of the mortgage claim must respond to the trustee's motion within 28 days after service, using the final Official Form—*Response to Trustee's Motion to Determine the Status of the Mortgage Claim*. The claim holder must indicate whether it agrees with the trustee's statements about the cure of any arrearages and the payment of any postpetition fees, expenses, and charges. It must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period. If it asserts that the debtor is current on

all postpetition payments, it must attach a payoff statement and provide the information listed in paragraph 3 of the form.

The Subcommittee recommends that the Advisory Committee request the Standing Committee to approve the five Official Forms for publication.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410C13-1N

Trustee's Midcase Notice of the Status of the Mortgage Claim **12/23**

The trustee must file this notice in a chapter 13 case between 18 and 24 months after the petition was filed. Rule 3002.1(f).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Cure Amount

		Amount
a. Allowed amount of prepetition arrearage, if any:	(a)	$ _____
b. Total prepetition arrearage paid by the trustee as of date of notice:	(b)	$ _____
c. Remaining balance of the prepetition arrearage:	(c)	$ _____

Part 3: Postpetition Mortgage Payment

Check one:

❑ Ongoing postpetition mortgage payments are made by the debtor.

❑ Ongoing postpetition mortgage payments are paid through the trustee.

Current monthly payment: $ _____

Next mortgage payment due: ____/____/_____
MM / DD / YYYY

Part 4: A Response Is Required by Bankruptcy Rule 3002.1(g)(1)

Within 21 days after service of this notice, **the holder of the claim must file a response using Official Form 410C13-R.**

✘ _____ Date ____/_____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Official Form 410C13-1R

Response to Trustee's Midcase Notice of the Status of the Mortgage Claim

12/23

The claim holder must respond to the Trustee's Midcase Notice of the Status of the Mortgage Claim within 21 days after it was served. Rule 3002.1(g)(1).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Cure Amount

Check all that are applicable:

❑ Claim holder agrees with the allowed amount of the prepetition arrearage and the arrearage balance set forth in the Trustee's Notice.

❑ Claim holder disagrees with the allowed amount of the prepetition arrearage set forth in the Trustee's Notice. Claim holder asserts that the allowed amount of the prepetition arrearage is $ _____.

❑ Claim holder disagrees with the prepetition arrearage balance set forth in the Trustee's Notice. Claim holder asserts that the prepetition balance as of the date of the Trustee's Notice is $ _____.

Part 3: Postpetition Mortgage Payment

The status of the ongoing postpetition mortgage payments as of the Trustee's Notice is:

Current postpetition monthly payment: $ _____

Date next postpetition mortgage payment due: ____/____/_____
MM / DD / YYYY

Total ongoing postpetition payments due and unpaid: $ _____

Check one:

❑ The debtor is current on the ongoing postpetition mortgage payments.

❑ Claim holder asserts that the debtor is not current on the ongoing postpetition mortgage payments.

Part 4: Itemized Payment History

If the claim holder disagrees in Part 2 with the prepetition arrearage balance listed in the Trustee's Notice or states in Part 3 that the debtor is not current on ongoing postpetition payments as of the date of the Trustee's Notice, the claim holder must attach an itemized payment history listing:

- all payments received during the period from the filing of the bankruptcy petition through the date of this response; and
- how the payments were applied to principal, interest, and escrow from the filing of the bankruptcy petition through the date of this response.

Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

❑ I am the claim holder.

❑ I am the claim holder's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

✘ _____ Date ____/____/_____
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

United States Bankruptcy Court

_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion to Determine the Status of the Mortgage Claim

(The trustee should use this form if the trustee made the ongoing postpetition mortgage payments.)

The trustee states as follows:

1. On _____, debtor completed all payments under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached.

2. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

3. The trustee disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage paid by the trustee: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Postpetition arrearage paid by the trustee: $ _____

e. Total: (Add lines b. and d.): $ _____

4. The trustee disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges recoverable under Rule 3002.1(c): $ _____

b. Amount of postpetition fees, expenses, and charges listed in a. and paid through the trustee: $ _____

5. The ongoing postpetition mortgage payments were paid through the trustee.

Total postpetition ongoing mortgage payments paid	$ _____
Current monthly payment	$ _____
Date of next mortgage payment due	____/_____/_____

6. Therefore, I ask the court for an order under Rule 3002.1(j) determining that, as of the date of this motion, the debtor is current on all payments required by the plan and § 1322(b)(5) to be paid to the holder of the mortgage claim—including all escrow amounts—and that all postpetition fees, expenses, and charges are satisfied in full.

Signed: _____
(Trustee)

Date: _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Motion to Determine the Status of the Mortgage Claim

(The trustee should use this form if the debtor made the ongoing postpetition mortgage payments directly to the claim holder.)

The trustee states as follows:

1. On _____, debtor completed all payments under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached.

2. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

3. The trustee disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ _____

b. Total amount of the prepetition arrearage paid by the trustee: $ _____

c. Allowed amount of postpetition arrearage, if any: $ _____

d. Postpetition arrearage paid by the trustee: $ _____

e. Total: (Add lines b. and d.): $ _____

4. The trustee disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges recoverable under Rule 3002.1(c): $ _____

b. Amount of postpetition fees, expenses, and charges listed in a. and paid through the trustee: $ _____

5. The debtor's chapter 13 plan provided that ongoing postpetition mortgage payments were to be paid by the debtor directly to the claim holder.

6. Therefore, I ask the court for an order under Rule 3002.1(j) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage and that all postpetition fees, expenses, and charges are satisfied in full. Unless the claim holder responds to this motion with an allegation that the debtor is not current on the ongoing postpetition mortgage payments, I also ask the court to determine that the debtor is current on all postpetition payments required by the plan and § 1322(b)(5) to be paid to the holder of the mortgage claim—including all escrow amounts.

Signed: _____
(Trustee)

Date: _____

United States Bankruptcy Court
_____ District of _____

In re _____, Debtor Case No. _____
Chapter 13

Response to Trustee's Motion to Determine the Status of the Mortgage Claim

_____ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:_____ **Court claim no**. (if known):_____

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: _____

_____
City State ZIP Code

2. Check one:

☐ Debtor has paid in full the amount required to cure any prepetition arrearage on this mortgage claim.

☐ Debtor has not paid in full the amount required to cure any prepetition arrearage on this mortgage claim. The claim holder asserts that the total prepetition arrearage amount remaining unpaid as of the date of this response is: $ _____.

3. Check all that apply:

☐ Debtor is current on all ongoing postpetition mortgage payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: _____

Date next postpetition payment from the debtor is due: _____

Amount of the next postpetition payment that is due: $_____

Unpaid principal balance of the loan: $_____

Additional amounts due for any deferred or accrued interest: $_____

Balance of the escrow account: $_____

Balance of unapplied funds or funds held in a suspense account: $_____

☐ Debtor is not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/_____.
MM / DD / YYYY

☐ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is $_____.

4. Include if applicable:

Because the claim holder disagrees that the prepetition arrearage has been paid in full or states that the debtor Is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

_____ Date ____/_____/_____
Signature

Print _____ Title _____
First Name Middle Name Last Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.

Committee Note

Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R are new. They are adopted to implement new provisions of Rule 3002.1 that prescribe procedures for determining the status of a home mortgage claim in a chapter 13 case.

Official Form 410C13-1N is to be used by a trustee to provide the notice required by Rule 3002.1(f). This notice is filed midway through a chapter 13 case (18-24 months after the petition was filed), and it requires the trustee to report on the status of payments to cure any prepetition arrearages and, if the trustee makes the ongoing postpetition mortgage payments, the amount and date of the next payment.

Within 21 days after service of the trustee's notice, the holder of the mortgage claim must file a response using Official Form 410C13-1R. *See* Rule 3002.1(g)(1). The claim holder must indicate whether it agrees with the trustee's statements about the cure of any prepetition arrearage, and it must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period.

Official Forms 410C13-10C and 410C13-10NC implement Rule 3002.1(h). Form 410C13-10C is used if the trustee made the ongoing postpetition mortgage payments (as a conduit), and Form 410C13-10NC is used if those payments were made by the debtor directly to the holder of the mortgage claim (nonconduit). This motion is filed at the end of a chapter 13 case when the debtor has completed all plan payments, and it seeks a court order determining the status of the mortgage claim. The trustee informs the court about the payments the trustee has made to the claim holder for the cure of any pre- and postpetition arrearages and for any postpetition fees, expenses, and charges. If the trustee made the ongoing postpetition mortgage payments, the

trustee must also state the total amount paid and the amount and date of the next mortgage payment.

As required by Rule 3002.1(*i*)(1) and (2), the holder of the mortgage claim must respond to the trustee's motion within 28 days after service, using Official Form 410C13-10R. The claim holder must indicate whether it agrees with the trustee's statements about the cure of any arrearages and the payment of any postpetition fees, expenses, and charges. It must also provide information about the status of ongoing postpetition mortgage payments. If the claim holder disagrees with the trustee or states that the debtor is not current on postpetition mortgage payments, it must attach an itemized payment history for the postpetition period. If it asserts that the debtor is current on all postpetition payments, it must attach a payoff statement and provide the information listed in paragraph 3 of the form.

TAB 8C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 20-BK-I and 21-BK-A – BUSINESS NAMES AND EINS ON VOLUNTARY PETITION

DATE: MAR. 9, 2021

Henry A. Callaway, the Chief Bankruptcy Judge in the S.D. Alabama, has suggested that the instructions to Official Form B101 (Voluntary Petition for Individuals Filing for Bankruptcy) be modified. Judge Kathy A. Surratt-States, Chief Bankruptcy Judge for the E.D. Mo. makes a similar suggestion as well as alternative suggestions for mitigating the damage caused by improper inclusion of names and EINs on voluntary petitions and versions of Form 309 (Notice of Bankruptcy Case).

Part 1, Question 4 of Form 101 asks, for each proposed Debtor, to list "**Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years**". It then provides, in smaller font, immediately below the question, the following direction: "Include trade names and *doing business as* names."

The various Notices of Bankruptcy Case, Forms 309A-I, provide in Box 2 a list of "all other names used in the last 8 years" for each debtor. The versions of Form 309 include EINs for a debtor (or joint debtor), in the identification block of each form.

The information on Form 101 with respect to the debtor's prior names is required by Fed. R. Bankr. P. 1005, which requires the title of a bankruptcy case to include "all other names used within eight years before filing the petition." The Advisory Committee Note to Rule 1005 (1983) states, "The title of the case should include all names used by the debtor, such as trade names, former married names and maiden name." The eight-year period was inserted in the rule in 2008 to conform to the amendment to § 727(a)(8) extending the time between chapter 7 discharges from 6 to 8 years.

It should be noted that the applicable question on Form 101 is asking about names used BY THE DEBTOR during the applicable period, not names used by an entity with a separate legal existence that is owned by the Debtor or in which the Debtor is an investor or participant. Question 4 on Form 101 asks for "business names . . . YOU have used" in the past 8 years (emphasis supplied). The introduction to the Form states clearly that "The bankruptcy forms use *you* and *Debtor* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint* case—and in joint cases, these forms use *you* to ask for information from both debtors." There is nothing in the Form that suggests that the word "you" can embrace a

person or entity other than the debtor or a joint debtor (which would be the debtor's spouse in an individual case).

However, both Judge Callaway and Judge Surratt-States have seen that debtors do not understand this subtlety. Both judges report that debtors list among those business names on Question 4 the names of limited liability companies or corporations through which the debtor has operated during that time period. Those LLCs and corporations have a distinct legal existence from the debtor, and when they are listed on the petition, Judge Callaway suggests, it creates "confusion as to whether the LLC is in bankruptcy, whether the LLC's assets are part of the bankruptcy estate, and whether creditors should file proofs of claim in the individual case based on debts of the LLC (they usually do, which then prompts a round of claim objections)."

Judge Surratt-States provided examples of individual petitions on which the debtors listed corporations or LLCs in which they had some investment during the past 8 years and their EINs, as a result of which the CM/ECF system captures the information and it is used in the applicable Form 309 to notify creditors of the bankruptcy. The names provided by the individual debtor of these legally distinct entities are listed as debtors on the applicable version of Form 309 along with their EINs. Recipients of those notices would naturally assume that the corporations or LLCs have filed for bankruptcy protection, when in fact they have nothing to do with the current individual bankruptcy. The same information is listed on PACER, providing an erroneous impression that these entities have initiated a bankruptcy case.

Judge Callaway suggests that "the instructions be revised to add language along these lines: 'Do not list any separate legal entity such as a limited liability company or corporation.'" Judge Surratt-States also suggests that we should "[a]dd language or provide some form of context to the reader of Paragraph 4 of the Voluntary Petition, explaining that inclusion of the business names and EINs does not constitute a declaration of bankruptcy for these businesses/EINs nor constitute a part of the bankruptcy estate." In the alternative, Judge Surratt-States suggests the elimination of any provisions in the Forms 309 that are based on information provided in Part 1, Question 4 of Form 101, and/or coordination with the Electronic Public Access Program to avoid creating a PACER record under these separate names.

Although Judge Callaway characterizes his suggestion as a proposed modification to the "instructions to" Form 101, in fact the instructions to Form 101 (or Form 201) provide no line-by-line guidance on filling out the Form (as opposed to the Schedules). Former Form 1 had such instructions with respect to the requirement to disclose other names, and they read as follows:

> **Names/Identification Numbers**
>
> Bankruptcy Rule 1005 requires a debtor filing a voluntary petition to include the "name, employer identification number [if any], last four digits of the social-security number, any other individual-taxpayer identification number, and all other names used" within eight years before filing the petition. **Examples of**

> **other names used by a debtor include trade names, names used in doing business, former married name(s), and maiden name (if used within eight years before filing the petition). They should be furnished in the space provided.** If there is not sufficient room for all such names on the form itself, the list should be continued on an additional sheet attached to the petition. The debtor's name also should be inserted at the top of the second and third pages of Official Form B1.
>
> Separate spaces are provided for the name, address, and other information about joint debtors filing bankruptcy together in a single (joint) case. Only a husband and wife may file a joint bankruptcy case. 11 U.S.C. § 302. If the bankruptcy case is filed by one person, a corporation, or a partnership, the "joint debtor" spaces on the petition should be left blank.
>
> Complete information helps creditors to (1) correctly identify the debtor when they receive notices and orders from the court, (2) comply with the automatic stay, (3) file a proof of claim, and (4) exercise other rights given to them by the Bankruptcy Code. It is important to make sure that all creditors know about the bankruptcy proceeding and are allowed to exercise their rights in the case. A debt owed to a creditor who is not given proper notice of the bankruptcy may not be "discharged" or "forgiven," and the debtor may continue to be liable for payment of the debt despite having completed the bankruptcy case. Therefore, it is essential to provide not only the current legal name(s) but all name(s) used by the debtor and any joint debtor during the specified period (eight years).

(Emphasis supplied.)

The Subcommittee recommends to the Advisory Committee an amendment to Form 101 to eliminate the portion of Question 4 that asks for any business names the debtor has used in the last 8 years (leaving only the request for employer identification numbers, if any), and expand the margin instruction at Question 2 (which now asks for "**All other names you have used in the last 8 years**" and directs the debtor to "Include your married or maiden names") to modify the language in small font after "**All other names you have used in the last 8 years**" to read "Include your married or maiden names and any assumed, trade names and *doing business as* names." To reinforce that only information about the debtor, not separate entities, is sought, the Subcommittee recommends adding the additional instruction: "Do NOT list the name of any separate legal entity, like a corporation, partnership, or LLC, that is not filing this petition." We would then revise the lines for including the information to add lines for "business name (if applicable)". This would make Form 101 consistent with other forms of petition:

> Form 105 (Involuntary Petition Against an Individual), in Part 2, Question 3, asks for "Other names you know the debtor has used in the last 8 years" and

directs the filer to "[i]nclude any assumed, married, maiden, or trade names, or *doing business as* names." There is no separate question about business names.

Form 201 (Voluntary Petition for Non-Individuals Filing for Bankruptcy), in Question 2, which asks for "All other names debtor used in the last 8 years," and directs the filer to"[i]nclude any assumed names, trade names, and *doing business as* names." There is no separate question for business names.

Form 205 (Involuntary Petition Against a Non-Individual) in Part 2, Question 3, asks for "other names you know the debtor has used in the last 8 years" and directs the filer to"[i]nclude any assumed names, trade names, or *doing business as* names." There is no separate question about business names.

A redlined version of Form 101 with these changes accompanies this memo.

A proposed Advisory Committee Note follows:

Advisory Committee Note

Form 101 is amended to eliminate language in former Part 1, Question 4, which asked for "any business names . . . you have used in the last 8 years." Instead, Part 1, Question 2, is modified to add to the direction with respect to "other names you have used in the last 8 years" -- which currently directs the debtor to "Include you married and maiden names" -- to ask the debtor to include "any assumed, trade names, or *doing business as* names," and to direct that the debtor should not include the names of separate legal entities that are not filing the petition. Many individual debtors erroneously believed that Question 4 was asking for the names of corporations or Limited Liability Corporations in which they held any interest in the past 8 years, and any names listed in response were then treated as additional debtors for purposes of noticing and reporting. By asking for the information in Question 2, the form now makes it clearer that the only names to be listed are names that were used by the debtor personally in conducting business, not names used by other legal entities. This amendment also conforms Form 101 to Forms 105, 201 and 205 with respect to the same information.

The Subcommittee recommends that the Advisory Committee approve these amendments to Form 101 and recommend publication to the Standing Committee.

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____

Chapter you are filing under:
- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

❑ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy 12/22

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names and any assumed, trade names and *doing business as* names. Do NOT list the name of any separate legal entity such as a corporation, partnership, or LLC that is not filing this petition.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name _____ Business name (if applicable) _____ Business name (if applicable)
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Your Employer Identification Number (EIN), if any.	__ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN	__ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN
5. Where you live	_____ Number Street _____ _____ City State ZIP Code _____ County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code	**If Debtor 2 lives at a different address:** _____ Number Street _____ _____ City State ZIP Code _____ County **If Debtor 2's mailing address is different from yours, fill in here.** Note that the court will send any notices to this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

8. How you will pay the fee

- ❑ **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ❑ **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ❑ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- ❑ No
- ❑ Yes. District _____ When _____ Case number _____
  MM / DD / YYYY
  District _____ When _____ Case number _____
  MM / DD / YYYY
  District _____ When _____ Case number _____
  MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ❑ No
- ❑ Yes. Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY
  Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY

11. Do you rent your residence?

- ❑ No. Go to line 12.
- ❑ Yes. Has your landlord obtained an eviction judgment against you?
  - ❑ No. Go to line 12.
  - ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

- ❑ No. Go to Part 4.
- ❑ Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

- ❑ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ❑ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ❑ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ❑ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ❑ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- ❑ No. I am not filing under Chapter 11.
- ❑ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
- ❑ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

- ❑ No
- ❑ Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- ❑ No. Go to line 16b.
- ❑ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- ❑ No. Go to line 16c.
- ❑ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- ❑ No. I am not filing under Chapter 7. Go to line 18.
- ❑ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
  - ❑ No
  - ❑ Yes

18. How many creditors do you estimate that you owe?

- ❑ 1-49
- ❑ 50-99
- ❑ 100-199
- ❑ 200-999
- ❑ 1,000-5,000
- ❑ 5,001-10,000
- ❑ 10,001-25,000
- ❑ 25,001-50,000
- ❑ 50,001-100,000
- ❑ More than 100,000

19. How much do you estimate your assets to be worth?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

20. How much do you estimate your liabilities to be?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

✘ _____ Date _____
Signature of Attorney for Debtor MM / DD / YYYY

_____
Printed name

_____
Firm name

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Contact phone _____ Email address _____

_____ _____
Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- ❑ No
- ❑ Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- ❑ No
- ❑ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- ❑ No
- ❑ Yes. Name of Person_____.
  Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

✘ _____	✘ _____
Signature of Debtor 1	Signature of Debtor 2
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY
Contact phone _____	Contact phone _____
Cell phone _____	Cell phone _____
Email address _____	Email address _____

TAB 8D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 21-BK-E – FORMS 309E1 (NOTICE OF CHAPTER 11 BANKRUPTCY CASE FOR INDIVIDUALS OR JOINT DEBTORS) AND 309E2 (NOTICE OF CHAPTER 11 BANKRUPTCY CASE FOR INDIVIDUALS OR JOINT DEBTORS UNDER SUBCHAPTER V)

DATE: MAR. 9, 2021

We received a suggestion from Timothy Dore, bankruptcy judge in the W.D. Washington, about line 7 in Official Form 309E1 (line 8 in Official Form 309E2). This line includes deadlines for objecting to the debtor's discharge and for objecting to the dischargeability of a specific debt, and Judge Dore finds the language confusing.

The language of the relevant lines in the forms reads as follows:

7. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint**: ▪ if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) or ▪ if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).	First date set for hearing on confirmation of plan. The court will send you a notice of that date later. **Filing deadline for dischargeability complaints:** _____

Two problems are noted by Judge Dore. First, the right-hand column (which is setting out the deadlines) is not connected to the left-hand column (which describes the relief sought). The first two sentences of the right-hand language are intended to apply to complaints seeking denial of discharge which, under Fed. R. Bankr. P. 4004(a), must be filed "no later than the first date set for the hearing on confirmation" in a chapter 11 case. The language in bold at the bottom of the right-hand column is intended to effectuate Fed. Bankr. P. 4007(c) which fixes the deadline for filing a complaint to determine the dischargeability of a debt at 60 days after the first date set for the § 341(a) meeting of creditors. But there is no spatial connection between the descriptions of the complaints in the left-hand column and the deadlines in the right-hand column. Second, use of the words "dischargeability complaints" might be perceived as covering both complaints seeking denial of dischargeability and complaints seeking exceptions to discharge.

The Subcommittee believes that the concerns are valid ones, and have approved amended language to be used in the lines dealing with deadlines in the two forms. Suggested amendments

are reflected in the attached draft forms. (None of the other versions of Form 309 has the same problem.)

A proposed Advisory Committee Note follows:

Advisory Committee Note

> Official Form 309E1, line 7 and Official Form 309E2, line 8, are amended to clarify which deadline applies for filing complaints to deny the debtor a discharge and which applies for filing complaints seeking to except a particular debt from discharge.

The Subcommittee recommends that the amended forms be approved and sent to the Standing Committee for publication.

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

[Date case filed for chapter 11 _____ MM / DD / YYYY] OR

Case number: _____

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 11 _____] MM / DD / YYYY

Official Form 309E1 (For Individuals or Joint Debtors)

Notice of Chapter 11 Bankruptcy Case 12/22

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 10 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at https://pacer.uscourts.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy clerk's office** Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.		Hours open _____ Contact phone _____

For more information, see page 2 ▶

6. Meeting of creditorsMeeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.

Creditors may attend, but are not required to do so.

_____ at _____ Location:
Date Time

The meeting may be continued or adjourned to a later date.
If so, the date will be on the court docket.

7. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint objecting to discharge or to challenge whether certain debts are dischargeable (see line 10 for more information):

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) the deadline is the first date set for hearing on confirmation of the plan. The court will send you notice of that date later.
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6) **the deadline is**:_____

Deadline for filing proof of claim: [Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court)]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions: **Filing deadline:** 30 days after the *conclusion* of the meeting of creditors

The law permits debtors to keep certain property as exempt.
If you believe that the law does not authorize an exemption claimed, you may file an objection.

8. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

9. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate the debtor's business.

10. Discharge of debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). However, unless the court orders otherwise, the debts will not be discharged until all payments under the plan are made. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.

11. Exempt property

The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 7.

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

Last 4 digits of Social Security number or ITIN ___ ___ ___ ___

EIN __ __ – __ __ __ __ __ __ __

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

[Date case filed for chapter 11 _____ MM / DD / YYYY] OR

Case number: _____

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 11 _____] MM / DD / YYYY

Official Form 309E2 (For Individuals or Joint Debtors under Subchapter V)

Notice of Chapter 11 Bankruptcy Case

12/22

For the debtors listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read all pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 11 plan may result in a discharge of debt. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at https://pacer.uscourts.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy trustee** Name and address		Contact phone _____ Email _____

For more information, see page 2 ▶

6. Bankruptcy clerk's office

Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov.

Hours open
_____

Contact phone
_____

7. Meeting of creditors

Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend.

Creditors may attend, but are not required to do so.

_____ at _____ Location:
Date Time

The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines

The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.

Deadline to file a complaint objecting to discharge or to challenge whether certain debts are dischargeable (see line 11 for more information):

- if you assert that the debtor is not entitled to receive a discharge of any debts under 11 U.S.C. § 1141(d)(3) the deadline is the first date set for hearing on confirmation of the plan. The court will send you notice of that date later.
- if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6) **the deadline is**:_____

Deadline for filing proof of claim:

[Not yet set. If a deadline is set, the court will send you another notice.] or

[date, if set by the court)]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as *disputed*, *contingent*, or *unliquidated*;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

Deadline to object to exemptions:

The law permits debtors to keep certain property as exempt.

If you believe that the law does not authorize an exemption claimed, you may file an objection.

Filing deadline: 30 days after the *conclusion* of the meeting of creditors

9. Creditors with a foreign address

If you are a creditor receiving mailed notice at a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case

Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.

For more information, see page 3 ▶

11. Discharge of debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of a debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you believe that a particular debt owed to you should be excepted from the discharge under 11 U.S.C. § 523 (a)(2), (4), or (6), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1141 (d)(3), you must file a complaint and pay the filing fee in the clerk's office by the first date set for the hearing on confirmation of the plan. The court will send you another notice telling you of that date.
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 8.

TAB 9

TAB 9A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER INSOLVENCY

SUBJECT: CACM SUGGESTION FOR THE USE OF ELECTRONIC SIGNATURES

DATE: MARCH 10, 2021

Judge Audrey Fleissig, chair of the Committee on Court Administration and Case Management ("CACM"), submitted a suggestion (20-BK-E) based on a question her committee received from Bankruptcy Judge Vincent Zurzolo (C.D. Cal.). Judge Zurzolo inquired whether debtors and others without CM/ECF filing privileges are permitted to electronically sign documents filed in bankruptcy cases. Judge Fleissig notes that in 2013 CACM "requested that the Rules Committee explore creating a national federal rule regarding electronic signatures and the retention of paper documents containing original signatures to replace the model local rules." That effort was eventually abandoned, however, largely because of opposition from the Department of Justice.

Judge Fleissig points out that recent amendments to Rule 5005(a)(2) provide that 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," but that the rule is silent about electronic signatures of persons without a CM/ECF account. She says that her committee believes that courts are hesitant to allow such signatures "without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes, particularly for petitions, lists, schedules and statements, amendments, pleadings, affidavits, or other

documents that must contain original signatures, require verification under Fed. R. Bankr. P. 1008, or require an unsworn declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746."

Judge Fleissig asks the Advisory Committee to consider the issue raised by Judge Zurzolo, as well as whether security standards should be required for electronic signatures that would eliminate the need for the retention of wet signatures. With regard to the latter, she says that "DocuSign is a product that allows signatures and documents to be uploaded, electronically signed, and encrypted for security. The product contains a number of security features that ensure the validity of electronic signatures."

Judge Fleissig's letter was addressed to Judge David Campbell, who was at the time the chair of the Standing Committee, and he referred it to our Committee. In doing so, he noted that, although the suggestion relates specifically to bankruptcy, it is an issue that is relevant to the work of the other rules advisory committees. He requested that our Committee take the lead in pursuing the issues.

At the fall 2020 meeting, the Advisory Committee gave approval to pursuit of the CACM suggestion, and the matter was referred to this Subcommittee. During the Subcommittee's meeting on March 2, members discussed how they want to proceed with this project. Also joining in the meeting were Molly Johnson and Ken Lee of the Federal Judicial Center, who will be assisting the Subcommittee in doing research about existing e-signature judicial practices and in obtaining input from other organizations. Also attending was Nicole Eallonardo, a staff member in the District Court for the Northern District of New York. Ms. Eallonardo is a member a subgroup of the COVID-19 Judiciary Task Force that is focusing on using virtual technology for court proceedings and other meetings with detainees. The question of electronic signatures has come up in that context as well. Ms. Eallonardo is in the Director's Leadership

Program and is doing a project that looks at identifying and implementing digital signature technology for video proceedings. She has agreed to share with us her knowledge of digital signature technology.

The sections of the memorandum that follow provide some background materials concerning the Advisory Committee's earlier consideration of expansion of the use of e-signatures. Included is the executive summary of the report that Dr. Johnson prepared for the Advisory Committee in 2013 regarding electronic signatures and requirements for retaining wet signatures. That report is now being updated by Drs. Johnson and Lee. Following that summary are excerpts of this Subcommittee's report to the Advisory Committee in 2014 that explains the proposed amendments to Rule 5005 that were published for comment and why the Subcommittee recommended that that the Advisory Committee not proceed with them. The memorandum concludes with an account of the Subcommittee's discussion at its March 2 meeting and its plans for going forward with this matter.

I. 2013 FJC Report

Executive Summary

> At the request of the Advisory Committee, we collected and reviewed local bankruptcy rules regarding signatures of non-registrants of CM/ECF (e.g., debtors) and requirements for retention of documents bearing original handwritten ("wet") signatures of non-registrants. We also reviewed district court rules regarding signatures and retention, reviewed an OMB document on the use of electronic signatures in federal transactions, and solicited the views of interested parties regarding potential rules changes in these areas.
>
> Findings include:
>
> - The vast majority of bankruptcy courts (85/93) require the filing attorney to retain hard copy documents bearing non-registrant's signatures, although retention periods and the times from which they begin running vary widely.
>
> - Of courts that do not require retention of hard copy documents, most require a declaration to be filed that is signed under penalty of perjury by the person whose signature is required on the documents, attesting to the truth and

accuracy of information contained in those documents. Depending on the court, the declaration form is retained either by the filing attorney or the Clerk of Court. Other variations include whether the attorney must also sign the declaration; when the declaration is signed relative to the filing of the documents to which it refers; whether the declaration is retained in hard copy form or as a scanned image; and the exact attestations the signer makes in signing the declaration.

- Four courts do not require retention of hard copy documents (at least under some circumstances) and also do not have a declaration procedure.

- District courts generally have retention requirements in both civil and criminal cases. Our research did not reveal any district courts that allow a declaration to be filed without requiring retention of hard copies of signature-bearing documents.

- United States Trustees and Chapter 7 case trustees responding to our inquiry expressed concern about doing away with hard copy retention requirements because of difficulty that could cause with subsequent prosecutions. Some suggested, however, that requiring a scanned image of the relevant signature(s), as opposed to a purely electronic ("/s/Name") signature would address that problem.

- Informal feedback from the Executive Office of U.S. Attorneys indicated that hard copy signatures are thought to serve an important evidentiary function, particularly in jury trials, in prosecutions for fraud or related crimes. Although hard copy signatures are preferable, a scanned image of a signature might be "workable." Those responding expressed some concern about a declaration option, noting that having a signature on a declaration in lieu of the filed documents could leave ambiguity as to whether the signer saw all of the relevant documents or knew which ones were covered by the declaration.

- A number of federal agencies are also grappling with the issue of electronic signatures. In a report issued on January 25, 2013 (earlier versions of which were available in 2012) at the request of the Office of Management and Budget (OMB), the General Services Administration (GSA) and Federal Chief Information Officers (CIO) Council enumerated the following requirements for legally binding electronic signatures in federal organization transactions: 1) A person (i.e., the signer) must use an acceptable electronic **form of signature**; 2) the electronic form of signature must be executed or adopted by a person with the **intent to sign** the electronic record; 3) the electronic form of **signature must be attached to or associated with the electronic record** being signed; 4) there must be a means to **identify and authenticate** a particular person as **the signer**; and 5) there must be a means to preserve the **integrity of the signed record** (emphases in original).

II. 2014 Report to the Advisory Committee

At the spring 2013 meeting, the Advisory Committee voted to propose for publication an amendment to Rule 5005(a) to govern electronic signatures. As proposed, this national rule would replace local rules and would permit the filing of a scanned signature page of a document bearing the signature of an individual who is not a registered user of the CM/ECF system. That scanned signature could be used with the same force and effect as an original signature, and retention of the original document with the wet signature would not be required.

After the Advisory Committee meeting, the proposed amendment to Rule 5005(a) was considered by the Standing Committee's CM/ECF Subcommittee. That subcommittee suggested that the rule provide an additional means of ensuring the integrity of a scanned signature, and it proposed two alternatives: (1) to deem the filing attorney's act of filing the document and the scanned signature to certify that the signature was part of the original document, and (2) to require the acknowledgment of a notary public that the scanned signature was part of the original document. At its June meeting, the Standing Committee approved the Rule 5005(a) amendment for publication with the alternative provisions included. The publication package contained a note that called attention to the alternative provisions and specifically sought comment on whether one of the provisions was preferable.

Comments Received

Nineteen comments were submitted on the Rule 5005(a) amendment. Everyone who commented on the alternatives preferred Alternative 1. Most of those comments explained the reasons for the preference without commenting more broadly on the desirability of the overall amendment. Seven comments expressed opposition to adoption of the amendment. Included in that group is the detailed comment submitted by the Deputy Attorney General. Among the reasons for opposition were that current procedures work fine and scanning of signatures would be more complicated, scanned documents will require greater electronic storage capacity, there is or soon will be superior technology that will assure the validity of electronic signatures, and elimination of the retention requirement will make prosecutions and civil enforcement actions for bankruptcy fraud and abuse more difficult. Four of the comments gave suggestions for revising the wording or scope of the amendment.

* * * * *

Adverse Impact on Law Enforcement

The main basis for the Department of Justice's opposition to the proposed rule is that, by eliminating the requirement for retaining original signatures, it would adversely affect the Department's ability to successfully prosecute bankruptcy crimes and to pursue civil enforcement actions for bankruptcy fraud and abuse. The Deputy Attorney General's comment was informed by a poll of

federal prosecutors across the country who are involved in prosecuting white collar crime. Ninety-two percent of respondents indicated that they saw no problem that needs fixing, and 57% said that eliminating the retention of original signatures would make their job of prosecuting bankruptcy crimes more difficult. They expressed concern that debtors' repudiation of signatures is more likely with electronic signatures and that proving that a signature belongs to the defendant will be more difficult. Circumstantial proof of authenticity will be required because the FBI will not provide conclusive expert testimony on handwriting analysis without the original signatures. The Deputy Attorney General also stated that "a scanned signature is easily appended to a[] . . . document [amended by a lawyer after it was signed by a debtor] and difficult to disprove."

The Department of Justice's comment distinguished the proposed amendment from the IRS's use of electronic signatures. The IRS practice is supported by a federal statute, 26 U.S.C. § 6061(b)(2), which provides that an electronic signature on a return "shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed." The Department commented that there is no equivalent statute for bankruptcy and argued that it would be premature for it to endorse such legislation at this time. It also noted that other federal agencies, such as the SEC, require the retention of original signatures for a period of time.

* * * * *

The Subcommittee concluded that the comments shed new light on the factors that prompted the amendment. Comments from attorneys did not indicate dissatisfaction with current procedures. No comment expressed relief that retention would no longer be required, and some attorneys said that the current procedures work well. While the concerns of the Department of Justice about existing procedures for the retention of documents with wet signatures had prompted the Committee's pursuit of an amendment to Rule 5005(a), the Department's current position is one of opposition to the proposed amendment. The Subcommittee attached significant weight to the Department's views and concluded that, given the lack of indication of a need for change, the Committee should not proceed further with the amendment.

* * * * *

III. The Subcommittee's Discussion

The Subcommittee identified several questions that should be pursued in considering whether to propose a new e-signature rule:

- Is there a problem that needs fixing?

- What is the Department of Justice's current view regarding the use of e-signatures by debtors without the retention of documents with wet signatures?
- What e-signature products are available, and what safeguards to assure authenticity do they possess?
- Should a new e-signature rule specify needed safeguards for e-signatures or just refer to standards to be developed by the Administrative Office of the Courts?
- Rather than creating a new rule allowing debtors and pro se litigants to use e-signatures, can those groups be given CM/ECF accounts so that they come within Rule 5005(a)(2)(C)'s provision for e-signatures?

During the Subcommittee's meeting, Dr. Johnson explained that she and Dr. Lee had begun gathering information regarding e-signature local rules to update the earlier FJC report. Of particular interest is information about practices adopted by courts during the current pandemic that have relaxed restrictions on the use of e-signatures. Ms. Eallonardo discussed with the Subcommittee an e-signature product that she has been exploring that will allow a court to obtain signatures on documents during remote hearings. The Subcommittee also noted that legislation was introduced in the last Congress that would provide that "[i]n a case under title 11, United States Code, an original signature may be an electronic signature." S.4491 § 106(c); H.R. 8902 § 106(c).

The Subcommittee agreed that input should be sought from various groups about the desirability of allowing e-signatures of debtors. These groups include court clerks, the National Association of Consumer Bankruptcy Attorneys, the National Association of Chapter Thirteen Trustees, and the National Association of Bankruptcy Trustees. Meanwhile, the Department of Justice will be seeking input from U.S. trustees, U.S. attorneys, and the FBI. The Subcommittee

also plans to gather information about e-signature products currently on the market, as well as to investigate the procedures used by bankruptcy courts that allow electronic filing by pro se debtors.

The Subcommittee invites input from the Advisory Committee on the issues raised.

TAB 10

TAB 10A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON RESTYLING

SUBJECT: RESTYLING OF FEDERAL RULES OF BANKRUPTCY PROCEDURE – PARTS I AND II

DATE: MAR. 9, 2021

Parts I and II of the Restyled Federal Rules of Bankruptcy Procedure (the "Restyled Rules") were published for comments as USC-RULES-BK-2020-002 in August 2020. We received three comments. The first, from Jean Publieee, made no specific criticism of the draft rules.[1] A second letter was submitted by Cheryl L. Siler, the Director of Aderant CompuLaw Operations. Her only comment was on ***Rule 2002(n)***, suggesting that we are making a substantive change by changing the time period in the rule from 21 days, as was specified in existing Rule 2002(o), to 20 days.

Unfortunately, the changes to Rule 2002(n) to redesignate it as 2002(o) and change the time period from 20 to 21 days were made in error. Rule 2002(n) was enacted by Congress and cannot be modified though the normal rule-making process. The language included in the restyled rules is the language enacted by Congress. A committee note to Rule 2002 will explain why this rule has not been restyled and why it differs from existing Rule 2002(o).

Finally, we received an extensive letter of comments from the National Bankruptcy Conference ("NBC"), reflecting a review of the restyled rules by its Court System and Bankruptcy Administration Committee. Each comment is addressed individually below.

1. ***No Substantive Change***. The NBC suggests that the Restyled Rules include a "specific rule of interpretation" or be accompanied by "a declarative statement in the Supreme Court order adopting the new rules" to make clear that no substantive change was intended in the restyling process and the restyled rules must be interpreted consistently with the current rules.

Response: The Bankruptcy Rules are the last of the five sets of federal rules to be restyled. In the prior restyling projects, the applicable Advisory Committee has emphasized that the restyling is not intended to make any substantive change in two ways. One was the Advisory Committee Note to the restyled rules. For example, in the Note to Rule 1 of the Federal Rules of Civil

[1] The full text of the comment reads as follows: "all rules proposed sollely by lawyers need to be reviewed for their ability to be understood and used by the general public, which has a l2 year old recognition of the english language (or less). they need to be made simple, fully explained and should never be accepted unless they are so written and passed for inclusion in rules books. the courts are there for all americna citizens not just for lawyers, who use the rules far too often to scam the general public. and we need a rule that judgs are not to favor lawyers and disregard all documents presented by the general public." (spelling and punctuation as in original)

Procedure, the Advisory Committee stated "The style changes to the rules are intended to make no changes in substantive meaning." In our Committee Note we expressly state the following:

"No Substantive Change. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule."

(This language was identical to that used in the committee note for the restyled Federal Rules of Evidence.) The Subcommittee has expanded this note to insert a new sentence before the current one that reads exactly like that used for the civil procedure rules: "The style changes to the rules are intended to make no changes in substantive meaning."

Second, every restyled rule has its own Committee Note stating that "the language of rule ___ has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only." We did not include a Committee Note following every rule in the version of the restyled Bankruptcy Rules as they were published (because we included side-by-side versions on the existing rules), but when they are sent to the Standing Committee we intend to do so. It will read as follows:

"The language of Rule ___ has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only."

In connection with the restyling of the Federal Rules of Civil Procedure, Professor Ed Hartnett argued that these expressions of intent in the committee notes were not binding on courts, and discussed whether the restyled rules should have included "a rule of construction in the text of the rules themselves." Edward A. Hartnett, "*Against (Mere) Restyling*, 82 NOTRE DAME L. REV. 155 (2006). He said that the Advisory Committee on Civil Rules could have included a provision in Rule 1 that stated that "[t]hese rules must be construed to retain the same meaning after the amendments adopted on December 1, 2007 [the date of the restyling amendments], as they did before those amendments." *Id*. at 168. However, he noted that the Advisory Committee rejected including such a rule of construction because it would "make it impossible for anyone to rely on the text of any of the restyled rules. In every instance in which someone relied on the text of the rule should be ignored in favor of its prior meaning." *Id*. Of course, if courts rely on the committee notes, the same problem is created; the plain meaning of the restyled rules are always subject to challenge based on the meaning of the prior version of the rules. As Professor Hartnett said,

> "The more the courts rely on the purpose of maintaining prior meaning, the less the restyled rules will achieve their goal of making the rules clear and easily understood. The flip side is that the more that courts rely on the plain language of the restyled rule, the more the restyled rules will achieve their goal of making the rules clear and easily understood. Ironically, then, the best hope for the successful implementation of clear, easily understood restyled rules is if lawyers and judges ignore the Advisory Committee Note repeated after each restyled rule."

Id. at 169-70.

The Subcommittee recommends that the Advisory Committee follow the pattern that was developed in the prior restyled rules and include committee notes after each rule, but not include a rule of construction or any other method of providing that the rules do not change the substance of the prior version of the rules.

2. ***Capitalization***. The NBC objects to the choice of the style consultants to capitalize the words "title," "chapter," and "subchapter." This choice is inconsistent with how those terms are used in the Code (without capitalization).

Response: The position of the Advisory Committee has been that the choices of the style consultants should prevail on matters of pure style. This is a matter of pure style. Therefore, we have no basis for rejecting the capitalization choice of the style consultants.

3. ***Bullet Points***. The NBC objects to the use of bullet points in the rules rather than lettered designations. Use of bullet points makes it "difficult and cumbersome for courts and parties to try to correctly cite any given bullet point."

Response: Bullet points have been used in other restylings. See, e.g. Civil Rule 8(c)(1). The Subcommittee is comfortable that bullet points are not used in a way that would be likely to require citation to individual bullet points (as opposed to the section in which they appear). They are usually used to list the recipients of notice or service. The style consultants feel strongly that their use is consistent with modern trends in making language comprehensible, and as a stylistic matter it rests with them.

4. ***Court's Designee***. The NBC notes that some rules that previously referred to "the clerk, or some other person as the court may direct" were changed to refer to "the clerk or the court's designee" and that others were not. They object to the phrase "the court's designee" as less clear than "some other person as the court may direct."

Response: The rules should treat the phrase consistently in its restyling process. In only two places in all the rules through Part V (Rule 2002(f) and Rule 2002(n)) was the phrase not changed to "the court's designee." We cannot modify the phrase in either of these places, because those provisions were enacted by Congress. The Subcommittee does not believe the phrase is substantively different from "some other person as the court may direct." It made no change in response to this comment.

5. ***Title for Part I***. The NBC objects to the modification of the title of Part I. The prior version is "Commencement of the Case; Proceedings Relating to Petition and Order for Relief." The style consultants changed it to "Commencing a Bankruptcy Case; The Petition and Order for Relief." The NBC says that Part I includes rules about schedules, filing fee, dismissal and change of venue, and that is not captured by the new title.

Response: The Subcommittee changed the title to Part I to read "Commencing a Bankruptcy Case; The Petition, The Order for Relief, and Related Matters." That would cover the matters the NBC believes are omitted from the current title.

6. ***Rule 1003***. The NBC made a stylistic suggestion to remove the word "that" before the semi-colon so that the lead-in to the subsections would read "a signed statement" and the subparts begin with "affirming" and "setting" respectively.

Response: This is a purely stylistic matter, and the Advisory Committee defers to the style consultants on matters of pure style

7. ***Rule 1004.2***. The NBC suggested changing "when the petition is filed" in Rule 1004.2(b), fourth bullet, to "when the petition was filed" to confirm to Rules 1007(a)(4)(B)(ii) and 2002(q)(1).

Response: Comment accepted.

8. ***Rule 1005***. The NBC suggests changing the words "docket number" to "case number (if known)." They note that the words "docket number" might be interpreted to refer to individual docket entries rather than the number associated with the entire case, and that Official Form 101 uses the term "case number."

Response: The Subcommittee agreed with this comment.

9. ***Rule 1006***. The NBC suggests changing the words "the filing fee" to "any part of the fees required by (a)" to avoid suggesting that the "filing fee" does not include both the statutory fee under 28 U.S.C. § 1930 and the additional AP fees.

Response: The ambiguity is created because the restyling process has eliminated the definition of "filing fee" that used to be in Rule 1006(a). Because that term is used in Rule 1006(b), it is necessary to put it back in (a) to avoid having to use the phrase "the fees required by (a)" throughout the rest of the rule.

10. ***Rule 1007***. The NBC made several suggestions for this Rule. First, they noted that the order of subparts (a)(4)(B)(ii) and (iii) are inconsistent with the order for the very similar lists in Rule 1004.2(b) and Rule 2002(q)(1) and suggest reversing the two subparts. Second, in (c)(1) they find the phrase "after it is filed" to be ambiguous and think it should say "after the petition is filed." Third, they suggest adding a comma in (d). In (i)(2) they suggest replacing "each of them" with "each listed holder." And they pointed out a typo in (k)(1).

Response: The first suggestion is a good one. The rules should list the entities in the same order, and the change was made. The second suggestion was rejected, because the word "it" can refer only to the most recently-mentioned noun, which in (c)(1) is "the petition." The third point is valid. The fourth point is accepted; "each listed holder" is an improvement. The typo in (k)(1) has been corrected.

11. ***Rule 1010***. The NBC suggests that the second sentence in (a) begin with "The summons must be served on the debtor" rather than just "The summons must be served." They also suggest that the last sentence, which currently says that "Rule 7004(e) and Fed. R. Civ. P. 4(l) govern service," be expanded by saying "under this rule."

Response: The first sentence of (a) requires the clerk to "promptly issue a summons for service on the debtor." The Subcommittee believes it is perfectly clear that the second sentence is referring to the summons described in the first sentence, which is for service on the debtor. Therefore, no change is necessary. Adding "under this rule" to the last sentence is consistent with the original rule, and was accepted.

12. ***Rule 1014***. The NBC questions the language of (b)(3) which states that "The court may order the parties in a case commenced by a later-filed petition not to proceed further until the motion is decided." They note that "the motion" is not mentioned in (b)(3), and suggest that the words "a motion under (b)(2)" be substituted.

Response: The only motion mentioned in Rule 1014 is the motion in (b)(2). Therefore there is no need for the cross-reference. The section has been rewritten by the style consultants to make it more clear.

13. ***Rule 1016***. The last sentence of the Rule states that "If the court chooses to continue [a Chapter 11, 12, or 13 cases upon the debtor's death or incompetency], it must do so, as far as possible as though the death or incompetency had not occurred." The original rule said that "if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." The NBC reads the words "it must do so" as changing the substance of the rule from permissive to mandatory.

Response: The Subcommittee believes the NBC misreads the restyled rule. The restyled rule clearly states that upon death or incompetency "the court **may** dismiss the case or **may** continue it if further administration is possible and is in the parties' best interests." (Emphasis supplied.) The mandatory language applies only to the manner in which the case proceeds once the court has chosen to do so. The last sentence of the restyled rule begins "If the court **chooses** to continue …." (Emphasis supplied). The Subcommittee believes that is the meaning of the original rule and there is no substantive change. We made no change in response to this comment.

14. ***Rule 1017***. In (a), the original language describing a motion to dismiss as "on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties" with the phrase "for any reason." The NBC believes this is a substantive change.

Response: The Subcommittee was not certain whether there was a substantive difference, but in order to avoid any issue, it concluded that use of the original language was preferable.

15. ***Rule 1019***. The NBC raises three issues. First, in (c), they suggest that removing the word "actually" before filed may work a substantive change, because some claims are deemed

filed. Second, they object to describing a trustee or debtor in possession in (d) as "it". Third, in (f)(1), they suggest adding the word "such" before "a request by a governmental unit."

Response: Although the word "actually" is in the existing rule, the Subcommittee does not think it has any substantive purpose. Claims that are deemed filed are not filed by a creditor, and (c) applies only to claims filed by a creditor. To expand it to deemed claims would be a substantive change. In clause (d), the Subcommittee does not believe there is any confusion about what is meant by "its" and no change should be made. In clause (f)(1), we have inserted "Such" at the beginning of the second sentence as suggested.

16. ***Rule 1020***. The NBC had several comments on this restyled Rule. First, they suggest changing the title to "Designating a Chapter 11 Debtor as a Small Business Debtor." It currently refers to designating a Chapter 11 case as a small business case. Second, in (b) and (c) they object to replacing "except as provided in subdivision (c)" to "unless (c) applies." They believe this creates an ambiguity because it implies that the U.S. trustee or party in interest my not file an objection to the debtor's statement if (c) applies, and suggest replacing the phrase "unless (c) applies" with "except as provided in (c)".

Response: We have changed the title of the rule, but note that this rule has been completely rewritten and retitled in the wake of the Small Business Reorganization Act and the revised rule is currently out for comment. We have also changed "unless (c) applies" to "unless (c) provides otherwise."

Rule 2002. The NBC makes several points about this rule.

First, in (a)(4) they suggest inserting the word "to" before "convert" to be parallel to the phrase "to dismiss" in the first line.

Second, they think the word "proposal" in (a)(5) should be "motion."

Third, they again object to the use of the word "it" in (c)(3)(C) (referring to the injunction).

Fourth, in (g)(1) they suggest modifying "the request" in the second sentence with the word "qualifying."

Fifth, in (g)(2) they suggest changing "Except as § 342(f) provides otherwise" to "Except as otherwise provided in § 342(f)" as more readable.

Sixth, they make a comment on (h)(1) (which their letter erroneously says is (h)(2). They believe that replacing "creditors that hold claims for which proofs of claim have been filed" in the original rule with "creditors with claims for which proofs of claim have been filed" in the fourth bullet point is potentially a substantive change because an assignee may hold a claim but not be a creditor with a claim.

Seventh, they question the reordering of (n) and (o).

Eighth, they repeat the comment they made with respect to Rule 1004.3(b) and Rule 1007(a)(4)(B)(ii) which is described above.

Response: The first point is a good suggestion. As to their second point, motions are not "accepted" or "rejected." The original language is "the time fixed to accept or reject a proposed modification of a plan." The Subcommittee decided to return to the original language – it is the modification that is being accepted or rejected. The third comment is consistent with the concern of the Subcommittee the use of "it" to refer to something in a different subsection. This is the only change the Subcommittee made that is opposed by the style consultants. As to the fourth comment, "the request" referred to in the second sentence is clearly the "last request" mentioned in the immediately preceding line of the rule. There is no ambiguity about which request is intended to be described. As to the fifth comment, the style consultants have consistently changed phrases like "except as otherwise provided in § ___" to the active voice ("Except as § __ provides otherwise.") There is no reason to single out this one phrase and treat it differently. On the sixth point, the Code defines a creditor in § 101(10) as an "entity that has a claim." Holding a claim is the same as having a claim, and having a claim is the same as being a "creditor with" a claim. We made no change. As to the seventh point, Rule 2002(n) was enacted by Congress and should never have been redesignated as Rule 2002(o), which is why we returned it to its statutory location. We made the change noted in their eighth comment.

Rule 2003. The first comment of NBC is an objection to beginning the second sentence in (a)(3) sentence with "Or." They suggest instead that we create a vertical list. Second, they suggest changing the phrase "under Subchapter V" in (b)(1)(B) to "under subchapter V of chapter 7" to make it clear we are not referring to the new Subchapter V of Chapter 11. Third, in (b)(3)(A)(ii) they note that it fails to mention the alternative to a proof of claim, a "writing" referenced in (b)(3)(A)(i), and that it should be added. Fourth, in (d)(2)(B), they suggest changing the two references to "must" to "will."

Response: As to the first comment, that is a matter of style and we defer to the style consultants on matters of style. The problem with creating a vertical list is that there would be hanging text after the (A) and (B), and as a matter of style we never have text after numbered paragraphs (only after bullet points). This textual matter is not appropriate for bullet points. Therefore, we made no change in response to this comment. As to the second point, the paragraph in which this phrase appears it entitled "Chapter 7 Cases." There cannot possibly be confusion about whether the reference is to Subchapter V in Chapter 11. We made no change. On the third point, indeed (b)(3)(A)(ii) does not mention the "writing" described in (b)(3)(A)(i), but the existing rule does not either. The current language is "unless objection is made to the claim or the proof of claim is insufficient on its face." Their suggestion would be a substantive change. Fourth, the original language of Rule 2003(d) states: "Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 14 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case." We have consistently changed the word "shall" to "must" in the rules, which is why the style consultants used that word in this rule. However, the style consultants have suggested changing the language to

"continues in office" and "serves as trustee" without any "must" or "will." This should meet the concern.

Rule 2004. The NBC suggests in (b)(1)(D) adding "any matter that may affect" before "the debtor's right to a discharge," both because they think that substantively reflects the current rule and for parallelism They also suggest in (e)(2) rewording the first sentence for clarity.

Response: The first suggestion would change the substance of the existing rule. The phrase "any matter which may affect" in the current rule clearly modifies only "the administration of the debtor's estate," NOT "the debtor's right to a discharge." No change was made. In response to their second suggestion, we have redrafted (e)(2) to make it clearer and more parallel to (e)(1).

Rule 2005. The NBC objects to the use of the term "affidavit" in (a)(1), given that 28 U.S.C. § 1746 allows a declaration to be used in lieu of an affidavit. They suggest using the phrase "affidavit or declaration." They recognize that the existing rule uses only "affidavit" but believe this is not a substantive change. The NBC also objects to the word "the" before "examination" in (a)(1)(B), suggesting it implies that the debtor has to have attempted to evade service for the examination sought under Rule 2005 rather than a prior examination. Finally, the NBC again objects to the use of "it" in (a)(2)(B) rather than "such examination."

Response: Although it would undoubtedly be helpful to alert those reading the rule that the Judicial Code permits use of a declaration in lieu of an affidavit, the original rule uses only the term affidavit, and we cannot modify that term without making a substantive change. As to the second comment, the Subcommittee believes that Rule 2005(a) is providing for an order to compel attendance only if the debtor has evaded service of a subpoena or an order to attend this particular examination, or has willfully disobeyed a duly served subpoena or order to attend this particular examination (not any examination in the past). We changed the word "an" to "the" in (a)(1)(A) to be consistent. The use of "it" in (a)(2)(B) is consistent with the style consultants' usage in other sections, and here the antecedent ("further examination") is in the same section, so there is no confusion about what "it" means.

Rule 2006. In (e)(2)(B)(ii) the cross-references do not correspond to the references made in the restyled versions of the rules.

Response: Corrections made.

Rule 2009. In (b) the NBC suggests replacing "the debtor's estate" with "that debtor's estate." Also in (b) they suggest changing "any debtor's creditors may elect" with "the creditors of any debtor may elect."

Response: The style consultants do not like using "of" where it is not absolutely necessary, so they object to "the creditors of any debtor," and it is not substantively different from "any debtor's creditors." As to "that debtor's estate," the original rule says "the estate of the debtor" and "the debtor's estate" accurately reflects that original language. We made no change.

Rule 2010. In (a)(1) the NBC suggests changing "in a number of cases" to "in multiple cases" which is done in (a)(2) with respect to "a number of trustees" in the original.

Response: Suggestion accepted.

Rule 2013. In (a), NBC suggests changing "docket number" to "case number."

Response: Suggestion accepted.

Rule 2015. In (a)(6), the NBC notes that the existing rule (and restyled rule) are not clear whether this reporting requirement applies to cases under subchapter V of chapter 11. They also suggest that (b) and (c)(1) be consistent by inserting a list of (1) and (2) into (b), like (1)(A) and (B) in (c).

Response: The definition of "small business case" in § 101(51C) clearly excludes a case in which the debtor has elected treatment under subchapter V of chapter 11. There is no subchapter V "small business case." No change is needed. The format of (c)(1) cannot be used for (b) without creating hanging text after numbered clauses, and that is not proper style.

Rule 2015.3. In clause (b) the NBC suggests changing "date the plan becomes effective" to "date a plan becomes effective."

Response: Accepted.

Rule 2018. The NBC believes that in (d) the restyled rule changes the substance of the original rule by eliminating the phrase "which exercises its right to be heard under this subdivision."

Response: We added the language "exercising that right" to convey that concept.

The version of Parts I and II reflecting the changes since publication are attached to this memorandum, along with the proposed committee notes. The Subcommittee recommends that the Advisory Committee approve Parts I and II, and forward these parts to the Standing Committee for its approval. However, because none of the restyled rules will become effective until all of the restyled rules have been drafted, published, and comments incorporated, the Advisory Committee should suggest to the Standing Committee that it not send these rules to the Judicial Conference of the United States until all remaining parts have been approved.

Bankruptcy Rules Restyling

1000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
Rule 1001. Scope of Rules and Forms; Short Title	**Rule 1001. Scope; Title; Citations; References to a Specific Form**
The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.	**(a) In General.** These rules, together with the bankruptcy forms, govern the procedure in cases under the Bankruptcy Code, Title 11 of the United States Code. They must be construed, administered, and employed by both the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding. **(b) Title.** These rules should be referred to as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. **(c) Citations.** In these rules, the Bankruptcy Code is cited with a section sign and number (§ 101). A rule is cited with "Rule" followed by the rule number (Rule 1001(a)). **(d) References to a Specific Form.** A reference to a "Form" followed by a number is a reference to an Official Bankruptcy Form.
PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF	**PART I. COMMENCING A BANKRUPTCY CASE; THE PETITION, THE ORDER FOR RELIEF, AND RELATED MATTERS**

ORIGINAL	REVISION
Rule 1002. Commencement of Case	**Rule 1002. Commencing a Bankruptcy Case**
(a) PETITION. A petition commencing a case under the Code shall be filed with the clerk.	**(a) In General.** A bankruptcy case is commenced by filing a petition with the clerk.
(b) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of this rule.	**(b) Copy to the United States Trustee.** The clerk must promptly send a copy of the petition to the United States trustee.

ORIGINAL	REVISION
Rule 1003. Involuntary Petition	**Rule 1003. Involuntary Petition: Transferred Claims; Joining Other Creditors; Additional Time to Join**
(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.	**(a) Transferred Claims.** An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case under Chapter 7 or Chapter 11 is not a qualified petitioner. A petitioner that has transferred or acquired a claim must attach to the petition and to any copy: (1) all documents evidencing the transfer, whether it was unconditional, for security, or otherwise; and (2) a signed statement that: (A) affirms that the claim was not transferred for the purpose of commencing the case; and (B) sets forth the consideration for the transfer and its terms.
(b) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.	**(b) Joining Other Creditors After Filing.** If an involuntary petition is filed by fewer than 3 creditors and the debtor's answer alleges the existence of 12 or more creditors as provided in § 303(b), the debtor must attach to the answer: (1) the names and addresses of all creditors; and (2) a brief statement of the nature and amount of each creditor's claim. **(c) Additional Time to Join.** If there appear to be 12 or more creditors, the court must allow a reasonable time for other creditors to join the petition before holding a hearing on it.

ORIGINAL	REVISION
Rule 1004. Involuntary Petition Against a Partnership	**Rule 1004. Involuntary Petition Against a Partnership**
After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.	A petitioner who files an involuntary petition against a partnership under § 303(b)(3) must promptly send the petition to—or serve a copy on—each general partner who is not a petitioner. The clerk must promptly issue a summons for service on any general partner who is not a petitioner. Rule 1010 governs the form and service of the summons.

ORIGINAL	REVISION
Rule 1004.1. Petition for an Infant or Incompetent Person	**Rule 1004.1. Voluntary Petition on Behalf of an Infant or Incompetent Person**
If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.	**(a) Represented Infant or Incompetent Person.** If an infant or an incompetent person has a representative—such as a general guardian, committee, conservator, or similar fiduciary—the representative may file a voluntary petition on behalf of the infant or incompetent person. **(b) Unrepresented Infant or Incompetent Person.** If an infant or an incompetent person does not have a representative: (1) a next friend or guardian ad litem may file the petition; and (2) the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the infant debtor or incompetent debtor.

ORIGINAL	REVISION
Rule 1004.2. Petition in Chapter 15 Cases	**Rule 1004.2. Petition in a Chapter 15 Case**
(a) DESIGNATING CENTER OF MAIN INTERESTS. A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.	**(a) Designating the Center of Main Interests.** A petition under Chapter 15 for recognition of a foreign proceeding must: (1) designate the country where the debtor has its center of main interests; and (2) identify each country in which a foreign proceeding is pending against, by, or regarding the debtor.
(b) CHALLENGING DESIGNATION. The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition. The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor was a party as of the time the petition was filed, and such other entities as the court may direct.	**(b) Challenging the Designation.** The United States trustee or a party in interest may, by motion, challenge the designation. If the motion is filed by a party in interest, a copy must be sent to the United States trustee. Unless the court orders otherwise, the motion must be filed at least 7 days before the date set for the hearing on the petition. The motion must be served on: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entity as the court orders.

ORIGINAL	REVISION
Rule 1005. Caption of Petition	**Rule 1005. Caption of a Petition; Title of the Case**
The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social-security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.	**(a) Caption and Title; Required Information.** A petition's caption must contain the name of the court, the title of the case, and thecase number (if known). The title must include the following information about the debtor: (1) name; (2) employer-identification number; (3) the last 4 digits of the social-security number or individual taxpayer-identification number; (4) any other federal taxpayer-identification number; and (5) all other names the debtor has used within 8 years before the petition was filed. **(b) Petition Not Filed by Debtor.** A petition not filed by the debtor must include all names that the petitioner knows have been used by the debtor.

ORIGINAL	REVISION
Rule 1006. Filing Fee	**Rule 1006. Filing Fee**
(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as provided in subdivisions (b) and (c) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)–(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.	**(a) In General.** Unless (b) or (c) applies, every petition must be accompanied by the filing fee. In this rule "filing fee" means: (1) the filing fee required by 28 U.S.C. § 1930(a)(1)–(5); and (2) any other fee that the Judicial Conference of the United States requires under 28 U.S.C. § 1930(b) to be paid upon filing.
(b) PAYMENT OF FILING FEE IN INSTALLMENTS. (1) Application to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments. (2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. (3) Postponement of Attorney's Fees. All installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payments to an attorney or any other	**(b) Paying by Installment.** **(1)** *Application to Pay by Installment.* The clerk must accept for filing an individual's voluntary petition, regardless of whether any part of the filing fee is paid, if it is accompanied by a completed and signed application to pay in installments (Form 103A). **(2)** *Court Decision on Installments.* Before the meeting of creditors, the court may order payment of the entire filing fee or may order the debtor to pay it in installments, designating the number, amount, and payment dates. The number of payments must not exceed 4, and all payments must be made within 120 days after the petition is filed. The court may, for cause, extend the time to pay an installment, but the last one must be paid within 180 days after the petition is filed. **(3)** *Postponing Other Payments.* Until the filing fee has been paid in full, the debtor or Chapter 13 trustee must not make any further payment to an attorney or any other person who provides services to the debtor in connection with the case.

ORIGINAL	REVISION
person who renders services to the debtor in connection with the case.	
(c) WAIVER OF FILING FEE. A voluntary chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.	**(c) Waiving the Filing Fee.** The clerk must accept for filing an individual's voluntary Chapter 7 petition if it is accompanied by a completed and signed application to waive the filing fee (Form 103B).

ORIGINAL	REVISION
Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits	**Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File**
(a) CORPORATE OWNERSHIP STATEMENT, LIST OF CREDITORS AND EQUITY SECURITY HOLDERS, AND OTHER LISTS. (1) Voluntary Case. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate. (2) Involuntary Case. In an involuntary case, the debtor shall file, within seven days after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. (3) Equity Security Holders. In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within 14 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder. (4) Chapter 15 Case. In addition to the documents required under § 1515	**(a) Lists of Names and Addresses.** **(1)** *Voluntary Case.* In a voluntary case, the debtor must file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official Bankruptcy Forms. Unless it is a governmental unit, a corporate debtor must: (A) include a corporate-ownership statement containing the information described in Rule 7007.1; and (B) promptly file a supplemental statement if changed circumstances make the original statement inaccurate. **(2)** *Involuntary Case.* Within 7 days after the order for relief has been entered in an involuntary case, the debtor must file a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official Bankruptcy Forms. **(3)** *Chapter 11—List of Equity Security Holders.* Unless the court orders otherwise, a Chapter 11 debtor must, within 14 days after the order for relief is entered, file a list of the debtor's equity security holders by class. The list must show the number and type of interests registered in each holder's name, along with the holder's last known address or place of business. **(4)** *Chapter 15—Information Required from a Foreign Representative.* If a foreign representative files a petition under Chapter 15 for recognition of a foreign proceeding, the representative

ORIGINAL	REVISION
of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code. (5) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.	must—in addition to the documents required by § 1515—include with the petition: (A) a corporate-ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of: (i) all persons or bodies authorized to administer the debtor's foreign proceedings; (ii) all entities against whom provisional relief is sought under § 1519; and (iii) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed. **(5)** *Extending the Time to File.* On motion and for cause, the court may extend the time to file any list required by this Rule 1007(a). Notice of the motion must be given to: • the United States trustee; • any trustee; • any committee elected under § 705 or appointed under § 1102; and • any other party as the court orders.
(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED. (1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed	**(b) Schedules, Statements, and Other Documents.** **(1)** *In General.* Except in a Chapter 9 case or when the court orders otherwise, the debtor must file—prepared as prescribed by the appropriate Official Form, if any—

ORIGINAL	REVISION
by the appropriate Official Forms, if any: (A) schedules of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social security number or individual taxpayer-identification number; and (F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code. (2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement. (3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which must include one of the following:	(A) a schedule of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment that the debtor received from any employer within 60 days before the petition was filed—with all but the last 4 digits of the debtor's social-security number or individual taxpayer-identification number deleted; and (F) a record of the debtor's interest, if any, in an account or program of the type specified in § 521(c). **(2)** *Statement of Intention.* In a Chapter 7 case, an individual debtor must: (A) file the statement of intention required by § 521(a) (Form 108); and (B) before or upon filing, serve a copy on the trustee and the creditors named in the statement. **(3)** *Credit-Counseling Statement.* Unless the United States trustee has determined that the requirement to file a credit-counseling statement under § 109(h) does not apply in the district, an individual debtor must file a statement of compliance (included in Form 101). The debtor must include one of the following: (A) a certificate and any debt-repayment plan required by § 521(b);

ORIGINAL	REVISION
(A) an attached certificate and debt repayment plan, if any, required by § 521(b); (B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b); (C) a certification under § 109(h)(3); or (D) a request for a determination by the court under § 109(h)(4). (4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form. (5) An individual debtor in a chapter 11 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form. (6) A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, a calculation of disposable income made in accordance with § 1325(b)(3), prepared as prescribed by the appropriate Official Form.	(B) a statement that the debtor has received the credit-counseling briefing required by § 109(h)(1), but does not have a § 521(b) certificate; (C) a certification under § 109(h)(3); or (D) a request for a court determination under § 109(h)(4). **(4)** *Current Monthly Income—Chapter 7.* Unless § 707(b)(2)(D) applies, an individual debtor in a Chapter 7 case must: (A) file a statement of current monthly income (Form 122A-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 7 means-test calculation (Form 122A-2). **(5)** *Current Monthly Income—Chapter 11.* An individual debtor in a Chapter 11 case must file a statement of current monthly income (Form 122B). **(6)** *Current Monthly Income—Chapter 13.* A debtor in a Chapter 13 case must: (A) file a statement of current monthly income (Form 122C-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 13 calculation of disposable income (Form 122C-2). **(7)** *Personal Financial-Management Course.* Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition, an individual debtor in a

ORIGINAL	REVISION
(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition: (A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and (B) An individual debtor in a chapter 11 case shall file the statement if § 1141(d)(3) applies. (8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtor shall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).	Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a statement that such a course has been completed (Form 423). **(8)** ***Limitation on Homestead Exemption.*** This Rule 1007(b)(8) applies if an individual debtor in a Chapter 11, 12, or 13 case claims an exemption under § 522(b)(3)(A) in property of the type described in § 522(p)(1) and the property value exceeds the amount specified in § 522(q)(1). The debtor must file a statement about any pending proceeding in which the debtor may be found: (A) guilty of the type of felony described in § 522(q)(1)(A); or (B) liable for the type of debt described in § 522(q)(1)(B).
(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who	**(c) Time to File.** **(1)** ***Voluntary Case—Various Documents.*** Unless (d), (e), (f), or (h) provides otherwise, the debtor in a voluntary case must file the documents required by (b)(1), (b)(4), (b)(5), and (b)(6) with the petition or within 14 days after it is filed. **(2)** ***Involuntary Case—Various Documents.*** In an involuntary case, the debtor must file the documents required by (b)(1) within 14 days after the order for relief is entered. **(3)** ***Credit-Counseling Documents.*** In a voluntary case, the documents required by (b)(3)(A), (C), or (D) must be filed

ORIGINAL	REVISION
has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.	with the petition. Unless the court orders otherwise, a debtor who has filed a statement under (b)(3)(B) must file the documents required by (b)(3)(A) within 14 days after the order for relief is entered. **(4)** *Financial-Management Course.* Unless the court extends the time to file, an individual debtor must file the statement required by (b)(7) as follows: (A) in a Chapter 7 case, within 60 days after the first date set for the meeting of creditors under § 341; and (B) in a Chapter 11 or Chapter 13 case, before the last payment is made under the plan or before a motion for a discharge is filed under § 1141(d)(5)(B) or § 1328(b). **(5)** *Limitation on Homestead Exemption.* The debtor must file the statement required by (b)(8) no earlier than the date of the last payment made under the plan, or the date a motion for a discharge is filed under § 1141(d)(5)(B), 1228(b), or 1328(b). **(6)** *Documents in a Converted Case.* Unless the court orders otherwise, a document filed before a case is converted to another chapter is considered filed in the converted case. **(7)** *Extending the Time to File.* Except as § 1116(3) provides otherwise, the court, on motion and for cause, may extend the time to file a document under this rule. The movant must give notice of the motion to: • the United States trustee; • any committee elected under § 705 or appointed under § 1102; and

ORIGINAL	REVISION
	• any trustee, examiner, and other party as the court directs. If the motion is granted, notice must be given to the United States trustee and to any committee, trustee, and other party as the court orders.
(d) LIST OF 20 LARGEST CREDITORS IN CHAPTER 9 MUNICIPALITY CASE OR CHAPTER 11 REORGANIZATION CASE. In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.	**(d) List of the 20 Largest Unsecured Creditors in a Chapter 9 or Chapter 11 Case.** In addition to the lists required by (a), a debtor in a Chapter 9 case or in a voluntary Chapter 11 case must file with the petition a list containing the names, addresses, and claims of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form (Form 104 or 204). In an involuntary Chapter 11 case, the debtor must file the list within 2 days after the order for relief is entered under § 303(h).
(e) LIST IN CHAPTER 9 MUNICIPALITY CASES. The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.	**(e) Chapter 9 Lists.** In a Chapter 9 case, the court must set the time for the debtor to file a list required by (a). If a proposed plan requires the assessments on real estate to be revised so that the proportion of special assessments or special taxes for some property will be different from the proportion in effect when the petition is filed, the debtor must also file a list that shows—for each adversely affected property—the name and address of each known holder of title, both legal and equitable. On motion and for cause, the court may modify the requirements of this Rule 1007(e) and those of (a).

ORIGINAL	REVISION
(f) STATEMENT OF SOCIAL SECURITY NUMBER. An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number. In a voluntary case, the debtor shall submit the statement with the petition. In an involuntary case, the debtor shall submit the statement within 14 days after the entry of the order for relief.	**(f) Social-Security Number.** In a voluntary case, an individual debtor must submit with the petition a statement that gives the debtor's social-security number or states that the debtor does not have one (Form 121). In an involuntary case, the debtor must submit the statement within 14 days after the order for relief is entered.
(g) PARTNERSHIP AND PARTNERS. The general partners of a debtor partnership shall prepare and file the list required under subdivision (a), schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.	**(g) Partnership Case.** The general partners of a debtor partnership must file for the partnership the list required by (a) and the documents required by (b)(1)(A)–(D). The court may order any general partner to file a statement of personal assets and liabilities and may set the deadline for doing so.
(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance	**(h) Interests in Property Acquired or Arising After a Petition Is Filed.** After the petition is filed, in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed, except for property acquired after a plan is confirmed in a Chapter 11 case or a discharge is granted in a Chapter 12 or 13 case.

ORIGINAL	REVISION
with this subdivision continues notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order confirming a chapter 11 plan or discharging the debtor in a chapter 12 or chapter 13 case.	
(i) DISCLOSURE OF LIST OF SECURITY HOLDERS. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.	**(i) Security Holders Known to Others.** After notice and a hearing and for cause, the court may direct an entity other than the debtor or trustee to: (1) disclose any list of the debtor's security holders in its possession or under its control by: (A) producing the list or a copy of it; (B) allowing inspection or copying; or (C) making any other disclosure; and (2) indicate the name, address, and security held by eachlisted holder.
(j) IMPOUNDING OF LISTS. On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.	**(j) Impounding Lists.** On motion of a party in interest and for cause, the court may impound any list filed under this rule and may refuse inspection. But the court may permit a party in interest to inspect or use an impounded list on terms prescribed by the court.
(k) PREPARATION OF LIST, SCHEDULES, OR STATEMENTS ON DEFAULT OF DEBTOR. If a list, schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these	**(k) Debtor's Failure to File a Required Document.** If a debtor fails to properly prepare and file a list, schedule, or statement (other than a statement of intention) as required by this rule, the court may order:

ORIGINAL	REVISION
papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.	(1) that the trustee, a petitioning creditor, a committee, or other party do so within the time set by the court; and (2) that the cost incurred be reimbursed as an administrative expense.
(l) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of every list, schedule, and statement filed pursuant to subdivision (a)(1), (a)(2), (b), (d), or (h) of this rule.	**(l) Copies to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of every list, schedule, or statement filed under (a)(1), (a)(2), (b), (d), or (h).
(m) INFANTS AND INCOMPETENT PERSONS. If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).	**(m) Infant or Incompetent Person.** If a debtor knows that a person named in a list of creditors or in a schedule is an infant or is incompetent, the debtor must include the name, address, and legal relationship of any person on whom process would be served in an adversary proceeding against that person under Rule 7004(b)(2).

ORIGINAL	REVISION
Rule 1008. Verification of Petitions and Accompanying Papers	**Rule 1008. Requirement to Verify Petitions and Accompanying Documents**
All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.	A petition, list, schedule, statement, and any amendment must be verified or must contain an unsworn declaration under 28 U.S.C. § 1746.

ORIGINAL	REVISION
Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements	**Rule 1009. Amending a Voluntary Petition, List, Schedule, or Statement**
(a) GENERAL RIGHT TO AMEND. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.	**(a) In General.** (1) ***By a Debtor.*** A debtor may amend a voluntary petition, list, schedule, or statement at any time before the case is closed. The debtor must give notice of the amendment to the trustee and any affected entity. (2) ***By a Party in Interest.*** On motion of a party in interest and after notice and a hearing, the court may order a voluntary petition, list, schedule, or statement to be amended. The clerk must give notice of the amendment to entities that the court designates.
(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected there-by.	**(b) Amending a Statement of Intention.** A debtor may amend a statement of intention at any time before the time provided in § 521(a)(2) expires. The debtor must give notice of the amendment to the trustee and any affected entity.
(c) STATEMENT OF SOCIAL SECURITY NUMBER. If a debtor becomes aware that the statement of social security number submitted under Rule 1007(f) is incorrect, the debtor shall promptly submit an amended verified statement setting forth the correct social security number. The debtor shall give notice of the amendment to all of the entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).	**(c) Incorrect Social-Security Number.** If a debtor learns that a social-security number shown on the statement submitted under Rule 1007(f) is incorrect, the debtor must: (1) promptly submit an amended statement with the correct number (Form 121); and (2) give notice of the amendment to all entities required to be listed under Rule 1007(a)(1) or (a)(2).
(d) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall promptly transmit to the United States trustee a copy of every amendment filed	**(d) Copy to the United States Trustee.** The clerk must promptly send a copy of every amendment filed under this rule to the United States trustee.

ORIGINAL	REVISION
or submitted under subdivision (a), (b), or (c) of this rule.	

ORIGINAL	REVISION
Rule 1010. Service of Involuntary Petition and Summons	**Rule 1010. Serving an Involuntary Petition and Summons**
(a) SERVICE OF INVOLUNTARY PETITION AND SUMMONS. On the filing of an involuntary petition, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(l) F.R.Civ.P. apply when service is made or attempted under this rule.	**(a) In General.** After an involuntary petition has been filed, the clerk must promptly issue a summons for service on the debtor. The summons must be served with a copy of the petition in the manner that Rule 7004(a) and (b) provide for service of a summons and complaint. If service cannot be so made, the court may order service by mail to the debtor's last known address, and by at least one publication as the court orders. Service may be made anywhere. Rule 7004(e) and Fed. R. Civ. P. 4(*l*) govern service under this rule.
(b) CORPORATE OWNERSHIP STATEMENT. Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.	**(b) Corporate-Ownership Statement.** A corporation that files an involuntary petition must file and serve with the petition a corporate-ownership statement containing the information described in Rule 7007.1.

ORIGINAL	REVISION
Rule 1011. Responsive Pleading or Motion in Involuntary Cases	**Rule 1011. Responsive Pleading in an Involuntary Case; Effect of a Motion**
(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.	**(a) Who May Contest a Petition.** A debtor may contest an involuntary petition filed against it. In a partnership case under Rule 1004, a nonpetitioning general partner—or a person who is alleged to be a general partner but denies the allegation—may contest the petition.
(b) DEFENSES AND OBJECTIONS; WHEN PRESENTED. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 21 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.	**(b) Defenses and Objections; Time to File.** A defense or objection to the petition must be presented as prescribed by Fed. R. Civ. P. 12. It must be filed and served within 21 days after the summons is served. But if service is made by publication on a party or partner who does not reside in—or cannot be found in—the state where the court sits, the court must set the time to file and serve the answer.
(c) EFFECT OF MOTION. Service of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P.	**(c) Effect of a Motion.** Serving a motion under Fed. R. Civ. P. 12(b) extends the time to file and serve an answer as Fed. R. Civ. P. 12(a) permits.
(d) CLAIMS AGAINST PETITIONERS. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.	**(d) Debtor's Claim Against a Petitioning Creditor.** A debtor's answer must not assert a claim against a petitioning creditor except to defeat the petition.
(e) OTHER PLEADINGS. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.	**(e) Limit on Pleadings.** No pleading other than an answer to the petition is allowed, but the court may order a reply to an answer and set the time for filing and service.
(f) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the involuntary petition is a	**(f) Corporate-Ownership Statement.** A corporation that responds to the petition must file a corporate-ownership statement

ORIGINAL	REVISION
corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.	containing the information described in Rule 7007.1. The corporation must do so with its first appearance, pleading, motion, response, or other first request to the court.

ORIGINAL	REVISION
Rule 1012. Responsive Pleading in Cross-Border Cases	**Rule 1012. Contesting a Petition in a Chapter 15 Case**
(a) WHO MAY CONTEST PETITION. The debtor or any party in interest may contest a petition for recognition of a foreign proceeding.	**(a) Who May Contest the Petition.** A debtor or a party in interest may contest a Chapter 15 petition for recognition of a foreign proceeding.
(b) OBJECTIONS AND RESPONSES; WHEN PRESENTED. Objections and other responses to the petition shall be presented no later than seven days before the date set for the hearing on the petition, unless the court prescribes some other time or manner for responses.	**(b) Time to File a Response.** Unless the court sets a different time, a response to the petition must be filed at least 7 days before the date set for a hearing on the petition.
(c) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the petition is a corporation, then the entity shall file a corporate ownership statement containing the information described in Rule 7007.1 with its first appearance, pleading, motion, response, or other request addressed to the court.	**(c) Corporate-Ownership Statement.** A corporation that responds to the petition must file a corporate-ownership statement containing the information described in Rule 7007.1. The corporation must do so with its first appearance, pleading, motion, response, or other first request to the court.

ORIGINAL	REVISION
Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case	**Rule 1013. Contested Petition in an Involuntary Case; Default**
(a) CONTESTED PETITION. The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.	**(a) Hearing and Disposition.** When a petition in an involuntary case is contested, the court must: (1) rule on the issues presented at the earliest practicable time; and (2) promptly issue an order for relief, dismiss the petition, or issue any other appropriate order.
(b) DEFAULT. If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition.	**(b) Default.** If the petition is not contested within the time allowed by Rule 1011, the court must issue the order for relief on the next day or as soon as practicable.
[(c) ORDER FOR RELIEF]	

ORIGINAL	REVISION
Rule 1014. Dismissal and Change of Venue	**Rule 1014. Transferring a Case to Another District; Dismissing a Case Improperly Filed**
(a) DISMISSAL AND TRANSFER OF CASES. (1) Cases Filed in Proper District. If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties. (2) Cases Filed in Improper District. If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.	**(a) Dismissal or Transfer.** **(1)** ***Petitions Filed in the Proper District.*** If a petition is filed in the proper district, the court may transfer the case to another district in the interest of justice or for the parties' convenience. The court may do so: (A) on its own or on timely motion of a party in interest; and (B) only after a hearing on notice to the petitioner, United States trustee, and other entities as the court orders. **(2)** ***Petitions Filed in an Improper District.*** If a petition is filed in an improper district, the court may dismiss the case or may transfer it to another district on the same grounds and under the same procedures as stated in (1).
(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, the court in the district in which the first-filed petition is pending may determine, in the interest of justice or	**(b) Petitions Involving the Same or Related Debtors Filed in Different Districts.** **(1)** ***Scope.*** This Rule 1014(b) applies if petitions commencing cases or seeking recognition under Chapter 15 are filed in different districts by, regarding, or against: (A) the same debtor; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate.

ORIGINAL	REVISION
for the convenience of the parties, the district or districts in which any of the cases should proceed. The court may so determine on motion and after a hearing, with notice to the following entities in the affected cases: the United States trustee, entities entitled to notice under Rule 2002(a), and other entities as the court directs. The court may order the parties to the later-filed cases not to proceed further until it makes the determination.	**(2)** *Court Action.* The court in the district where the first petition is filed may determine the district or districts in which the cases should proceed in the interest of justice or for the parties' convenience. The court may do so on timely motion and after a hearing on notice to: • the United States trustee; • entities entitled to notice under Rule 2002(a); and • other entities as the court orders. **(3)** *Later-Filed Petitions.* The court in the district where the first petition is filed may order the parties to the later-filed cases not to proceed further until the motion is decided.

ORIGINAL	REVISION
Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court	**Rule 1015. Consolidating or Jointly Administering Cases Pending in the Same District**
(a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.	**(a) Consolidating Cases Involving the Same Debtor.** The court may consolidate two or more cases regarding or brought by or against the same debtor that are pending in its district.
(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).	**(b) Jointly Administering Cases Involving Related Debtors; Exemptions of Spouses; Protective Orders to Avoid Conflicts of Interest.** **(1)** *In General.* The court may order joint administration of the estates in a joint case or in two or more cases pending in the court if they are brought by or against: (A) spouses; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate. **(2)** *Potential Conflicts of Interest.* Before issuing a joint-administration order, the court must consider how to protect the creditors of different estates against potential conflicts of interest. **(3)** *Exemptions in Cases Involving Spouses.* If spouses have filed separate petitions, with one electing exemptions under § 522(b)(2) and the other under § 522(b)(3), and the court orders joint administration, that order must: (A) set a reasonable time for the debtors to elect the same exemptions; and

ORIGINAL	REVISION
	(B) advise the debtors that if they fail to do so, they will be considered to have elected exemptions under § 522(b)(2).
(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.	**(c) Protective Orders to Avoid Unnecessary Costs and Delay.** When cases are consolidated or jointly administered, the court may issue orders to avoid unnecessary costs and delay while still protecting the parties' rights under the Code.

ORIGINAL	REVISION
Rule 1016. Death or Incompetency of Debtor	**Rule 1016. Death or Incompetency of a Debtor**
Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.	**(a) Chapter 7 Case.** In a Chapter 7 case, the debtor's death or incompetency does not abate the case. The case continues, as far as possible, as though the death or incompetency had not occurred. **(b) Chapter 11, 12, or 13 Case.** Upon the debtor's death or incompetency in a Chapter 11, 12, or 13 case, the court may dismiss the case or may continue it if further administration is possible and is in the parties' best interests. If the court chooses to continue, it must do so, as far as possible, as though the death or incompetency had not occurred.

ORIGINAL	REVISION
Rule 1017. Dismissal or Conversion of Case; Suspension	**Rule 1017. Dismissing a Case; Suspending Proceedings; Converting a Case to Another Chapter**
(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.	**(a) Dismissing a Case.** Except as provided in § 707(a)(3), 707(b), 1208(b), or 1307(b), or in Rule 1017(b), (c), or (e), the court must conduct a hearing on notice under Rule 2002 before dismissing a case on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties. For the purpose of the notice, a debtor who has not already done so must, before the court's deadline, file a list of creditors and their addresses. If the debtor fails to timely file the list, the court may order the debtor or another entity to do so.
(b) DISMISSAL FOR FAILURE TO PAY FILING FEE. (1) If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case. (2) If the case is dismissed or closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.	**(b) Dismissing a Case for Failure to Pay an Installment Toward the Filing Fee.** If the debtor fails to pay any installment toward the filing fee, the court may dismiss the case after a hearing on notice to the debtor and trustee. If the court dismisses or closes the case without full payment of the filing fee, previous installment payments must be distributed as if full payment had been made.
(c) DISMISSAL OF VOLUNTARY CHAPTER 7 OR CHAPTER 13 CASE FOR FAILURE TO TIMELY FILE LIST OF CREDITORS, SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS. The court may dismiss a voluntary chapter 7 or chapter 13 case under § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United	**(c) Dismissing a Voluntary Chapter 7 or Chapter 13 Case for Failure to File a Document on Time.** On motion of the United States trustee, the court may dismiss a voluntary Chapter 7 case under § 707(a)(3), or a Chapter 13 case under § 1307(c)(9), for a failure to timely file the information required by § 521(a)(1). But the court may do so only after a hearing on

ORIGINAL	REVISION
States trustee on the debtor, the trustee, and any other entities as the court directs.	notice served by the United States trustee on the debtor, trustee, and any other entity as the court orders.
(d) SUSPENSION. The court shall not dismiss a case or suspend proceedings under § 305 before a hearing on notice as provided in Rule 2002(a).	**(d) Dismissing a Case or Suspending Proceedings Under § 305.** The court may dismiss a case or suspend proceedings under § 305 only after a hearing on notice under Rule 2002(a).
(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE, OR CONVERSION TO A CASE UNDER CHAPTER 11 OR 13, FOR ABUSE. The court may dismiss or, with the debtor's consent, convert an individual debtor's case for abuse under § 707(b) only on motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entity as the court directs. (1) Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse. (2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing.	**(e) Dismissing an Individual Debtor's Chapter 7 Case for Abuse; Converting the Case to Chapter 11 or 13.** (1) *In General.* On motion under § 707(b), the court may dismiss an individual debtor's Chapter 7 case for abuse or, with the debtor's consent, convert it to Chapter 11 or 13. The court may do so only after a hearing on notice to: • the debtor, • the trustee, • the United States trustee, and • any other entity as the court orders. (2) *Time to File.* Except as § 704(b)(2) provides otherwise, a motion to dismiss a case for abuse under § 707(b) or (c) must be filed within 60 days after the first date set for the meeting of creditors under § 341(a). On request made within the 60-day period, the court may, for cause, extend the time to file. The motion must: (A) set forth all matters to be considered at the hearing; and (B) if made under § 707(b)(1) and (3), state with particularity the circumstances alleged to constitute abuse.

ORIGINAL	REVISION
	(3) *Hearing on the Court's Own Motion.* If the hearing is set on the court's own motion, the clerk must serve notice on the debtor within 60 days after the first date set for the meeting of creditors under § 341(a). The notice must set forth all matters to be considered at the hearing.
(f) PROCEDURE FOR DISMISSAL, CONVERSION, OR SUSPENSION. (1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b). (2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013. (3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.	**(f) Procedures for Dismissing, Suspending, or Converting a Case.** (1) *In General.* Rule 9014 governs a proceeding to dismiss or suspend a case or to convert it to another chapter—except under § 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b). (2) *Cases Requiring a Motion.* Dismissing or converting a case under § 706(a), 1112(a), 1208(b), or 1307(b) requires a motion filed and served as required by Rule 9013. (3) *Conversion Date in a Chapter 12 or 13 Case.* If the debtor files a conversion notice under § 1208(a) or § 1307(a), the case will be converted without court order, and the filing date of the notice becomes the conversion date in applying § 348(c) or Rule 1019. The clerk must promptly send a copy of the notice to the United States trustee.

ORIGINAL	REVISION
Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings	**Rule 1018. Contesting a Petition in an Involuntary or Chapter 15 Case; Vacating an Order for Relief; Applying Part VII Rules**
Unless the court otherwise directs and except as otherwise prescribed in Part I of these rules, the following rules in Part VII apply to all proceedings contesting an involuntary petition or a chapter 15 petition for recognition, and to all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings contesting an involuntary petition or a chapter 15 petition for recognition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.	**(a) Applying Part VII Rules.** Unless the court orders or a Part I rule provides otherwise, Rules 7005, 7008–10, 7015–16, 7024–26, 7028–37, 7052, 7054, 7056, and 7062—together with any other Part VII rules as the court may direct—apply to the following: (1) a proceeding contesting either an involuntary petition or a Chapter 15 petition for recognition; and (2) a proceeding to vacate an order for relief. **(b) References to "Adversary Proceedings."** Any reference to "adversary proceedings" in the rules listed in (a) is a reference to the proceedings listed in (a)(1)–(2). **(c) "Complaint" Means "Petition."** For the proceedings described in (a), a reference to the "complaint" in the Federal Rules of Civil Procedure must be read as a reference to the petition.

ORIGINAL	REVISION
Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case	**Rule 1019. Converting or Reconverting a Chapter 11, 12, or 13 Case to Chapter 7**
When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case: (1) Filing of Lists, Inventories, Schedules, Statements. (A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall com-ply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7. (B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.	**(a) Papers Previously Filed; New Filing Dates; Statement of Intention.** **(1)** *Papers Previously Filed.* Unless the court orders otherwise, when a Chapter 11, 12, or 13 case is converted or reconverted to Chapter 7, the lists, inventories, schedules, and statements of financial affairs previously filed are considered filed in the Chapter 7 case. If they have not been previously filed, the debtor must comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the same date as the order directing that the case continue under Chapter 7. **(2)** *Statement of Intention.* A statement of intention, if required, must be filed within 30 days after the conversion order is entered or before the first date set for the meeting of creditors, whichever is earlier. The court may, for cause, extend the time to file only on motion filed —or on oral request made during a hearing—before the time has expired. Notice of an extension must be given to the United States trustee and to any committee, trustee, or other party as the court orders.
(2) New Filing Periods. (A) A new time period for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002,	**(b) New Period to File a § 707(b) or (c) Motion, a Proof of Claim, an Objection to a Discharge, or a Complaint to Determine Dischargeability.** **(1)** *When a New Period Begins.* When a case is converted to Chapter 7, a new

ORIGINAL	REVISION
4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case. (B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless: (i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.	period begins under Rule 1017, 3002, 4004, or 4007 for filing: (A) a motion under § 707(b) or (c); (B) a proof of claim; (C) a complaint objecting to a discharge; or (D) a complaint to determine whether a specific debt may be discharged. **(2)** ***When a New Period Does Not Begin.*** No new period to file begins when a case is reconverted to Chapter 7 after a previous conversion to Chapter 11, 12, or 13 if the time to file in the original Chapter 7 case has expired. **(3)** ***New Period to Object to a Claimed Exemption.*** When a case is converted to Chapter 7, a new period begins under Rule 4003(b) to object to a claimed exemption unless: (A) more than 1 year has elapsed since the court issued the first order confirming a plan under Chapter 11, 12, or 13, or (B) the case was previously pending in Chapter 7 and time has expired to object to a claimed exemption in the original Chapter 7 case.
(3) Claims Filed Before Conversion. All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.	**(c) Proof of Claim Filed Before Conversion.** A proof of claim filed by a creditor before conversion is considered filed in the Chapter 7 case.
(4) Turnover of Records and Property. After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and	**(d) Turning Over Records and Property.** Unless the court orders otherwise, after a trustee in the Chapter 7 case qualifies or assumes duties, the debtor in possession—or the previously acting trustee in the Chapter 11, 12, or 13 case—must promptly turn over to the Chapter 7 trustee all

ORIGINAL	REVISION
property of the estate in the possession or control of the debtor in possession or trustee.	records and property of the estate that are in its possession or control.
(5) Filing Final Report and Schedule of Postpetition Debts. (A) Conversion of Chapter 11 or Chapter 12 Case. Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall: (i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and (ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account; (B) Conversion of Chapter 13 Case. Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7, (i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and (ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account; (C) Conversion After Confirmation of a Plan. Unless the court	**(e) Final Report and Account; Schedule of Unpaid Postpetition Debts.** **(1)** ***In a Chapter 11 or Chapter 12 Case.*** Unless the court orders otherwise, when a Chapter 11 or 12 case is converted to Chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion must: (A) within 14 days after conversion, file a schedule of unpaid debts incurred after the petition was filed but before conversion and include the name and address of each claim holder; and (B) within 30 days after conversion, file and send to the United States trustee a final report and account. **(2)** ***In a Chapter 13 Case.*** Unless the court orders otherwise, when a Chapter 13 case is converted to Chapter 7: (A) within 14 days after conversion, the debtor must file a schedule of unpaid debts incurred after the petition was filed but before conversion and include the name and address of each claim holder; and (B) within 30 days after conversion, the trustee must file and send to the United States trustee a final report and account. **(3)** ***Converting a Case to Chapter 7 After a Plan Has Been Confirmed.*** Unless the court orders otherwise, if a case under Chapter 11, 12, or 13 is converted to a case under Chapter 7

ORIGINAL	REVISION
orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file: (i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and § 348(f)(2) does not apply; (ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and (iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion. (D) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).	after a plan is confirmed, the debtor must file: (A) a schedule of property that was acquired after the petition was filed but before conversion and was not listed in the final report and account, except when a Chapter 13 case is converted to Chapter 7 and § 348(f)(2) does not apply; (B) a schedule of unpaid debts that were incurred after confirmation but before conversion and were not listed in the final report and account; and (C) a schedule of executory contracts and unexpired leases that were entered into or assumed after the petition was filed but before conversion. **(4)** *Copy to the United States Trustee.* The clerk must promptly send to the United States trustee a copy of any schedule filed under this Rule 1019(e).
(6) Postpetition Claims; Preconversion Administrative Expenses; Notice. A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in § 348(d) may be filed in accordance with Rules 3001(a)–(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the	**(f) Postpetition Claims; Preconversion Administrative Expenses.** **(1)** *Request to Pay an Administrative Expense; Time to File.* A request to pay an administrative expense incurred before conversion is timely filed under § 503(a) if it is filed before conversion or within a time set by the court. Such a request by a governmental unit is timely if it is filed: (A) before conversion; or (B) within 180 days after conversion or within a time set by the court, whichever is later. **(2)** *Proof of Claim Against the Debtor or the Estate.* A proof of claim under § 348(d) against either the debtor or

ORIGINAL	REVISION
time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in § 348(d).	the estate may be filed as specified in Rules 3001(a)–(d) and 3002. **(3)** *Giving Notice of Certain Time Limits.* After the filing of a schedule of debts incurred after the case was commenced but before conversion, the clerk, or the court's designee, must notify the entities listed on the schedule of: (A) the time to request payment of an administrative expense; and (B) the time to file a proof of claim under § 348(d), unless a notice of insufficient assets to pay a dividend has been mailed under Rule 2002(e).

ORIGINAL	REVISION
Rule 1020. Small Business Chapter 11 Reorganization Case	**Rule 1020. Designating a Chapter 11 Debtor as a Small Business Debtor**
(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor. Except as provided in subdivision (c), the status of the case as a small business case shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.	**(a) In General.** In a voluntary Chapter 11 case, the debtor must state in the petition whether the debtor is a small business debtor. In an involuntary case, the debtor must do so in a statement filed within 14 days after the order for relief is entered. Unless (c) provides otherwise, the case must proceed in accordance with the debtor's statement, unless and until the court issues an order finding that the debtor's statement is incorrect.
(b) OBJECTING TO DESIGNATION. Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.	**(b) Objecting to the Designation.** Unless (c) provides otherwise, the United States trustee or a party in interest may object to the debtor's designation. The objection must be filed within 30 days after the conclusion of the meeting of creditors held under § 341(a) or within 30 days after an amendment to the designation is filed, whichever is later.
(c) APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS. If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this	**(c) When a Committee of Unsecured Creditors Has Been Appointed.** **(1)** ***Determining Whether the Committee Is Active and Representative.*** If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case may proceed as a small business case only if, and from the time when, the court determines that: (A) the committee is not sufficiently active and representative in

ORIGINAL	REVISION
subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.	providing effective oversight of the debtor; and (B) the debtor satisfies all other requirements for a small business debtor. **(2)** ***Motion for a Court Determination.*** Within a reasonable time after the committee has become insufficiently active or representative, the United States trustee or a party in interest may move for a determination by the court. The debtor may do so at any time.
(d) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; any committee appointed under § 1102 or its authorized agent, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs.	**(d) Procedure; Service.** An objection or request under this rule is governed by Rule 9014 and must be served on: • the debtor; • the debtor's attorney; • the United States trustee; • the trustee; • any committee appointed under § 1102 or its authorized agent, or, if no unsecured creditors' committee has been appointed, the creditors on the list filed under Rule 1007(d); and • any other entity as the court orders.

ORIGINAL	REVISION
Rule 1021. Health Care Business Case	**Rule 1021. Designating a Chapter 7, 9, or 11 Case as a Health Care Business Case**
(a) HEALTH CARE BUSINESS DESIGNATION. Unless the court orders otherwise, if a petition in a case under chapter 7, chapter 9, or chapter 11 states that the debtor is a health care business, the case shall proceed as a case in which the debtor is a health care business.	**(a) In General.** If a petition in a Chapter 7, 9, or 11 case designates the debtor as a health care business, the case must proceed in accordance with the designation unless the court orders otherwise.
(b) MOTION. The United States trustee or a party in interest may file a motion to determine whether the debtor is a health care business. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs. The motion shall be governed by Rule 9014.	**(b) Seeking a Court Determination.** The United States trustee or a party in interest may move the court to determine whether the debtor is a health care business. Proceedings on the motion are governed by Rule 9014. If the motion is filed by a party in interest, a copy must be sent to the United States trustee. The motion must be served on: • the debtor; • the trustee; • any committee elected under § 705 or appointed under § 1102, or its authorized agent; • in a Chapter 9 or Chapter 11 case in which an unsecured creditors' committee has not been appointed under § 1102, the creditors on the list filed under Rule 1007(d); and • any other entity as the court orders.

Bankruptcy Rules Restyling

2000 Series

ORIGINAL	REVISION
PART II— OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS	**PART II. OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS AND APPOINTMENTS; FINAL REPORT; COMPENSATION**
Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case	**Rule 2001. Appointing an Interim Trustee Before the Order for Relief in an Involuntary Chapter 7 Case**
(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.	**(a) Appointing an Interim Trustee.** After an involuntary Chapter 7 case commences but before an order for relief, the court may, on a party in interest's motion, order the United States trustee to appoint an interim trustee under § 303(g). The motion must set forth the need for the appointment and may be granted only after a hearing on notice to: • the debtor; • the petitioning creditors; • the United States trustee; and • other parties in interest as the court orders.
(b) BOND OF MOVANT. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.	**(b) Bond Required.** An interim trustee may be appointed only if the movant furnishes a bond, in an amount that the court approves, to indemnify the debtor for any costs, attorney's fees, expenses, and damages allowable under § 303(i).
(c) ORDER OF APPOINTMENT. The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.	**(c) The Order's Content.** The court's order must state the reason the appointment is needed and specify the trustee's duties.
(d) TURNOVER AND REPORT. Following qualification of the trustee selected under § 702 of the Code, the	**(d) The Interim Trustee's Final Report.** Unless the court orders otherwise, after

ORIGINAL	REVISION
interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.	qualification of a trustee selected under § 702, the interim trustee must: (1) promptly deliver to the trustee all the records and property of the estate that are in the interim trustee's possession or under its control; and (2) within 30 days after the trustee qualifies, file a final report and account.

ORIGINAL	REVISION
Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee	**Rule 2002. Notices**
(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number; (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent; (4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for	**(a) 21-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (h), (i), (*l*), (p), and (q) provide otherwise, the clerk or the court's designee must give the debtor, the trustee, all creditors, and all indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b), which notice—unless the court orders otherwise—must include the debtor's: (A) employer-identification number; (B) social-security number; and (C) any other federal taxpayer-identification number; (2) a proposal to use, sell, or lease property of the estate other than in the ordinary course of business—unless the court, for cause, shortens the time or orders another method of giving notice; (3) a hearing to approve a compromise or settlement other than an agreement under Rule 4001(d)—unless the court, for cause, orders that notice not be sent; (4) a hearing on a motion to dismiss a Chapter 7, 11, or 12 case or to convert it to another chapter—unless the hearing is under § 707(a)(3) or § 707(b) or is on a motion to dismiss the case for failure to pay the filing fee;

ORIGINAL	REVISION
failure to pay the filing fee; (5) the time fixed to accept or reject a proposed modification of a plan; (6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000; (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and (9) the time fixed for filing objections to confirmation of a chapter 13 plan.	(5) the time to accept or reject a proposed modification to a plan; (6) a hearing on a request for compensation or for reimbursement of expenses, if the request exceeds $1,000; (7) the time to file proofs of claims under Rule 3003(c); (8) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 12 plan; and (9) the time to object to confirming a Chapter 13 plan.
(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.	**(b) 28-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (*l*) provides otherwise, the clerk or the court's designee must give the debtor, trustee, all creditors, and all indenture trustees at least 28 days' notice by mail of: (1) the time to file objections and the time of a hearing to: (A) consider approving a disclosure statement; or (B) determine under § 1125(f) whether a plan includes adequate information to make a separate disclosure statement unnecessary; (2) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 9 or 11 plan; and (3) the time of a hearing to consider whether to confirm a Chapter 13 plan.

ORIGINAL	REVISION
(c) CONTENT OF NOTICE. (1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information. (2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested. (3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall: (A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be subject to the injunction.	**(c) Content of Notice.** **(1)** ***Proposed Use, Sale, or Lease of Property.*** Subject to Rule 6004, a notice of a proposed use, sale, or lease of property under (a)(2) must include: (A) the time and place of any public sale; (B) the terms and conditions of any private sale; and (C) the time to file objections. The notice suffices if it generally describes the property. In a notice of a proposed sale or lease of personally identifiable information under § 363(b)(1), the notice must state whether the sale is consistent with any policy that prohibits transferring the information. **(2)** ***Hearing on an Application for Compensation or Reimbursement.*** A notice under (a)(6) of a hearing on a request for compensation or for reimbursement of expenses must identify the applicant and the amounts requested. **(3)** ***Hearing on Confirming a Plan That Proposes an Injunction.*** If a plan proposes an injunction against conduct not otherwise enjoined under the Code, the notice under (b)(2) must: (A) state in conspicuous language (bold, italic, or underlined text) that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be subject to the injunction.
(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11	**(d) Notice to Equity Security Holders in a Chapter 11 Case.** Unless the court orders

ORIGINAL	REVISION
reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to § 341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.	otherwise, in a Chapter 11 case, the clerk or the court's designee must give notice as the court orders to the equity security holders of: (1) the order for relief; (2) a meeting of equity security holders under § 341; (3) a hearing on a proposed sale of all, or substantially all, the debtor's assets; (4) a hearing on a motion to dismiss a case or convert it to another chapter; (5) the time to file objections to—and the time of the hearing to consider whether to approve—a disclosure statement; (6) the time to file objections to—and the time of the hearing to consider whether to confirm—a Chapter 11 plan; and (7) the time to accept or reject a proposal to modify a plan.
(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.	**(e) Notice of No Dividend in a Chapter 7 Case.** In a Chapter 7 case, if it appears from the schedules that there are no assets from which to pay a dividend, the notice of the meeting of creditors may state: (1) that fact; (2) that filing proofs of claim is unnecessary; and (3) that further notice of the time to file proofs of claim will be given if enough assets become available to pay a dividend.
(f) OTHER NOTICES. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees	**(f) Other Notices.** **(1)** ***Various Notices to the Debtor, Creditors, and Indenture Trustees.*** Except as (*l*) provides otherwise, the clerk, or some other person as the

ORIGINAL	REVISION
notice by mail of: (1) the order for relief; (2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (6) the waiver, denial, or revocation of a discharge as provided in Rule 4006; (7) entry of an order confirming a chapter 9, 11, or 12 plan; (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500; (9) a notice under Rule 5008 regarding the presumption of abuse; (10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and (11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).	court may direct, must give the debtor, creditors, and indenture trustees notice by mail of: (A) the order for relief; (B) a case's dismissal or conversion to another chapter; (C) a suspension of proceedings under § 305; (D) the time to file a proof of claim under Rule 3002; (E) the time to file a complaint to object to the debtor's discharge under § 727, as Rule 4004 provides; (F) the time to file a complaint to determine whether a debt is dischargeable under § 523, as Rule 4007 provides; (G) a waiver, denial, or revocation of a discharge, as Rule 4006 provides; (H) entry of an order confirming a plan in a Chapter 9, 11, or 12 case; (I) a summary of the trustee's final report in a Chapter 7 case if the net proceeds realized exceed $1,500; (J) a notice under Rule 5008 regarding the presumption of abuse; (K) a statement under § 704(b)(1) about whether the debtor's case would be presumed to be an abuse under § 707(b); and (L) the time to request a delay in granting the discharge under §§ 1141(d)(5)(C), 1228(f), or 1328(h). **(2)** ***Notice of the Time to Accept or Reject a Plan.*** Notice of the time to accept or reject a plan under

ORIGINAL	REVISION
	Rule 3017(c) must be given in accordance with Rule 3017(d).
(g) ADDRESSING NOTICES. (1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision— (A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and (B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address. (2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders. (3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative	**(g) Addressing Notices.** **(1)** *In General.* A notice mailed to a creditor, indenture trustee, or equity security holder must be addressed as the entity or its authorized agent provided in its last request filed in the case. The request may be: (A) a proof of claim filed by a creditor or an indenture trustee designating a mailing address (unless a notice of no dividend has been given under (e) and a later notice of a possible dividend under Rule 3002(c)(5) has not been given); or (B) a proof of interest filed by an equity security holder designating a mailing address. **(2)** *When No Request Has Been Filed.* Except as § 342(f) provides otherwise, if a creditor or indenture trustee has not filed a request under (1) or Rule 5003(e), the notice must be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request, the notice must be mailed to the address shown on the list of equity security holders. **(3)** *Notices to Representatives of an Infant or Incompetent Person.* If a list or schedule filed under Rule 1007 includes a name and address of an infant's or an incompetent person's representative, and a person other than that representative files a request or proof of claim designating a different name and mailing address, then unless the court orders otherwise, the notice

ORIGINAL	REVISION
files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim. (4) Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law. (5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.	must be mailed to both persons at their designated addresses. **(4)** ***Using an Address Agreed to Between an Entity and a Notice Provider.*** Notwithstanding (g)(1)-(3), when the court orders that a notice provider give a notice, the provider may do so in the manner agreed to between the provider and an entity, and at the address or addresses the entity supplies. An address supplied by the entity is conclusively presumed to be a proper address for the notice. But a failure to use a supplied address does not invalidate a notice that is otherwise effective under applicable law. **(5)** ***When a Notice Is Not Brought to a Creditor's Attention.*** A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, before the notice was issued, the creditor has filed a statement: (A) designating the name and address of the person or organizational subdivision responsible for receiving notices; and (B) describing the creditor's procedures for delivering notices to the designated person or organizational subdivision.
(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed	**(h) Notice to Creditors That Have Filed Proofs of Claim in a Chapter 7 Case.** **(1)** ***In General.*** In a Chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341,

ORIGINAL	REVISION
only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.	the court may order that all notices required by (a) be mailed only to: • the debtor; • the trustee; • indenture trustees; • creditors with claims for which proofs of claim have been filed; and • creditors that have received an extension of time under Rule 3002(c)(1) or (2) to file proofs of claim. **(2)** ***When a Notice of Insufficient Assets Has Been Given.*** If notice of insufficient assets to pay a dividend has been given to creditors under (e), after 90 days following the mailing of a notice of the time to file proofs of claim under Rule 3002(c)(5), the court may order that notices be mailed only to those entities listed in (1).
(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by	**(i) Notice to a Committee.** **(1)** ***In General.*** Any notice required to be mailed under this Rule 2002 must also be mailed to a committee elected under § 705 or appointed under § 1102, or to its authorized agent. **(2)** ***Limiting Notices.*** The court may order that a notice required by (a)(2), (3), or (6) be: (A) sent to the United States trustee; and (B) mailed only to: (i) the committees elected under § 705 or appointed under § 1102, or to their authorized agents; and

ORIGINAL	REVISION
subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.	(ii) those creditors and equity security holders who file—and serve on the trustee or debtor in possession—a request that all notices be mailed to them. **(3)** *Copy to a Committee.* A notice required under (a)(1), (a)(5), (b), (f)(1)(B)–(C), or (f)(1)(H)—and any other notice as the court orders—must be sent to a committee appointed under § 1114.
(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.	**(j) Notice to the United States.** A notice required to be mailed to all creditors under this Rule 2002 must also be mailed: (1) in a Chapter 11 case in which the Securities and Exchange Commission has filed either a notice of appearance or a request to receive notices, to the SEC at any place it designates; (2) in a commodity-broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a Chapter 11 case, to the Internal Revenue Service at the address in the register maintained under Rule 5003(e) for the district where the case is pending; (4) in a case for which the papers indicate that a debt (other than for taxes) is owed to the United States, to the United States attorney for the district where the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) in a case for which the papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

ORIGINAL	REVISION
(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et. seq.	**(k) Notice to the United States Trustee.** **(1)** *In General.* Except in a Chapter 9 case or unless the United States trustee requests otherwise, the clerk or the court's designee must send to the United States trustee notice of: (A) all matters described in (a)(2)–(4), (a)(8), (b), (f)(1)(A)–(C), (f)(1)(E), (f)(1)(G)–(I), and (q); (B) all hearings on applications for compensation or for reimbursement of expenses; and (C) any other matter if the United States trustee requests it or the court orders it. **(2)** *Time to Send.* The notice must be sent within the time (a) or (b) prescribes. **(3)** *Exception Under the Securities Investor Protection Act.* In a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., these rules do not require any document to be sent to the United States trustee.
(*l*) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.	**(*l*) Notice by Publication.** The court may order notice by publication if notice by mail is impracticable or if it is desirable to supplement the notice.
(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.	**(m) Orders Concerning Notices.** Except as these rules provide otherwise, the court may designate the matters about which, the entity to whom, and the form and manner in which a notice must be sent.
(n) CAPTION. The caption of every notice given under this rule shall comply	**(n) Notice of an Order for Relief in a Consumer Case.** In a voluntary case

ORIGINAL	REVISION
with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.	commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order.
(o) NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.	**(o) Caption.** The caption of a notice given under this Rule 2002 must conform to Rule 1005. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.
(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS. (1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. (2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c). (3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be	**(p) Notice to a Creditor with Foreign Address.** **(1)** ***When Notice by Mail Does Not Suffice.*** At the request of the United States trustee or a party in interest, or on its own, the court may find that a notice mailed to a creditor with a foreign address within the time these rules prescribe would not give the creditor reasonable notice. The court may then order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be extended. **(2)** ***Notice of the Time to File a Proof of Claim.*** Unless the court, for cause, orders otherwise, a creditor with a foreign address must be given at least 30 days' notice of the time to file a proof of claim under Rule 3002(c) or Rule 3003(c). **(3)** ***Determining a Foreign Address.*** Unless the court, for cause, orders otherwise, the mailing address of a

ORIGINAL	REVISION
determined under Rule 2002(g).	creditor with a foreign address must be determined under (g).
(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES. (1) *Notice of Petition for Recognition.* After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision. (2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being	**(q) Notice of a Petition for Recognition of a Foreign Proceeding; Notice of Intent to Communicate with a Foreign Court or Foreign Representative.** **(1)** ***Timing of the Notice; Who Must Receive It.*** After a petition for recognition of a foreign proceeding is filed, the court must promptly hold a hearing on it. The clerk or the court's designee must promptly give at least 21 days' notice by mail of the hearing to: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is being sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entities as the court orders. If the court consolidates the hearing on the petition with a hearing on a request for provisional relief, the court may set a shorter notice period. **(2)** ***Contents of the Notice.*** The notice must: (A) state whether the petition seeks recognition as a foreign main proceeding or a foreign nonmain proceeding; and

ORIGINAL	REVISION
sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.	(B) include a copy of the petition and any other document the court specifies. **(3)** *Communicating with a Foreign Court or Foreign Representative.* If the court intends to communicate with a foreign court or foreign representative, the clerk or the court's designee must give notice by mail of the court's intention to all those listed in (q)(1).

ORIGINAL	REVISION
Rule 2003. Meeting of Creditors or Equity Security Holders	**Rule 2003. Meeting of Creditors or Equity Security Holders**
(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.	**(a) Date and Place of the Meeting.** **(1)** *Date.* Unless § 341(e) applies, the United States trustee must call a meeting of creditors to be held: (A) in a Chapter 7 or 11 case, no fewer than 21 days and no more than 40 days after the order for relief; (B) in a Chapter 12 case, no fewer than 21 days and no more than 35 days after the order for relief; or (C) in a Chapter 13 case, no fewer than 21 days and no more than 50 days after the order for relief. **(2)** *Effect of a Motion or an Appeal.* The United States trustee may set a later date for the meeting if there is a motion to vacate the order for relief, an appeal from such an order, or a motion to dismiss the case. **(3)** *Place; Possible Change in the Meeting Date.* The meeting may be held at a regular place for holding court. Or the United States trustee may designate any other place in the district that is convenient for the parties in interest. If the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief.
(b) ORDER OF MEETING. (1) Meeting of Creditors. The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may	**(b) Conducting the Meeting; Agenda; Who May Vote.** **(1)** *At a Meeting of Creditors.* (A) *Generally.* The United States trustee must preside at the meeting of creditors. The meeting must include an examination of the

ORIGINAL	REVISION
include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths. (2) Meeting of Equity Security Holders. If the United States trustee convenes a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside. (3) Right To Vote. In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of the general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.	debtor under oath. The presiding officer has the authority to administer oaths. (B) *Chapter 7 Cases.* In a Chapter 7 case, the meeting may include the election of a creditors' committee; and if the case is not under Subchapter V, the meeting may include electing a trustee. **(2)** ***At a Meeting of Equity Security Holders.*** If the United States trustee convenes a meeting of equity security holders under § 341(b), the United States trustee must set a date for the meeting and preside over it. **(3)** ***Who Has a Right to Vote; Objecting to the Right to Vote.*** (A) *In a Chapter 7 Case.* A creditor in a Chapter 7 case may vote if, at or before the meeting: (i) the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote under § 702(a); (ii) the proof of claim is not insufficient on its face; and (iii) no objection is made to the claim. (B) *In a Partnership Case.* A creditor in a partnership case may file a proof of claim or a writing evidencing a right to vote for a trustee for the general partner's estate even if a trustee for the partnership's estate has previously qualified. (C) *Objecting to the Amount or Allowability of a Claim for Voting Purposes.* Unless the court orders otherwise, if there is an objection to the amount or allowability of a claim for voting purposes, the United States trustee

ORIGINAL	REVISION
	must tabulate the votes for each alternative presented by the dispute. If resolving the dispute is necessary to determine the election's result, the United States trustee must report to the court the tabulations for each alternative.
(c) RECORD OF MEETING. Any examination under oath at the meeting of creditors held pursuant to § 341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.	**(c) Recording the Proceedings.** At the meeting of creditors under § 341(a), the United States trustee must: (1) record verbatim—using electronic sound-recording equipment or other means of recording—all examinations under oath; (2) preserve the recording and make it available for public access for 2 years after the meeting concludes; and (3) upon request, certify and provide a copy or transcript of the recording to any entity at that entity's expense.
(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE. (1) Report of Undisputed Election. In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed. (2) Disputed Election. If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the	**(d) Reporting Election Results in a Chapter 7 Case.** **(1)** *Undisputed Election.* In a Chapter 7 case, if the election of a trustee or a member of a creditors' committee is undisputed, the United States trustee must promptly file a report of the election. The report must include the name and address of the person or entity elected and a statement that the election was undisputed. **(2)** *Disputed Election.* (A) *United States Trustee's Report.* If the election is disputed, the United States trustee must: (i) promptly file a report informing the court of the nature of the dispute and listing the name and address of any candidate elected

ORIGINAL	REVISION
report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 14 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.	under any alternative presented by the dispute; and (ii) no later than the date on which the report is filed, mail a copy to any party in interest that has requested one. (B) *Interim Trustee.* Until the court resolves the dispute, the interim trustee continues in office. Unless a motion to resolve the dispute is filed within 14 days after the report is filed, the interim trustee serves as trustee in the case.
(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.	**(e) Adjournment.** The presiding official may adjourn the meeting from time to time by announcing at the meeting the date and time to reconvene. The presiding official must promptly file a statement showing the adjournment and the date and time to reconvene.
(f) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.	**(f) Special Meetings of Creditors.** The United States trustee may call a special meeting of creditors or may do so on request of a party in interest.
(g) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.	**(g) Final Meeting of Creditors.** If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $1,500, the clerk must give notice of the meeting to the creditors. The notice must include a summary of the trustee's final account and a statement of the amount of the claims allowed. The trustee must attend the meeting and, if requested, report on the administration of the estate.

ORIGINAL	REVISION
Rule 2004. Examination	**Rule 2004. Examinations**
(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.	**(a) In General.** On motion of a party in interest, the court may order the examination of any entity.
(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.	**(b) Scope of the Examination.** (1) *In General.* The examination of an entity under this Rule 2004, or of a debtor under § 343, may relate only to: (A) the debtor's acts, conduct, or property; (B) the debtor's liabilities and financial condition; (C) any matter that may affect the administration of the debtor's estate; or (D) the debtor's right to a discharge. (2) *Other Topics in Certain Cases.* In a Chapter 12 or 13 case, or in a Chapter 11 case that is not a railroad reorganization, the examination may also relate to: (A) the operation of any business and the desirability of its continuing; (B) the source of any money or property the debtor acquired or will acquire for the purpose of consummating a plan and the consideration given or offered; and (C) any other matter relevant to the case or to formulating a plan.
(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as	**(c) Compelling Attendance and the Production of Documents.** Regardless of the district where the examination will be conducted, an entity may be compelled under Rule 9016 to attend and produce documents. An attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be

ORIGINAL	REVISION
provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.	held if the attorney is admitted to practice in that court or in the court where the case is pending.
(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.	**(d) Time and Place to Examine the Debtor.** The court may, for cause and on terms it may impose, order the debtor to be examined under this Rule 2004 at any designated time and place, in or outside the district.
(e) MILEAGE. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.	**(e) Witness Fees and Mileage.** (1) *For a Nondebtor Witness.* An entity, except the debtor, may be required to attend as a witness only if the lawful mileage and witness fee for 1 day's attendance are first tendered. (2) *For a Debtor Witness.* A debtor who is required to appear for examination more than 100 miles from the debtor's residence must be tendered a mileage fee . The fee need cover only the distance exceeding 100 miles from the nearer of where the debtor resides: (A) when the first petition was filed; or (B) when the examination takes place.

ORIGINAL	REVISION
Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination	**Rule 2005. Apprehending and Removing a Debtor for Examination**
(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.	**(a) Compelling the Debtor's Attendance.** (1) *Order to Apprehend the Debtor.* On motion of a party in interest, supported by an affidavit, the court may order a marshal or other official authorized by law to bring the debtor before the court without unnecessary delay. The affidavit must allege that: (A) the examination is necessary to properly administer the estate, and there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid the examination; (B) the debtor has evaded service of a subpoena or an order to attend the examination; or (C) the debtor has willfully disobeyed a duly served subpoena or order to attend the examination. (2) *Ordering an Immediate Examination.* If, after hearing, the court finds the allegations to be true, it must: (A) order the immediate examination of the debtor; and (B) if necessary, set conditions for further examination and for the debtor's obedience to any further order regarding it.
(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the	**(b) Removing a Debtor to Another District for Examination.** (1) *In General.* When an order is issued under (a)(1) and the debtor is found in another district, the debtor may be

ORIGINAL	REVISION
following rules: (1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order. (2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.	taken into custody and removed as provided in (2) and (3). (2) ***Within 100 Miles.*** A debtor who is taken into custody less than 100 miles from where the order was issued must be brought promptly before the court that issued the order. (3) ***At 100 Miles or More.*** A debtor who is taken into custody 100 miles or more from where the order was issued must be brought without unnecessary delay for a hearing before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the judge finds that the person in custody is the debtor and is subject to an order under (a)(1), or if the person waives a hearing, the judge must order removal, and must release the person in custody on conditions ensuring prompt appearance before the court that issued the order compelling attendance.
(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).	(4) ***Conditions of Release.*** 18 U.S.C. § 3146(a) and (b) govern the court's determination of what conditions will reasonably assure attendance and obedience under this Rule 2005.

ORIGINAL	REVISION
Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases	**Rule 2006. Soliciting and Voting Proxies in a Chapter 7 Case**
(a) APPLICABILITY. This rule applies only in a liquidation case pending under chapter 7 of the Code.	**(a) Applicability.** This Rule 2006 applies only in a Chapter 7 case.
(b) DEFINITIONS. (1) Proxy. A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate. (2) Solicitation of Proxy. The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.	**(b) Definitions.** (1) ***Proxy.*** A "proxy" is a written power of attorney that authorizes an entity to vote the claim or otherwise act as the holder's attorney-in-fact in connection with the administration of the estate. (2) ***Soliciting a Proxy.*** "Soliciting a proxy" means any communication by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of a Chapter 7 petition filed by or against the debtor. But such a communication is not considered soliciting a proxy if it comes from an attorney to a claim owner who is a regular client or who has requested the attorney's representation.
(c) AUTHORIZED SOLICITATION. (1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over $500 or the 100 creditors having the largest claims had at least seven days' notice in writing and of which meeting written minutes were kept and are available	**(c) Who May Solicit a Proxy.** A proxy may be solicited only in writing and only by: (1) a creditor that, on the date the petition was filed, held an allowable unsecured claim against the estate; (2) a committee elected under § 705; (3) a committee elected by creditors that hold a majority of claims in number and in total amount and that: (A) have claims that are not contingent or unliquidated; (B) are not disqualified from voting under § 702(a); and (C) were present or represented at a creditors' meeting of which:

ORIGINAL	REVISION
reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. (2) A proxy may be solicited only in writing.	(i) all creditors with claims over $500 or the 100 creditors with the largest claims had at least 7 days' written notice; and (ii) written minutes are available that report the voting creditors' names and the amounts of their claims; or (4) a bona fide trade or credit association, which may solicit only creditors who, on the petition date: (A) were its members or subscribers in good standing; and (B) held allowable unsecured claims.
(d) SOLICITATION NOT AUTHORIZED. This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.	**(d) When Soliciting a Proxy Is Not Permitted.** This Rule 2006 does not permit soliciting a proxy: (1) for any interest except that of a general creditor; (2) by the interim trustee; or (3) by or on behalf of: (A) a custodian; (B) any entity not qualified to vote under § 702(a); (C) an attorney-at-law; or (D) a transferee holding a claim for collection purposes only.
(e) DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES. At any time before the voting commences at any meeting of creditors pursuant to § 341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified	**(e) Duties of Holders of Multiple Proxies.** Before voting begins at any meeting of creditors under § 341(a)—or at any other time the court orders—a holder of 2 or more proxies must file and send to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances regarding each proxy's execution and delivery. The statement must include:

ORIGINAL	REVISION
statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including: (1) a copy of the solicitation; (2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority; (3) a statement that no consideration has been paid or promised by the proxyholder for the proxy; (4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder's law firm,	(1) a copy of the solicitation; (2) an identification of the solicitor, the forwarder (if the forwarder is neither the solicitor nor the claim owner), and the proxyholder—including their connections with the debtor and with each other—together with: (A) if the solicitor, forwarder, or proxyholder is an association, a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were, on the petition date, members or subscribers in good standing with allowable unsecured claims; and (B) if the solicitor, forwarder, or proxyholder is a committee of creditors, a list stating: (i) the date and place the committee was organized; (ii) that the committee was organized under (c)(2) or (c)(3); (iii) the committee's members; (iv) the amounts of their claims; (v) when the claims were acquired; (vi) the amounts paid for the claims; and (vii) the extent to which the committee members' claims are secured or entitled to priority; (3) a statement that the proxyholder has neither paid nor promised any consideration for the proxy; (4) a statement addressing whether there is any agreement—and, if so, giving its

ORIGINAL	REVISION
which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate; (5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity other than a member or regular associate of the solicitor's or forwarder's law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate; (6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on the member's claim.	particulars—between the proxyholder and any other entity to pay any consideration related to voting the proxy or to share with any entity (except a member or regular associate of the proxyholder's law firm) compensation that may be allowed to: (A) the trustee or any entity for services rendered in the case; or (B) any person employed by the estate; (5) if the proxy was solicited by an entity other than the proxyholder—or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the claim owner—a statement signed and verified by the solicitor or forwarder: (A) confirming that no consideration has been paid or promised for the proxy; (B) addressing whether there is any agreement—and, if so, giving its particulars—between the solicitor or forwarder and any other entity to pay any consideration related to voting the proxy or to share with any entity (except a member or regular associate of the solicitor's or forwarder's law firm) compensation that may be allowed to: (i) the trustee or any entity for services rendered in the case; or (ii) any person employed by the estate; and (6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member disclosing the amount and source of any consideration paid or to

ORIGINAL	REVISION
	be paid to the member in connection with the case, except a dividend on the member's claim.
(f) ENFORCEMENT OF RESTRICTIONS ON SOLICITATION. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.	**(f) Enforcing Restrictions on Soliciting Proxies.** On motion of a party in interest or on its own, the court may determine whether there has been a failure to comply with this Rule 2006 or any other impropriety related to soliciting or voting a proxy. After notice and a hearing, the court may: (1) reject a proxy for cause; (2) vacate an order entered because a proxy was voted that should have been rejected; or (3) take other appropriate action.

ORIGINAL	REVISION
Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case	**Rule 2007. Reviewing the Appointment of a Creditors' Committee Organized Before a Chapter 9 or 11 Case Is Commenced**
(a) MOTION TO REVIEW APPOINTMENT. If a committee appointed by the United States trustee pursuant to § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as the court may direct, the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code.	**(a) Motion to Review the Appointment.** If, in a Chapter 9 or 11 case, a committee appointed by the United States trustee under § 1102(a) consists of the members of a committee organized by creditors before the case commenced, the court may determine whether the committee's appointment satisfies the requirements of § 1102(b)(1). The court may do so on a party in interest's motion and after a hearing on notice to the United States trustee and other entities as the court orders.
(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if: (1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least seven days' notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection; (2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the	**(b) Determining Whether the Committee Was Fairly Chosen.** The court may find that the committee was fairly chosen if: (1) it was selected by a majority in number and amount of claims of unsecured creditors who are entitled to vote under § 702(a) and who were present or represented at a meeting of which: (A) all creditors with unsecured claims of over $1,000 or the 100 unsecured creditors with the largest claims had at least 7 days' written notice; and (B) written minutes are available for inspection reporting the voting creditors' names and the amounts of their claims; (2) all proxies voted at the meeting were solicited under Rule 2006; (3) the lists and statements required by Rule 2006(e) have been sent to the United States trustee; and

ORIGINAL	REVISION
lists and statements required by subdivision (e) thereof have been transmitted to the United States trustee; and (3) the organization of the committee was in all other respects fair and proper.	(4) the committee's organization was in all other respects fair and proper.
(c) FAILURE TO COMPLY WITH REQUIREMENTS FOR APPOINTMENT. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.	**(c) Failure to Comply with Appointment Requirements.** If, after a hearing on notice under (a), the court finds that a committee appointment fails to satisfy the requirements of § 1102(b)(1), it: (1) must order the United States trustee to vacate the appointment; and (2) may order other appropriate action.

ORIGINAL	REVISION
Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case	**Rule 2007.1. Appointing a Trustee or Examiner in a Chapter 11 Case**
(a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.	**(a) In General.** In a Chapter 11 case, a motion to appoint a trustee or examiner under § 1104(a) or (c) must be made in accordance with Rule 9014.
(b) ELECTION OF TRUSTEE. (1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. (2) *Manner of Election and Notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006. (3) *Report of Election and Resolution of Disputes.* (A) *Report of Undisputed Election.* If no dispute arises out of the	**(b) Requesting the United States Trustee to Convene a Meeting of Creditors to Elect a Trustee.** **(1)** ***In General.*** A request to the United States trustee to convene a meeting of creditors to elect a trustee must be filed and sent to the United States trustee in accordance with Rule 5005 and within the time prescribed by § 1104(b). Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved under (c) below must serve as trustee. **(2)** ***Notice and Manner of Conducting the Election.*** A trustee's election under § 1104(b) must be conducted as Rules 2003(b)(3) and 2006 provide, and notice of the meeting of creditors must be given as Rule 2002 provides. The United States trustee must preside at the meeting. A proxy to vote in the election may be solicited only by a creditors' committee appointed under § 1102 or by another party entitled to solicit a proxy under Rule 2006. **(3)** ***Reporting Election Results; Resolving Disputes.*** (A) *Undisputed Election.* If the election is undisputed, the United States trustee must promptly file a report certifying the election, including

ORIGINAL	REVISION
election, the United States trustee shall promptly file a report certifying the election, including the name and address of the person elected and a statement that the election is undisputed. The report shall be accompanied by a verified statement of the person elected setting forth that person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. (B) *Dispute Arising Out of an Election*. If a dispute arises out of an election, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code.	the name and address of the person elected and a statement that the election is undisputed. The report must be accompanied by a verified statement of the person elected setting forth that person's connections with: (i) the debtor; (ii) creditors; (iii) any other party in interest; (iv) their respective attorneys and accountants; (v) the United States trustee; or (vi) any person employed in the United States trustee's office. (B) *Disputed Election.* If the election is disputed, the United States trustee must promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report must be accompanied by a verified statement by each such candidate, setting forth the candidate's connections with any entity listed in (A). No later than the date on which the report of the disputed election is filed, the United States trustee must mail a copy of the report and each verified statement to: (i) any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report; and

ORIGINAL	REVISION
	(ii) any committee appointed under § 1102.
(c) APPROVAL OF APPOINTMENT. An order approving the appointment of a trustee or an examiner under § 1104(d) of the Code shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or persons employed in the office of the United States trustee. The application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	**(c) Approving an Appointment.** On application of the United States trustee, the court may approve a trustee's or examiner's appointment under § 1104(d). The application must: (1) name the person appointed and state, to the best of the applicant's knowledge, all that person's connections with any entity listed in (b)(3)(A); (2) state the names of the parties in interest with whom the United States trustee consulted about the appointment; and (3) be accompanied by a verified statement of the person appointed setting forth that person's connections with any entity listed in (b)(3)(A).

ORIGINAL	REVISION
Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case	**Rule 2007.2. Appointing a Patient-Care Ombudsman in a Health Care Business Case**
(a) ORDER TO APPOINT PATIENT CARE OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under § 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than 21 days after the commencement of the case or within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.	**(a) In General.** In a Chapter 7, 9, or 11 case in which the debtor is a health care business, the court must order the appointment of a patient-care ombudsman under § 333—unless the court, on motion of the United States trustee or a party in interest, finds that appointing a patient-care ombudsman in that case is not necessary to protect patients. The motion must be filed within 21 days after the case was commenced or at another time set by the court.
(b) MOTION FOR ORDER TO APPOINT OMBUDSMAN. If the court has found that the appointment of an ombudsman is not necessary, or has terminated the appointment, the court, on motion of the United States trustee or a party in interest, may order the appointment at a later time if it finds that the appointment has become necessary to protect patients.	**(b) Deferred Appointment.** If the court has found that appointing an ombudsman is unnecessary, or has terminated the appointment, the court may, on motion of the United States trustee or a party in interest, order an appointment later if it finds that an appointment has become necessary to protect patients.
(c) NOTICE OF APPOINTMENT. If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment, including the name and address of the person appointed. Unless the person appointed is a State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office	**(c) Giving Notice.** When a patient-care ombudsman is appointed under § 333, the United States trustee must promptly file a notice of the appointment, including the name and address of the person appointed. Unless that person is a State Long-Term-Care Ombudsman, the notice must be accompanied by a verified statement of the person appointed setting forth that person's connections with: (1) the debtor; (2) creditors; (3) patients;

ORIGINAL	REVISION
of the United States trustee.	(4) any other party in interest; (5) their respective attorneys and accountants; (6) the United States trustee; or (7) any person employed in the United States trustee's office.
(d) TERMINATION OF APPOINTMENT. On motion of the United States trustee or a party in interest, the court may terminate the appointment of a patient care ombudsman if the court finds that the appointment is not necessary to protect patients.	**(d) Terminating an Appointment.** On motion of the United States trustee or a party in interest, the court may terminate a patient-care ombudsman's appointment that it finds to be unnecessary to protect patients.
(e) MOTION. A motion under this rule shall be governed by Rule 9014. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct.	**(e) Procedure.** Rule 9014 governs any motion under this Rule 2007.2. The motion must be sent to the United States trustee and served on: • the debtor; • the trustee; • any committee elected under § 705 or appointed under § 1102, or its authorized agent; and • any other entity as the court orders. In a Chapter 9 or 11 case, if no committee of unsecured creditors has been appointed under § 1102, the motion must also be served on the creditors included on the list filed under Rule 1007(d).

ORIGINAL	REVISION
Rule 2008. Notice to Trustee of Selection	**Rule 2008. Notice to the Person Selected as Trustee**
The United States trustee shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter 13 case that does not notify the court and the United States trustee in writing of rejection of the office within seven days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court and the United States trustee in writing of acceptance of the office within seven days after receipt of notice of selection or shall be deemed to have rejected the office.	**(a) Giving Notice.** The United States trustee must immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. **(b) Accepting the Position of Trustee.** **(1)** ***Trustee Who Has Filed a Blanket Bond.*** A trustee selected in a Chapter 7, 12, or 13 case who has filed a blanket bond under Rule 2010 may reject the office by notifying the court and the United States trustee in writing within 7 days after receiving notice of selection. Otherwise, the trustee will be deemed to have accepted the office. **(2)** ***Other Trustees.*** Any other person selected as trustee may accept the office by notifying the court and the United States trustee in writing within 7 days after receiving notice of selection. Otherwise, the person will be deemed to have rejected the office.

ORIGINAL	REVISION
Rule 2009. Trustees for Estates When Joint Administration Ordered	**Rule 2009. Trustees for Jointly Administered Estates**
(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 of the Code.	**(a) Creditors' Right to Elect a Single Trustee.** Except in a case under Subchapter V of Chapter 7, if the court orders that 2 or more estates be jointly administered under Rule 1015(b), the creditors may elect a single trustee for those estates.
(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7.	**(b) Creditors' Right to Elect a Separate Trustee.** Except in a case under Subchapter V of Chapter 7, any debtor's creditors may elect a separate trustee for the debtor's estate under § 702—even if the court orders joint administration under Rule 1015(b).
(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED. (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases. (2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases. (3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases. (4) *Chapter 13 Individual's Debt*	**(c) United States Trustee's Right to Appoint Interim Trustees in Cases with Jointly Administered Estates.** (1) ***Chapter 7.*** Except in a case under Subchapter V of Chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in Chapter 7. (2) ***Chapter 11.*** If the court orders the appointment of a trustee, the United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 11. (3) ***Chapter 12 or 13.*** The United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 12 or 13.

ORIGINAL	REVISION
Adjustment Cases. The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.	
(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.	**(d) Conflicts of Interest.** On a showing that a common trustee's conflicts of interest will prejudice creditors or equity security holders of jointly administered estates, the court must order the selection of separate trustees for the estates.
(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.	**(e) Keeping Separate Accounts.** A trustee of jointly administered estates must keep separate accounts of each estate's property and distribution.

ORIGINAL	REVISION
Rule 2010. Qualification by Trustee; Proceeding on Bond	**Rule 2010. Blanket Bond; Proceedings on the Bond**
(a) BLANKET BOND. The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.	**(a) Authorizing a Blanket Bond.** The United States trustee may authorize a blanket bond in the United States' favor, conditioned on the faithful performance of a trustee's official duties to cover: (1) a person who qualifies as trustee in multiple cases; or (2) multiple trustees who each qualifies in a different case.
(b) PROCEEDING ON BOND. A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.	**(b) Proceedings on the Bond.** A party in interest may bring a proceeding in the name of the United States on a trustee's bond for the use of the entity injured by the trustee's breach of the condition.

ORIGINAL	REVISION
Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee	**Rule 2011. Evidence That a Debtor Is a Debtor in Possession or That a Trustee Has Qualified**
(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.	**(a) The Clerk's Certification.** Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may issue a certificate to that effect. The certification constitutes conclusive evidence of that fact.
(b) If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a) of the Code, the clerk shall so notify the court and the United States trustee.	**(b) Trustee's Failure to Qualify.** If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a), the clerk must so notify the court and the United States trustee.

ORIGINAL	REVISION
Rule 2012. Substitution of Trustee or Successor Trustee; Accounting	**Rule 2012. Substituting a Trustee in a Chapter 11 or 12 Case; Successor Trustee in a Pending Proceeding**
(a) TRUSTEE. If a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.	**(a) Substituting a Trustee.** If a trustee is appointed in a Chapter 11 case or the debtor is removed as debtor in possession in a Chapter 12 case, the trustee is automatically substituted for the debtor in possession as a party in any pending action, proceeding, or matter.
(b) SUCCESSOR TRUSTEE. When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.	**(b) Successor Trustee.** When a trustee dies, resigns, is removed, or otherwise ceases to hold office while a bankruptcy case is pending, the successor trustee is automatically substituted as a party in any pending action, proceeding, or matter. The successor trustee must prepare, file, and send to the United States trustee an accounting of the estate's prior administration.

ORIGINAL	REVISION
Rule 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals	**Rule 2013. Keeping a Public Record of Compensation Awarded by the Court to Examiners, Trustees, and Professionals**
(a) RECORD TO BE KEPT. The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.	**(a) In General.** The clerk must keep a public record of fees the court awards to examiners and trustees, and to attorneys, accountants, appraisers, auctioneers, and other professionals that trustees employ. The record must include the case name and case number, the name of the individual or firm receiving the fee, and the amount awarded. The record must be maintained chronologically and be kept current and open for public examination without charge. "Trustee," as used in this Rule 2013, does not include a debtor in possession.
(b) SUMMARY OF RECORD. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge. The clerk shall transmit a copy of the summary to the United States trustee.	**(b) Annual Summary of the Record.** At the end of each year, the clerk must prepare a summary of the public record, by individual or firm name, showing the total fees awarded during the year. The summary must be open for public examination without charge. The clerk must send a copy of the summary to the United States trustee.

ORIGINAL	REVISION
Rule 2014. Employment of Professional Persons	**Rule 2014. Employing Professionals**
(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	**(a) Order Approving Employment; Application for Employment.** (1) *Order Approving Employment.* The court may approve the employment of an attorney, accountant, appraiser, auctioneer, agent, or other professional under § 327, § 1103, or § 1114 only on the trustee's or committee's application. (2) *Application for Employment.* The applicant must file the application and, except in a Chapter 9 case, must send a copy to the United States trustee. The application must state specific facts showing: (A) the necessity for the employment; (B) the name of the person to be employed; (C) the reasons for the selection; (D) the professional services to be rendered; (E) any proposed arrangement for compensation; and (F) to the best of the applicant's knowledge, all the person's connections with: • the debtor; • creditors; • any other party in interest; • their respective attorneys and accountants; • the United States trustee; and • any person employed in the United States trustee's office.

ORIGINAL	REVISION
	(3) *Verified Statement.* The application must be accompanied by a verified statement of the person to be employed, setting forth that person's connections with any entity listed in (2)(F).
(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.	**(b) Services Rendered by a Member or Associate of a Law or Accounting Firm.** If a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant—or if a named attorney or accountant is employed—then any partner, member, or regular associate may act as so employed, without further court order.

ORIGINAL	REVISION
Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status	**Rule 2015. Duty to Keep Records, Make Reports, and Give Notices**
(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall: (1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter	**(a) Duties of a Trustee or Debtor in Possession.** A trustee or debtor in possession must: (1) in a Chapter 7 case and, if the court so orders, in a Chapter 11 case, file and send to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file: (A) the reports and summaries required by § 704(a)(8); and (B) if payments are made to employees, a statement of the amounts of deductions for all taxes required to be withheld or paid on the employees' behalf and the place where these funds are deposited; (4) give notice of the case, as soon as possible after it commences, to the following entities, except those who know or have previously been notified of the case: (A) every entity known to be holding money or property subject to the debtor's withdrawal or order, including every bank, savings- or building-and-loan association, public utility company, and

ORIGINAL	REVISION
during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and (6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.	landlord with whom the debtor has a deposit; and (B) every insurance company that has issued a policy with a cash-surrender value payable to the debtor; (5) in a Chapter 11 case, on or before the last day of the month after each calendar quarter during which fees must be paid under 28 U.S.C. § 1930(a)(6), file and send to the United States trustee a statement of those fees and any disbursements made during that quarter; and (6) in a Chapter 11 small business case, unless the court, for cause, sets a different schedule, file and send to the United States trustee a report under § 308, using Form 425C, for each calendar month after the order for relief on the following schedule: • If the order for relief is within the first 15 days of a calendar month, the report must be filed for the rest of that month. • If the order for relief is after the 15th, the information for the rest of that month must be included in the report for the next calendar month. Each report must be filed within 21 days after the last day of the month following the month that the report covers. The obligation to file reports ends on the date that the plan becomes effective or the case is converted or dismissed.
(b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in	**(b) Duties of a Chapter 12 Trustee or Debtor in Possession.** In a Chapter 12 case, the debtor in possession must perform the duties prescribed in (a)(2)–(4)

ORIGINAL	REVISION
possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.	and, if the court orders, file and send to the United States trustee a complete inventory of the debtor's property within the time the court sets. If the debtor is removed as debtor in possession, the trustee must perform these duties.
(c) CHAPTER 13 TRUSTEE AND DEBTOR. (1) Business Cases. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.(2) Nonbusiness Cases. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.	**(c) Duties of a Chapter 13 Trustee and Debtor.** **(1)** ***Chapter 13 Business Case.*** In a Chapter 13 case, a debtor engaged in business must: (A) perform the duties prescribed by (a)(2)–(4); and (B) if the court so orders, file and send to the United States trustee a complete inventory of the debtor's property within the time the court sets. **(2)** ***Other Chapter 13 Case.*** In a Chapter 13 case in which the debtor is not engaged in business, the trustee must perform the duties prescribed by (a)(2).
(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.	**(d) Duties of a Chapter 15 Foreign Representative.** In a Chapter 15 case in which the court has granted recognition of a foreign proceeding, the foreign representative must file any notice required under § 1518 within 14 days after becoming aware of the subsequent information.
(e) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of	**(e) Making Reports Available in a Chapter 11 Case.** In a Chapter 11 case, the court may order that copies or summaries of annual reports and other reports be

ORIGINAL	REVISION
other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.	mailed to creditors, equity security holders, and indenture trustees. The court may also order that summaries of these reports be published. A copy of every such report or summary, whether mailed or published, must be sent to the United States trustee.

ORIGINAL	REVISION
Rule 2015.1. Patient Care Ombudsman	**Rule 2015.1. Patient-Care Ombudsman**
(a) REPORTS. A patient care ombudsman, at least 14 days before making a report under § 333(b)(2) of the Code, shall give notice that the report will be made to the court, unless the court orders otherwise. The notice shall be transmitted to the United States trustee, posted conspicuously at the health care facility that is the subject of the report, and served on: the debtor; the trustee; all patients; and any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct. The notice shall state the date and time when the report will be made, the manner in which the report will be made, and, if the report is in writing, the name, address, telephone number, email address, and website, if any, of the person from whom a copy of the report may be obtained at the debtor's expense.	**(a) Notice of the Report.** Unless the court orders otherwise, a patient-care ombudsman must give at least 14 days' notice before making a report under § 333(b)(2). (1) *Recipients of the Notice.* The notice must be sent to the United States trustee, posted conspicuously at the healthcare facility that is the report's subject, and served on: • the debtor; • the trustee; • all patients; • any committee elected under § 705 or appointed under § 1102 or its authorized agent; • in a Chapter 9 or 11 case, the creditors on the list filed under Rule 1007(d) if no committee of unsecured creditors has been appointed under § 1102; and • any other entity as the court orders. (2) *Contents of the Notice.* The notice must state: (A) the date and time when the report will be made; (B) the manner in which it will be made; and (C) if it will be written, the name, address, telephone number, email address, and any website of the person from whom a copy may be obtained at the debtor's expense.

ORIGINAL	REVISION
(b) AUTHORIZATION TO REVIEW CONFIDENTIAL PATIENT RECORDS. A motion by a patient care ombudsman under § 333(c) to review confidential patient records shall be governed by Rule 9014, served on the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and transmitted to the United States trustee subject to applicable nonbankruptcy law relating to patient privacy. Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 14 days after service of the motion.	**(b) Authorization to Review Confidential Patient Records.** **(1)** *Motion to Review; Service.* A patient-care ombudsman's motion under § 333(c) to review confidential patient records is governed by Rule 9014. The motion must: (A) be served on the patient; (B) be served on any family member or other contact person whose name and address have been given to the trustee or the debtor to provide information about the patient's healthcare; and (C) be sent to the United States trustee, subject to applicable nonbankruptcy law relating to patient privacy. **(2)** *Time for a Hearing*. Unless the court orders otherwise, a hearing on the motion may not commence earlier than 14 days after the motion is served.

ORIGINAL	REVISION
Rule 2015.2. Transfer of Patient in Health Care Business Case	**Rule 2015.2. Transferring a Patient in a Health Care Business Case**
Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under § 704(a)(12) of the Code unless the trustee gives at least 14 days' notice of the transfer to the patient care ombudsman, if any, the patient, and any family member or other contact person whose name and address has been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care. The notice is subject to applicable nonbankruptcy law relating to patient privacy.	Unless the court orders otherwise, if the debtor is a health care business, the trustee may transfer a patient to another health care business under § 704(a)(12) only if the trustee gives at least 14 days' notice of the transfer to: • any patient-care ombudsman; • the patient; and • any family member or other contact person whose name and address have been given to the trustee or the debtor to provide information about the patient's healthcare. The notice is subject to applicable nonbankruptcy law concerning patient privacy.

ORIGINAL	REVISION
Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest	**Rule 2015.3. Reporting Financial Information About Entities in Which a Chapter 11 Estate Holds a Substantial or Controlling Interest**
(a) REPORTING REQUIREMENT. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.	**(a) Reporting Requirement; Contents of the Report.** In a Chapter 11 case, the trustee or debtor in possession must file periodic financial reports of the value, operations, and profitability of each entity in which the estate holds a substantial or controlling interest—unless the entity is a publicly traded corporation or a debtor in a bankruptcy case. The reports must be prepared as prescribed by Form 426 and be based on the most recent information reasonably available to the filer.
(b) TIME FOR FILING; SERVICE. The first report required by this rule shall be filed no later than seven days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.	**(b) Time to File; Service.** The first report must be filed at least 7 days before the first date set for the meeting of creditors under § 341. Later reports must be filed at least every 6 months, until the date a plan becomes effective or the case is converted or dismissed. A copy of each report must be served on the United States trustee, any committee appointed under § 1102, and any other party in interest that has filed a request for it.
(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall	**(c) Presumption of a Substantial or Controlling Interest.** (1) *When a Presumption Applies.* Under this Rule 2015.3, the estate is presumed to have a substantial or controlling interest in an entity of which it controls or owns at least a 20% interest. Otherwise, the estate is presumed not to have a substantial or controlling interest.

ORIGINAL	REVISION
be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.	(2) ***Rebutting the Presumption.*** The entity, any holder of an interest in it, the United States trustee, or any other party in interest may move to rebut either presumption. After notice and a hearing, the court must determine whether the estate's interest in the entity is substantial or controlling.
(d) MODIFICATION OF REPORTING REQUIREMENT. The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.	**(d) Modifying the Reporting Requirement.** After notice and a hearing, the court may vary the reporting requirements of (a) for cause, including that: (1) the trustee or debtor in possession is not able, after a good-faith effort, to comply with them; or (2) the required information is publicly available.
(e) NOTICE AND PROTECTIVE ORDERS. No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders—known to the trustee or debtor in possession—of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under § 107 of the Code.	**(e) Notice to Entities in Which the Estate has a Substantial or Controlling Interest; Protective Order.** At least 14 days before filing the first report under (a), the trustee or debtor in possession must send notice to every entity in which the estate has a substantial or controlling interest—and all known holders of an interest in the entity—that the trustee or debtor in possession expects to file and serve financial information about the entity in accordance with this Rule 2015.3. Any such entity, or person holding an interest in it, may request that the information be protected under § 107.
(f) EFFECT OF REQUEST. Unless the court orders otherwise, the pendency of a request under subdivisions (c), (d), or (e) of this rule shall not alter or stay the	**(f) Effect of a Request.** Unless the court orders otherwise, a pending request under (c), (d), or (e) does not alter or stay the requirements of (a).

ORIGINAL	REVISION
requirements of subdivision (a).	

ORIGINAL	REVISION
Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses	**Rule 2016. Compensation for Services Rendered; Reimbursing Expenses**
(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.	**(a) In General.** (1) *Application.* An entity seeking from the estate interim or final compensation for services or reimbursement of necessary expenses must file an application showing: (A) in detail the amounts requested and the services rendered, time expended, and expenses incurred; (B) all payments previously made or promised for services rendered or to be rendered in connection with the case; (C) the source of the paid or promised compensation; (D) whether any previous compensation has been shared and whether an agreement or understanding exists between the applicant and any other entity for sharing compensation for services rendered or to be rendered in connection with the case; and (E) the particulars of any compensation sharing or agreement or understanding to share, except by the applicant as a member or regular associate of a law or accounting firm. (2) *Application for Services Rendered or to be Rendered by Attorney or Accountant.* The requirements of (a) apply to an application for compensation for services rendered by an attorney or accountant, even though a creditor or other entity files the application.

ORIGINAL	REVISION
	(3) *Copy to United States Trustee.* Except in a Chapter 9 case, the applicant must send a copy of the application to the United States trustee.
(b) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.	**(b) Disclosing Compensation Paid or Promised to the Debtor's Attorney.** Within 14 days after the order for relief—or at another time as the court orders—every debtor's attorney (whether or not applying for compensation) must file and send to the United States trustee the statement required by § 329. The statement must show whether the attorney has shared or agreed to share compensation with any other entity and, if so, the particulars of any sharing or agreement to share, except with a member or regular associate of the attorney's law firm. Within 14 days after any payment or agreement to pay not previously disclosed, the attorney must file and send to the United States trustee a supplemental statement.
(c) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO BANKRUPTCY PETITION PREPARER. Before a petition is filed, every bankruptcy petition preparer for a debtor shall deliver to the debtor, the declaration under penalty of perjury required by § 110(h)(2). The declaration shall disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration shall also describe the services performed and	**(c) Disclosing Compensation Paid or Promised to a Bankruptcy Petition Preparer.** (1) *Basic Requirements.* Before a petition is filed, every bankruptcy petition preparer for a debtor must deliver to the debtor the declaration under penalty of perjury required by § 110(h)(2). The declaration must: (A) disclose any fee, and its source, received from or on behalf of the debtor within 12 months before the petition's filing, together with

ORIGINAL	REVISION
documents prepared or caused to be prepared by the bankruptcy petition preparer. The declaration shall be filed with the petition. The petition preparer shall file a supplemental statement within 14 days after any payment or agreement not previously disclosed.	all unpaid fees charged to the debtor; (B) describe the services performed and the documents prepared or caused to be prepared by the bankruptcy petition preparer; and (C) be filed with the petition. (2) *Supplemental Statement.* Within 14 days after any later payment or agreement to pay not previously disclosed, the bankruptcy petition preparer must file a supplemental statement.

ORIGINAL	REVISION
Rule 2017. Examination of Debtor's Transactions with Debtor's Attorney	**Rule 2017. Examining Transactions Between a Debtor and the Debtor's Attorney**
(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.	**(a) Payments or Transfers to an Attorney Made Before the Order for Relief.** On motion of a party in interest, or on its own, the court may, after notice and a hearing, determine whether a debtor's direct or indirect payment of money or transfer of property to an attorney for services rendered or to be rendered was excessive if it was made: (1) in contemplation of the filing of a bankruptcy petition by or against the debtor, or (2) before the order for relief is entered in an involuntary case.
(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.	**(b) Payments or Transfers to an Attorney Made After the Order for Relief Is Entered.** On motion of the debtor or the United States trustee, or on its own, the court may, after notice and a hearing, determine whether a debtor's payment of money or transfer of property—or agreement to pay money or transfer property—to an attorney after an order for relief is entered is excessive. It does not matter for the determination whether the payment or transfer is made, or to be made, direct or indirect, if the payment, transfer, or agreement is for services related to the case.

ORIGINAL	REVISION
Rule 2018. Intervention; Right to Be Heard	**Rule 2018. Intervention by an Interested Entity; Right to Be Heard**
(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.	**(a) In General.** After hearing on such notice as the court orders and for cause, the court may permit an interested entity to intervene generally or regarding any specified matter.
(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.	**(b) Intervention by a State Attorney General.** In a Chapter 7, 11, 12, or 13 case, a state attorney general may appear and be heard on behalf of consumer creditors if the court determines that the appearance is in the public interest. But the state attorney general may not appeal from any judgment, order, or decree entered in the case.
(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.	**(c) Intervention by the United States Secretary of the Treasury or a State Representative.** In a Chapter 9 case: (1) the United States Secretary of the Treasury may—and if requested by the court must—intervene; and (2) a representative of the state where the debtor is located may intervene on matters the court specifies.
(d) LABOR UNIONS. In a chapter 9, 11, or 12 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees. A labor union or employees' association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.	**(d) Intervention by a Labor Union or an Association Representing the Debtor's Employees.** In a Chapter 9, 11, or 12 case, a labor union or an association representing the debtor's employees has the right to be heard on the economic soundness of a plan affecting the employees' interests. Unless otherwise permitted by law, the labor union or employees' association exercising that right may not appeal any judgment, order, or decree related to the plan.

ORIGINAL	REVISION
(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.	**(e) Serving Entities Covered by This Rule.** The court may issue orders governing the service of notice and papers on entities permitted to intervene or be heard under this Rule 2018.

ORIGINAL	REVISION
Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases	**Rule 2019. Disclosures by Groups, Committees, and Other Entities in a Chapter 9 or 11 Case**
(a) DEFINITIONS. In this rule the following terms have the meanings indicated: (1) "Disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest. (2) "Represent" or "represents" means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.	**(a) Definitions.** In this Rule 2019: (1) "disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest; and (2) "represent" or "represents" means to take a position before the court or to solicit votes regarding a plan's confirmation on another's behalf.
(b) DISCLOSURE BY GROUPS, COMMITTEES, AND ENTITIES. (1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another. (2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as: (A) an indenture trustee; (B) an agent for one or more other entities under an agreement	**(b) Who Must Disclose.** **(1)** *In General*. In a Chapter 9 or 11 case, a verified statement containing the information listed in (c) must be filed by every group or committee consisting of or representing, and every entity representing, multiple creditors or equity security holders that are: (A) acting in concert to advance their common interests; and (B) not composed entirely of affiliates or insiders of one another. **(2)** *When a Disclosure Statement Is Not Required.* Unless the court orders otherwise, an entity need not file the statement described in (1) solely because it is: (A) an indenture trustee;

ORIGINAL	REVISION
for the extension of credit; (C) a class action representative; or (D) a governmental unit that is not a person.	(B) an agent for one or more other entities under an agreement to extend credit; (C) a class-action representative; or (D) a governmental unit that is not a person.
(c) INFORMATION REQUIRED. The verified statement shall include: (1) the pertinent facts and circumstances concerning: (A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or (B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged; (2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee: (A) name and address; (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and (C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee	**(c) Required Information.** The verified statement must include: (1) the pertinent facts and circumstances concerning: (A) for a group or committee (except a committee appointed under § 1102 or § 1114), its formation, including the name of each entity at whose instance it was formed or for whom it has agreed to act; or (B) for an entity, the entity's employment, including the name of each creditor or equity security holder at whose instance the employment was arranged; (2) if not disclosed under (1), for each member of a group or committee and for an entity: (A) name and address; (B) the nature and amount of each disclosable economic interest held in relation to the debtor when the group or committee was formed or the entity was employed; and (C) for each member of a group or committee claiming to represent any entity in addition to its own members (except a committee appointed under § 1102 or § 1114), the quarter and year in which each disclosable economic interest was acquired—unless it was acquired more than 1 year before the petition was filed;

ORIGINAL	REVISION
appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed; (3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code: (A) name and address; and (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and (4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.	(3) if not disclosed under (1) or (2), for each creditor or equity security holder represented by an entity, group, or committee (except a committee appointed under § 1102 or § 1114): (A) name and address; and (B) the nature and amount of each disclosable economic interest held in relation to the debtor on the statement's date; and (4) a copy of any instrument authorizing the group, committee, or entity to act on behalf of creditors or equity security holders.
(d) SUPPLEMENTAL STATEMENTS. If any fact disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.	**(d) Supplemental Statements.** If a fact disclosed in its most recent statement has changed materially, a group, committee, or entity must file a verified supplemental statement whenever it takes a position before the court or solicits votes on a plan's confirmation. The supplemental statement must set forth any material changes in the information specified in (c).
(e) DETERMINATION OF FAILURE TO COMPLY; SANCTIONS. (1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.	**(e) Failure to Comply; Sanctions.** **(1)** ***Failure to Comply.*** On a party in interest's motion, or on its own, the court may determine whether there has been a failure to comply with this Rule 2019.

ORIGINAL	REVISION
(2) If the court finds such a failure to comply, it may: (A) refuse to permit the entity, group, or committee to be heard or to intervene in the case; (B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or (C) grant other appropriate relief.	**(2)** ***Sanctions.*** If the court finds a failure to comply, it may: (A) refuse to permit the group, committee, or entity to be heard or to intervene in the case; (B) hold invalid any authority, acceptance, rejection, or objection that the group, committee, or entity has given, procured, or received; or (C) grant other appropriate relief.

ORIGINAL	REVISION
Rule 2020. Review of Acts by United States Trustee	**Rule 2020. Reviewing an Act by a United States Trustee**
A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.	A proceeding to contest any act or failure to act by a United States trustee is governed by Rule 9014.

Committee Note [for Rule 1001]

The Bankruptcy Rules are the fifth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence took effect in 2011. The restyled Bankruptcy Rules apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, Civil and Evidence Rules.

General Guidelines. Guidance in drafting, usage, and style was provided by Bryan Garner, Guidelines for Drafting and Editing Court Rules, Administrative Office of the United States Courts (1996) and Bryan Garner, Dictionary of Modern Legal Usage (2d ed. 1995). See also Joseph Kimble, Guiding Principles for Restyling the Civil Rules, in Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure, at page x (Feb. 2005) (available at https://www.michbar.org/file/barjournal/article/documents/pdf4article909.pdf and https://www.michbar.org/file/barjournal/article/documents/pdf4article921.pdf); Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing 25 (2008-2009).

Formatting Changes. Many of the changes in the restyled Bankruptcy Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed.

Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. The restyled rules also minimize the use of inherently ambiguous words. The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. The restyled rules also remove words and concepts that are outdated or redundant.

Rule Numbers. The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

No Substantive Change. The style changes to the rules are intended to make no changes in substantive meaning. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee also declined to modify "sacred phrases"— those that have become so familiar in practice that to alter them would be unduly disruptive to practice and expectations. An example in the Bankruptcy Rules would be "meeting of creditors."

Legislative Rules. In those cases in which Congress enacted a rule by statute, in particular Rule 2002(n) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357), Rule 3001(g) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 361) and Rule 7004(h) (Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), the Committee has not restyled the rule.

Committee Note [for all Rules]

The language of Rule ___ has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Committee Note [for Rule 2002]

The language of most provisions in Rule 2002 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. In (f) the phrase "or some other person as the court may direct" has not been restyled because it was enacted by Congress, P.L. 98-91, 97 Stat. 607, § 2 (1983). Rule 2002(n) has not been restyled because it was also enacted by Congress, P.L. 98-353, 98 Stat. 357, § 114 (1984). That subsection was erroneously redesignated as subdivision (o) in 2008, and amended to modify its time period from 20 to 21 days in 2009. Because the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language, the subdivision is now returned to the language used by Congress.

TAB 10B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: RESTYLING SUBCOMMITTEE

SUBJECT: RESTYLING TO PARTS III-VI OF THE BANKRUPTCY RULES

DATE: MAR. 10, 2021

The Subcommittee is very pleased to present to the Advisory Committee for approval and publication Parts III-VI of the restyled Federal Rules of Bankruptcy Procedure, which are attached as exhibits to this memo, together with proposed Advisory Committee Notes. As you recall, when the restyling project began, we hoped to have the second group of rules ready for public comment in August 2021, and we have met that anticipated schedule.

Process and Principles

The restyled rules are the product of intensive and collaborative work between the style consultants, who produced the initial drafts, and the Reporters and Restyling Subcommittee, who provided comments to the style consultants on those drafts. Each set of rules was the subject of several reviews, by all parties, including many Microsoft Teams meetings by the Subcommittee to look at drafts while revisions were made and drafting issues discussed.

Throughout this process, the Subcommittee has been guided by the following basic principles:

1. **Make No Substantive Changes**. Most of the comments the Reporters and Subcommittee made on the drafts were aimed at preventing an inadvertent substantive change in meaning by the use of a different word or phrase than in the existing rule. When any member of the Subcommittee had a concern that the restyled language might create ambiguity or work a modification to the meaning of the rule, we insisted on retaining the language of the current rule. If we find something in the rules that we think should be changed in the future as a substantive matter, we put it on a list to consider outside the restyling context. We also would point out that the rules are being restyled from the version that was in effect at the time the project began. All subsequent changes to the rules made after that time will be incorporated before the restyled rules are finalized.

2. **Respect Defined Terms**. We decided early in the process that, in light of the direction of Rule 9001 (which directs that definitions of words and phrases in Sections 101, 902, 1101, and 1502 govern their use in the rules), and our own sense that the rules should follow the Code with respect to defined terms, any word or phrase that is defined in the Code should be used in the restyled rules exactly as defined in the Code without restyling. This initially caused some conflict with the style consultants, but those issues have been resolved.

On the other hand, when terms are used in the Code but are not defined, we have agreed that they may be restyled in the rules, such as "personal financial-management course," "credit-counseling statement," and "patient-care ombudsman."

3. **Preserve Terms of Art**. When a phrase is used commonly in bankruptcy practice, we asked that it not be restyled. These include such phrases as "property of the estate" and "free and clear of liens."

4. **Remain Open to New Ideas**. The style consultants suggested some different approaches in the rules, which the Subcommittee has embraced, including making references to specific forms by form number, and listing recipients of notices by bullet points.

5. **Defer on Matter of Pure Style**. Although the Subcommittee makes many suggestions of ways to improve the drafting of the restyled rules, on matters of pure style the Subcommittee has committed to deferring to the style consultants when they have different views. We have been please with how open the style consultants have been to suggestions from the Subcommittee aimed at improving the style of the restyled rules.

As we mentioned with respect to Rule 2002(n) in the last group of restyled rules, certain of the rules were enacted by Congress rather than through the normal Rules Enabling Act process. In the current group of restyled rules, Rule 3001(g) falls into that category, having been enacted in Pub. L. 98-353, 98 Stat. 361, Section 354. As a result, it has not been restyled except to add a new title. The Advisory Committee Note to Rule 3001 explains this.

Style Consultants

In submitting these restyled rules to the Advisory Committee, we must once again express our deep appreciation and admiration for the work accomplished by the style consultants on this project. Although their work speaks for itself – and we think the Advisory Committee will agree that the restyled rules are a big improvement – we must thank the style consultants for all that they have done and will continue to do as we make the Federal Rules of Bankruptcy more user-friendly for all those in the bankruptcy process.

Recommendation

The Subcommittee recommends that the Advisory Committee approve the restyled versions of Parts III-VI of the Federal Rules of Bankruptcy Procedure and recommend to the Standing Committee their publication for comment. (None of the restyled rules will submitted to the Judicial Conference until all of the rules have been restyled and published for comment and given final approval by the Advisory Committee and the Standing Committee.)

Bankruptcy Rules Restyling

3000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS	**PART III. CLAIMS; PLANS; DISTRIBUTIONS TO CREDITORS AND EQUITY SECURITY HOLDERS**
Rule 3001. Proof of Claim	**Rule 3001. Proof of Claim**
(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.	**(a) Definition and Form.** A proof of claim is a written statement of a creditor's claim. It must substantially conform to Form 410.
(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.	**(b) Who May Sign a Proof of Claim.** Only a creditor or the creditor's agent may sign a proof of claim—except as provided in Rules 3004 and 3005.
(c) SUPPORTING INFORMATION. (1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. (2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual: (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim. (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the	**(c) Required Supporting Information.** (1) ***Claim or Interest Based on a Writing.*** If a claim or an interest in the debtor's property securing the claim is based on a writing, the creditor must file a copy with the proof of claim—except for a claim based on a consumer-credit agreement under (4). If the writing has been lost or destroyed, a statement explaining the loss or destruction must be filed with the claim. (2) ***Additional Information in an Individual Debtor's Case.*** If the debtor is an individual, the creditor must file with the proof of claim: (A) an itemized statement of the principal amount and any interest, fees, expenses, or other charges incurred before the petition was filed; (B) for any claimed security interest in the debtor's property, the amount needed to cure any default as of the date the petition was filed; and

ORIGINAL	REVISION
petition shall be filed with the proof of claim. (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim. (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions: (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. (3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.* (A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account: (i) the name of the entity from whom the creditor	(C) for any claimed security interest in the debtor's principal residence: (i) Form 410A; and (ii) if there is an escrow account connected with the claim, an escrow-account statement, prepared as of the date the petition was filed, that is consistent in form with applicable nonbankruptcy law. (3) ***Sanctions in an Individual-Debtor Case.*** In a case with an individual debtor, if a claim holder fails to provide any information required by (c)(1) and (2), the court may, after notice and a hearing, take one or both of these actions: (A) preclude the holder from presenting the information in any form as evidence in any contested matter or adversary proceeding in the case—unless the court determines that the failure is substantially justified or is harmless; and (B) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. (4) ***Claim Based on an Open-End or Revolving Consumer-Credit Agreement.*** (A) *Required Statement.* Except when the claim is secured by an interest in the debtor's real property, a proof of claim for a claim based on an open-end or revolving consumer-credit agreement must be accompanied by a statement that

ORIGINAL	REVISION
purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of an account holder's last transaction; (iv) the date of the last payment on the account; and (v) the date on which the account was charged to profit and loss. (B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.	shows the following information about the credit account: (i) the name of the entity from whom the creditor purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of that last transaction; (iv) the date of the last payment on the account; and (v) the date that the account was charged to profit and loss. (B) *Copy to a Party in Interest.* On a party in interest's written request, the creditor must send a copy of the document described in (c)(1) to that party in interest within 30 days after the request is sent.
(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.	**(d) Claim Based on a Security Interest in the Debtor's Property.** If a creditor claims a security interest in the debtor's property, the proof of claim must be accompanied by evidence that the security interest has been perfected.
(e) TRANSFERRED CLAIM. (1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee. (2) *Transfer of Claim Other than for Security after Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after	**(e) Transferred Claim.** (1) ***Claim Transferred Before a Proof of Claim Is Filed.*** Unless the transfer was made for security, if a claim was transferred before a proof of claim was filed, only the transferee or an indenture trustee may file a proof of claim.

ORIGINAL	REVISION
the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor. (3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. (4) *Transfer of Claim for Security*	(2) ***Claim Transferred After a Proof of Claim Was Filed.*** (A) *Filing Evidence of the Transfer.* Unless the transfer was made for security, the transferee of a claim that was transferred after a proof of claim was filed must file evidence of the transfer—except for a claim based on a publicly traded note, bond, or debenture. (B) *Notice of the Filing and the Time for Objecting.* The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it. (C) *Hearing on an Objection; Substituting the Transferee.* If, on timely objection by the alleged transferor and after notice and a hearing, the court finds that the claim was transferred other than for security, the court must substitute the transferee for the transferor. If the alleged transferor does not file a timely objection, the court must substitute the transferee for the transferor. (3) ***Claim Transferred for Security Before a Proof of Claim is Filed.*** (A) *Right to File a Proof of Claim.* If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security before the proof of claim was filed, either the transferor or transferee (or both) may file a proof of claim for the full amount. The proof of claim must include a

ORIGINAL	REVISION
after Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. (5) *Service of Objection or Motion; Notice of Hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.	statement setting forth the terms of the transfer. (B) *Notice of a Right to Join in a Proof of Claim; Consolidating Proofs.* If either the transferor or transferee files a proof of claim, the clerk must, by mail, immediately notify the other of the right to join in the claim. If both file proofs of the same claim, the claims must be consolidated. (C) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. (4) ***Claim Transferred for Security After a Proof of Claim Has Been Filed.*** (A) *Filing Evidence of the Transfer.* If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security after a proof of claim was filed, the transferee must file a statement that sets forth the terms of the transfer. (B) *Notice of the Filing and the Time for Objecting.* The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it (C) *Hearing on an Objection.* If the alleged transferor files a timely objection,

ORIGINAL	REVISION
	the court must, after notice and a hearing, determine whether the transfer was for security. (D) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. (5) ***Serving an Objection or Motion; Notice of a Hearing.*** At least 30 days before a hearing, a copy of any objection filed under (2) or (4) or any motion filed under (3) or (4) must be mailed or delivered to either the transferor or transferee as appropriate, together with notice of the hearing.
(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.	**(f) Proof of Claim as Prima Facie Evidence of a Claim and Its Amount.** A proof of claim signed and filed in accordance with these rules is prima facie evidence of the validity and amount of the claim.
(g)[1] To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.	**(g) Proving the Ownership and Quantity of Grain.** To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

[1] So in original. Subsec. (g) adopted without a catchline.

ORIGINAL	REVISION
Rule 3002. Filing Proof of Claim or Interest	**Rule 3002. Filing a Proof of Claim or Interest**
(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.	**(a) Need to File.** Unless Rule 1019(c), 3003, 3004, or 3005 provides otherwise, every creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed. A lien that secures a claim is not void solely because an entity failed to file a proof of claim.
(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.	**(b) Where to File.** The proof of claim or interest must be filed in the district where the case is pending and in accordance with Rule 5005.
(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply: (1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of	**(c) Time to File.** In a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if it is filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13. In an involuntary Chapter 7 case, a proof of claim is timely filed if it is filed within 90 days after the order for relief is entered. These exceptions apply in all cases: **(1)** *Governmental Unit.* A governmental unit's proof of claim is timely if it is filed within 180 days after the order for relief. But a proof of claim resulting from a tax return filed under § 1308 is timely if it is filed within 180 days after the order for relief or within 60 days after the tax return is filed. On motion filed by a governmental unit before the time expires and for cause, the court may extend the time to file a proof of claim. **(2)** *Infant or Incompetent Person.* In the interests of justice, the court may extend the time for an infant or incompetent person—or a representative of either—to file a

ORIGINAL	REVISION
claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim. (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either. (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed. (4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct. (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed. (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted	proof of claim, but only if the extension will not unduly delay case administration. **(3)** *Unsecured Claim That Arises from a Judgment.* An unsecured claim that arises in favor of an entity or becomes allowable because of a judgment may be filed within 30 days after the judgment becomes final if it is to recover money or property from that entity or denies or avoids the entity's interest in property. The claim must not be allowed if the judgment imposes a liability that is not satisfied—or a duty that is not performed—within the 30 days or any additional time set by the court. **(4)** *Claim Arising from a Rejected Executory Contract or Unexpired Lease.* A proof of claim for a claim that arises from a rejected executory contract or an unexpired lease may be filed within the time set by the court. **(5)** *Notice That Assets May Be Available to Pay a Dividend.* The clerk must, by mail, give at least 90 days' notice to creditors that a dividend payment appears possible and that proofs of claim must be filed by the date set forth in the notice if: (A) a notice of insufficient assets to pay a dividend had been given under Rule 2002(e); and (B) the trustee later notifies the court that a dividend appears possible. **(6)** *Claim Secured by a Security Interest in the Debtor's Principal Residence.* A proof of a claim secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim and attachments required by Rule 3001(c)(2)(C) are

ORIGINAL	REVISION
if the court finds that: (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or (B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address. (7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and (B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.	filed within 70 days after the order for relief; and (B) the attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim within 120 days after the order for relief. **(7)** *Extending the Time to File.* On a creditor's motion filed before or after the time to file a proof of claim has expired, the court may extend the time to file by no more than 60 days from the date of its order. The motion may be granted if the court finds that: (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file because the debtor failed to timely file the list of creditors and their names and addresses as required by Rule 1007(a); or (B) the notice was mailed to the creditor at a foreign address and was insufficient to give the creditor a reasonable time to file.

ORIGINAL	REVISION
Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence	**Rule 3002.1. Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case**
(a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.	**(a) In General.** This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan requires the trustee or debtor to make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.
(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 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.	**(b) Notice of a Payment Change.** **(1)** ***Notice by the Claim Holder.*** The claim holder must file a notice of any change in the amount of an installment payment—including any change resulting from an interest-rate or escrow-account adjustment. At least 21 days before the new payment is due, the notice must be filed and served on: • the debtor; • the debtor's attorney; and • the trustee. If the claim arises from a home-equity line of credit, the court may modify this requirement. **(2)** ***Party in Interest's Objection.*** A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments under § 1322(b)(5). Unless the court orders otherwise, if no motion is filed by the

ORIGINAL	REVISION
	day before the new payment is due, the change goes into effect.
(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.	**(c) Fees, Expenses, and Charges Incurred After the Case Was Filed; Notice by the Claim Holder.** The claim holder must file a notice itemizing all fees, expenses, and charges incurred after the case was filed that the holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges were incurred, the notice must be served on: • the debtor; • the debtor's attorney; and • the trustee.
(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).	**(d) Filing Notice as a Supplement to a Proof of Claim.** A notice under (b) or (c) must be filed as a supplement to the proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).
(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.	**(e) Determining Fees, Expenses, or Charges.** On a party in interest's motion filed within one year after the notice in (c) was served, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments under § 1322(b)(5).
(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on	**(f) Notice of the Final Cure Payment.** **(1)** *Contents of a Notice.* Within 30 days after the debtor completes all

ORIGINAL	REVISION
the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.	payments under a Chapter 13 plan, the trustee must file a notice: (A) stating that the debtor has paid in full the amount required to cure any default on the claim; and (B) informing the claim holder of its obligation to file and serve a response under (g). **(2)** ***Serving the Notice.*** The notice must be served on: • the claim holder; • the debtor; and • the debtor's attorney. **(3)** ***The Debtor's Right to File.*** The debtor may file and serve the notice if: (A) the trustee fails to do so; and (B) the debtor contends that the final cure payment has been made and all plan payments have been completed.
(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of	**(g) Response to a Notice of the Final Cure Payment.** **(1)** ***Required Statement.*** Within 21 days after the notice under (f) is served, the claim holder must file and serve a statement that: (A) indicates whether: (i) the claim holder agrees that the debtor has paid in full the amount required to cure any default on the claim; and (ii) the debtor is otherwise current on all payments under § 1322(b)(5); and (B) itemizes the required cure or postpetition amounts, if any, that

ORIGINAL	REVISION
claim and is not subject to Rule 3001(f).	the claim holder contends remain unpaid as of the statement's date. **(2)** *Persons to be Served.* The holder must serve the statement on: • the debtor; • the debtor's attorney; and • the trustee. **(3)** *Statement to be a Supplement*. The statement must be filed as a supplement to the proof of claim and is not subject to Rule 3001(f).
(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.	**(h) Determining the Final Cure Payment.** On the debtor's or trustee's motion filed within 21 days after the statement under (g) is served, the court must, after notice and a hearing, determine whether the debtor has cured the default and made all required postpetition payments.
(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions: (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.	**(i) Failure to Give Notice.** If the claim holder fails to provide any information required by (b), (c), or (g), the court may, after notice and a hearing, take one or both of these actions: (1) preclude the holder from presenting the omitted information in any form as evidence in a contested matter or adversary proceeding in the case—unless the failure was substantially justified or is harmless; and (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

ORIGINAL	REVISION
Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases	**Rule 3003. Chapter 9 or 11— Filing a Proof of Claim or Equity Interest**
(a) APPLICABILITY OF RULE. This rule applies in chapter 9 and 11 cases.	**(a) Scope.** This rule applies only in a Chapter 9 or 11 case.
(b) SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECURITY HOLDERS. (1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to § 521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule. (2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.	**(b) Scheduled Liabilities and Listed Equity Security Holders as Prima Facie Evidence of Validity and Amount.** **(1)** ***Creditor's Claim.*** An entry on the schedule of liabilities filed under § 521(a)(1)(B)(i) is prima facie evidence of the validity and the amount of a creditor's claim—except for a claim shown as disputed, contingent, or unliquidated. Filing a proof of claim is unnecessary except as provided in (c)(2). **(2)** ***Interest of an Equity Security Holder.*** An entry on the list of equity security holders filed under Rule 1007(a)(3) is prima facie evidence of the validity and the amount of the equity interest. Filing a proof of the interest is unnecessary except as provided in (c)(2).
(c) FILING PROOF OF CLAIM. (1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule. (2) Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be	**(c) Filing a Proof of Claim.** **(1)** ***Who May File a Proof of Claim.*** A creditor or indenture trustee may file a proof of claim. **(2)** ***Who Must File a Proof of Claim or Interest.*** A creditor or equity security holder whose claim or interest is not scheduled—-or is shown as disputed, contingent, or unliquidated—-must file a proof of claim or interest. A creditor who fails to do so will not be treated as a creditor for that claim for voting and distribution.

ORIGINAL	REVISION
treated as a creditor with respect to such claim for the purposes of voting and distribution. (3) Time for Filing. The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6). (4) Effect of Filing Claim or Interest. A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code. (5) Filing by Indenture Trustee. An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.	**(3)** ***Time to File.*** The court must set the time to file a proof of claim or interest and may, for cause, extend the time. If the time has expired, the proof of claim or interest may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (3), (4), and (7). **(4)** ***Proof of Claim by an Indenture Trustee.*** An indenture trustee may file a proof of claim on behalf of all known or unknown holders of securities issued under the trust instrument under which it is trustee. **(5)** ***Effect of Filing a Proof of Claim or Interest.*** A proof of claim or interest signed and filed under (c) supersedes any scheduling under § 521(a)(1) of the claim or interest.
(d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.	**(d) Treating a Nonrecord Holder of a Security as the Record Holder.** For the purpose of Rules 3017, 3018, and 3021 and receiving notices, an entity that is not a record holder of a security may file a statement setting forth facts that entitle the entity to be treated as the record holder. A party in interest may file an objection to the statement.

ORIGINAL	REVISION
Rule 3004. Filing of Claims by Debtor or Trustee	**Rule 3004. Proof of Claim Filed by the Debtor or Trustee for a Creditor**
If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.	**(a) Filing by the Debtor or Trustee**. If a creditor does not file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), the debtor or trustee may do so within 30 days after the creditor's time to file expires. **(b) Notice by the Clerk.** The clerk must promptly give notice of the filing to: • the creditor; • the debtor; and • the trustee.

ORIGINAL	REVISION
Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor	**Rule 3005. Filing a Proof of Claim or Accepting or Rejecting a Plan by a Surety, Endorser, Guarantor, or Other Codebtor**
(a) FILING OF CLAIM. If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.	**(a) In General.** If a creditor fails to file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), it may be filed by an entity that, along with the debtor, is or may be liable to the creditor or has given security for the creditor's debt. The entity must do so within 30 days after the creditor's time to file expires. A distribution on such a claim may be made only on satisfactory proof that the original debt will be diminished by the distribution.
(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.	**(b) Accepting or Rejecting a Plan in a Creditor's Name.** An entity that has filed a proof of claim on behalf of a creditor under (a) may accept or reject a plan in the creditor's name. If the creditor's name is unknown, the entity may do so in its own name. But the creditor must be substituted for the entity on that claim if the creditor: (1) files a proof of claim within the time permitted by Rule 3003(c); or (2) files notice, before the plan is confirmed, of an intent to act in the creditor's own behalf.

ORIGINAL	REVISION
Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan	**Rule 3006. Withdrawing a Proof of Claim; Effect on a Plan**
A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.	**(a) Notice of Withdrawal; Limitations.** A creditor may withdraw a proof of claim by filing a notice of withdrawal. But unless the court orders otherwise after notice and a hearing, a creditor may not withdraw a proof of claim if: (A) an objection to it has been filed; (B) a complaint has been filed against the creditor in an adversary proceeding; or (C) the creditor has accepted or rejected the plan or has participated significantly in the case. **(b)** ***Notice of the Hearing; Order Permitting Withdrawal.*** Notice of the hearing must be served on: • the trustee or debtor in possession; and • any creditors' committee elected under § 705(a) or appointed under § 1102. The court's order permitting a creditor to withdraw a proof of claim must contain any terms and conditions the court deems proper. **(c) Effect of Withdrawing a Proof of Claim.** Unless the court orders otherwise, an authorized withdrawal constitutes withdrawal of any related acceptance or rejection of a plan.

ORIGINAL	REVISION
`Rule 3007. Objections to Claims	**Rule 3007. Objecting to a Claim**
(a) TIME AND MANNER OF SERVICE. (1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. (2) *Manner of Service.* (A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and (i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or (ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h). (B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.	**(a) Time and Manner of Serving the Objection.** **(1)** ***Time to Serve.*** An objection to a claim and a notice of the objection must be filed and served at least 30 days before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing. **(2)** ***Whom to Serve; Manner of Service.*** (A) *Serving the Claim Holder.* The notice—using Form 420B—and objection must be served by mail on the person the claim holder most recently designated to receive notices on the claim holder's original or latest amended proof of claim, at the address so indicated. If the objection is to a claim of: (i) the United States or one of its officers or agencies, service must be made as if it were a summons and complaint under Rule 7004(b)(4) or (5); or (ii) an insured depository institution, service must be made under Rule 7004(h). (B) *Serving Others.* The notice and objection must also be served, by mail (or other permitted means), on: • the debtor or debtor in possession; • the trustee; and • if applicable, the entity that filed the proof of claim under Rule 3005.

ORIGINAL	REVISION
(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.	**(b) Demanding Relief Under Rule 7001 Not Permitted.** In objecting to a claim, a party in interest must not include a demand for a type of relief specified in Rule 7001 but may include the objection in an adversary proceeding.
(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.	**(c) Limit on Omnibus Objections.** Unless the court orders otherwise or (d) permits, objections to more than one claim may not be joined in a single objection.
(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or	**(d) Omnibus Objection.** Subject to (e), objections to more than one claim may be joined in a single objection if: (1) all the claims were filed by the same entity; or (2) the objections are based solely on grounds that the claims should be disallowed, in whole or in part, because they: (A) duplicate other claims; (B) were filed in the wrong case; (C) have been amended by later proofs of claim; (D) were not timely filed; (E) have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (F) were presented in a form that does not comply with applicable rules and the objection states that because of the noncompliance the objector is unable to determine a claim's validity; (G) are interests, not claims; or

ORIGINAL	REVISION
(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.	(H) assert a priority in an amount that exceeds the maximum amount allowable under § 507.
(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall: (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection; (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims; (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds; (4) state in the title the identity of the objector and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.	**(e) Required Content of an Omnibus Objection.** An omnibus objection must: (1) state in a conspicuous place that claim holders can find their names and claims in the objection; (2) list the claim holders alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claim holders by category of claims; (3) state for each claim the grounds for the objection and provide a cross-reference to the pages where pertinent information about the grounds appears; (4) state in the title the objector's identity and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.
(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.	**(f) Finality of an Order When Objections Are Joined.** When objections are joined, the finality of an order regarding any claim must be determined as though it had been subject to an individual objection.

ORIGINAL	REVISION
Rule 3008. Reconsideration of Claims	**Rule 3008. Reconsidering an Order Allowing or Disallowing a Claim**
A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.	A party in interest may move to reconsider an order allowing or disallowing a claim. After notice and a hearing, the court must issue an appropriate order.

ORIGINAL	REVISION
Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case	**Rule 3009. Chapter 7—Paying Dividends**
In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.	In a Chapter 7 case, dividends to creditors on claims that have been allowed must be paid as soon as practicable. A dividend check must be made payable to and mailed to the creditor. But if a power of attorney authorizing another entity to receive payment has been filed under Rule 9010, the check must be: (a) made payable to both the creditor and the other entity; and (b) mailed to the other entity.

ORIGINAL	REVISION
Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases	**Rule 3010. Chapter 7, 12, or 13—Limits on Small Dividends and Payments**
(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.	**(a) Chapter 7.** In a Chapter 7 case, the trustee must not distribute to a creditor any dividend less than $5 unless authorized to do so by local rule or court order. A dividend not distributed must be treated in the same manner as unclaimed funds under § 347.
(b) CHAPTER 12 AND CHAPTER 13 CASES. In a chapter 12 or chapter 13 case no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.	**(b) Chapter 12 or 13.** In a Chapter 12 or 13 case, the trustee must not distribute to a creditor any payment less than $15 unless authorized to do so by local rule or court order. Distribution must be made when accumulated funds total $15 or more. Any remaining funds must be distributed with the final payment.

ORIGINAL	REVISION
Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases	**Rule 3011. Chapter 7, 12, or 13—Listing Unclaimed Funds**
The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.	The trustee must: (a) file a list of the known names and addresses of entities entitled to payment from any remaining property of the estate that is paid into court under § 347(a); and (b) include the amount due each entity.

ORIGINAL	REVISION
Rule 3012. Determining the Amount of Secured and Priority Claims	**Rule 3012. Determining the Amount of a Secured or Priority Claim**
(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine: (1) the amount of a secured claim under § 506(a) of the Code; or (2) the amount of a claim entitled to priority under § 507 of the Code.	**(a) In General.** On a party in interest's request, after notice and a hearing, the court may determine the amount of a secured claim under § 506(a) or the amount of a priority claim under § 507. The notice must be served on: • the claim holder; and • any other entity the court designates.
(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.	**(b) Determining the Amount of a Claim.** **(1)** *Secured Claim.* Except as provided in (c), a request to determine the amount of a secured claim may be made by motion, in an objection to a claim, or in a plan filed in a Chapter 12 or 13 case. If the request is included in a plan, a copy of the plan must be served on the claim holder and any other entity the court designates as if it were a summons and complaint under Rule 7004. **(2)** *Priority Claim.* A request to determine the amount of a priority claim may be made only by motion after the claim is filed or in an objection to the claim.
(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.	**(c) Governmental Unit's Secured Claim.** A request to determine the amount of a governmental unit's secured claim may be made only by motion—or in an objection to a claim—filed after: (A) the governmental unit has filed the proof of claim; or (B) the time to file it under Rule 3002(c)(1) has expired.

ORIGINAL	REVISION
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ORIGINAL	REVISION
Rule 3013. Classification of Claims and Interests	**Rule 3013. Determining Classes of Creditors and Equity Security Holders**
For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122, 1222(b)(1), and 1322(b)(1) of the Code.	For purposes of a plan and its acceptance, the court may, on motion after notice and a hearing, determine classes of creditors and equity security holders under §§ 1122, 1222(b)(1), and 1322(b)(1). The notice must be served as the court directs.

ORIGINAL	REVISION
Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3014. Chapter 9 or 11—Secured Creditors' Election to Apply § 1111(b)**
An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.	**(a) Time for an Election**. In a Chapter 9 or 11 case, before a hearing on the disclosure statement concludes, a class of secured creditors may elect to apply § 1111(b)(2). If the disclosure statement is conditionally approved under Rule 3017.1 and a final hearing on it is not held, the election must be made within the time provided in Rule 3017.1(a)(2). In either situation, the court may set another time for the election. **(b) Signed Writing; Binding Effect**. The election must be made in writing and signed unless made at the hearing on the disclosure statement. An election made by the majorities required by § 1111(b)(1)(A)(i) is binding on all members of the class.

ORIGINAL	REVISION
Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case	**Rule 3015. Chapter 12 or 13—Time to File a Plan; Nonstandard Provisions; Objection to Confirmation; Effect of Confirmation; Modifying a Plan**
(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.	**(a) Time to File a Chapter 12 Plan.** The debtor may file a Chapter 12 plan: (1) with the petition; or (2) within the time prescribed by § 1221.
(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.	**(b) Time to File a Chapter 13 Plan.** **(1)** *In General.* The debtor may file a Chapter 13 plan with the petition or within 14 days after it is filed. The time to file may not be extended except for cause and on notice as the court directs. **(2)** *Case Converted to Chapter 13.* If a case is converted to Chapter 13, the plan must be filed within 14 days after conversion. The time may not be extended except for cause and on notice as the court directs.
(c) FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.	**(c) Form of a Chapter 13 Plan.** **(1)** *In General.* In filing a Chapter 13 plan, the debtor must use Form 113, unless the court has adopted a local form under Rule 3015.1. **(2)** *Nonstandard Provision.* With either form, a nonstandard provision is effective only if it is included in the section of the form that is designated for nonstandard provisions and is identified in accordance with any other requirements of the form. A nonstandard provision is one that is not included in the form or deviates from it.

ORIGINAL	REVISION
(d) NOTICE. If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.	**(d) Serving a Copy of the Plan.** If the plan was not included with the notice of a confirmation hearing mailed under Rule 2002, the debtor must serve the plan on the trustee and creditors when it is filed.
(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under subdivision (a) or (b) of this rule.	**(e) Copy to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of any plan filed under (a) or (b) or any modification of it.
(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.	**(f) Objection to Confirmation; Determining Good Faith When No Objection is Filed.** **(1)** ***Serving an Objection.*** An entity that objects to confirmation of a plan must file and serve the objection on the debtor, trustee, and any other entity the court designates, and must send a copy to the United States trustee. Unless the court orders otherwise, the objection must be filed, served, and sent at least seven days before the date set for the confirmation hearing. The objection is governed by Rule 9014. **(2)** ***When No Objection Is Filed.*** If no objection is timely filed, the court may, without receiving evidence, determine that the plan has been proposed in good faith and not by any means forbidden by law.
(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: (1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and	**(g) Effect of Confirmation of a Chapter 12 or 13 Plan on the Amount of a Secured Claim; Terminating the Stay.** **(1)** ***Secured Claim.*** When a plan is confirmed, the amount of a secured claim—determined in the plan under Rule 3012—becomes binding on the holder of the claim. That is the effect even if the holder files a contrary proof

ORIGINAL	REVISION
regardless of whether an objection to the claim has been filed; and (2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.	of claim, the debtor schedules that claim, or an objection to the claim is filed. **(2)** *Terminating the Stay.* When a plan is confirmed, a request in the plan to terminate the stay imposed under § 362(a), § 1201(a), or § 1301(a) is granted.
(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.	**(h) Modifying a Plan After It Is Confirmed.** **(1)** *Request to Modify a Plan After It Is Confirmed.* A request to modify a confirmed plan under § 1229 or § 1329 must identify the proponent and include the proposed modification. Unless the court orders otherwise for creditors not affected by the modification, the clerk or the court's designee must: (A) give the debtor, trustee, and creditors at least 21 days' notice, by mail, of the time to file objections and the date of any hearing; (B) send a copy of the notice to the United States trustee; and (C) include a copy or summary of the modification. **(2)** *Objecting to a Modification.* Rule 9014 governs an objection to a proposed modification. An objection must be filed and served on: • the debtor; • the trustee; and • any other entity the court designates. A copy must also be sent to the United States trustee.

ORIGINAL	REVISION
Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case	**Rule 3015.1 Requirements for a Local Form for a Chapter 13 Plan**
Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied: (a) a single Local Form is adopted for the district after public notice and an opportunity for public comment; (b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph; (c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not: (1) contain any nonstandard provision; (2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or (3) avoid a security interest or lien; (d) the Local Form contains separate paragraphs for: (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence; (2) paying a domestic-support obligation; (3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and (4) surrendering property that secures a claim with a request that	As an exception to Rule 9029(a)(1), a court may require that a single local form be used for a chapter 13 plan in its district instead of Official Form 113 if it: (a) is adopted after public notice and an opportunity for comment; (b) numbers and labels each paragraph in boldface type with a heading that states its general subject matter; (c) includes an opening paragraph for the debtor to indicate that the plan does or does not: (1) contain a nonstandard provision; (2) limit the amount of a secured claim based on a valuation of the collateral; or (3) avoid a security interest or lien; (d) contains separate paragraphs relating to: (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence; (2) paying a domestic support obligation; (3) paying a claim described in the final paragraph of § 1325(a); and (4) surrendering property that secures a claim and requesting that the stay under § 362(a) or 1301(a) related to the property be terminated; and (e) contains a final paragraph providing a place for: (1) nonstandard provisions as defined in Rule 3015(c), with a warning

ORIGINAL	REVISION
the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and (e) the Local Form contains a final paragraph for: (1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and (2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.	that any nonstandard provision placed elsewhere in the plan is void; and (2) a certification by the debtor's attorney, or by an unrepresented debtor, that the plan does not contain any nonstandard provision except as set out in the final paragraph.

ORIGINAL	REVISION
Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3016. Chapter 9 or 11—Plan and Disclosure Statement**
(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.	**(a) In General.** In a Chapter 9 or 11 case, every proposed plan or modification must be dated. In a Chapter 11 case, the plan must name the entity or entities proposing or filing it.
(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.	**(b) Filing a Disclosure Statement.** **(1)** *In General.* In a Chapter 9 or 11 case, unless (2) applies, the disclosure statement required by § 1125 or evidence showing compliance with § 1126(b) must be filed with the plan or at another time set by the court. **(2)** *Providing Information Under § 1125(f)(1).* A plan intended to provide adequate information under § 1125(f)(1) must be so designated. Rule 3017.1 then applies as if the plan were a disclosure statement.
(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.	**(c) Injunction in a Plan.** If the plan provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction.
(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.	**(d) Form of a Disclosure Statement and Plan in a Small Business Case.** In a small business case, the court may approve a disclosure statement that substantially conforms to Form 425B and confirm a plan that substantially conforms to Form 425A—or, in either instance, to a standard form approved by the court.

ORIGINAL	REVISION
Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3017. Chapter 9 or 11—Hearing on a Disclosure Statement and Plan**
(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.	**(a) Hearing on a Disclosure Statement; Objections.** **(1)** ***Notice and Hearing.*** (A) *Notice.* Except as provided in Rule 3017.1 for a small business case, the court must hold a hearing on a disclosure statement filed under Rule 3016(b) and any objection or modification to it. The hearing must be held on at least 28 days' notice under Rule 2002(b) to: • the debtor; • creditors; • equity security holders; and • other parties in interest. (B) *Limit on Sending the Plan and Disclosure Statement.* A copy of the plan and disclosure statement must be mailed with the notice of a hearing to: • the debtor; • any trustee or appointed committee; • the Securities and Exchange Commission: and • any party in interest that, in writing, requests a copy of the disclosure statement or plan. **(2)** ***Objecting to a Disclosure Statement.*** An objection to a disclosure statement must be filed and served before the disclosure statement

ORIGINAL	REVISION
	is approved or by an earlier date the court sets. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. **(3)** *Chapter 11—Copies to the United States Trustee.* In a Chapter 11 case, a copy of every item required to be served or mailed under this Rule 3017(a) must also be sent to the United States trustee within the prescribed time.
(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.	**(b) Court Ruling on the Disclosure Statement.** After the hearing, the court must determine whether the disclosure statement should be approved.
(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.	**(c) Time to Accept or Reject a Plan and for the Confirmation Hearing.** At the time or before the disclosure statement is approved, the court: (1) must set a deadline for the holders of claims and interests to accept or reject the plan; and (2) may set a date for a confirmation hearing.
(d) TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY SECURITY HOLDERS. Upon approval of a disclosure statement,—[2] except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or	**(d) Hearing on Confirmation.** **(1)** *Transmitting the Plan and Related Documents.* (A) *In General.* After the disclosure statement has been approved, the court must order the debtor in possession, the trustee, the plan

2 So in original. The comma probably should not appear.

ORIGINAL	REVISION
equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee, (1) the plan or a court-approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan	proponent, or the clerk to mail the following items to creditors and equity security holders and, in a Chapter 11 case, to send a copy of each to the United States trustee: (i) the court-approved disclosure statement; (ii) the plan or a court-approved summary of it; (iii) a notice of the time to file acceptances and rejections of the plan; and (iv) any other information as the court directs—including any opinion approving the disclosure statement or a court-approved summary of the opinion. (B) *Exception.* The court may vary the requirements for an unimpaired class of creditors or equity security holders. **(2)** ***Time to Object to a Plan; Notice of the Confirmation Hearing.*** Notice of the time to file an objection to a plan's confirmation and the date of the hearing on confirmation must be mailed to creditors and equity security holders in accordance with Rule 2002(b). A ballot that conforms to Form 314 must also be mailed to creditors and equity security holders who are entitled to vote on the plan. If the court's opinion is not sent (or only a summary of the plan was sent), a party in interest may request a copy of the opinion or plan, which must be provided at the plan proponent's expense. **(3)** ***Notice to Unimpaired Classes.*** If the court orders that the disclosure statement and plan (or the plan

ORIGINAL	REVISION
proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.	summary) not be mailed to an unimpaired class, a notice that the class has been designated in the plan as unimpaired must be mailed to the class members. The notice must show: (A) the name and address of the person from whom the plan (or summary) and the disclosure statement may be obtained at the plan proponent's expense; (B) the time to file an objection to the plan's confirmation; and (C) the date of the confirmation hearing. **(4)** *Definition of "Creditors" and "Equity Security Holders."* In this Rule 3017(d), "creditors" and "equity security holders" include record holders of stock, bonds, debentures, notes, and other securities on the date the order approving the disclosure statement is entered—or another date the court sets for cause and after notice and a hearing.
(e) TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.	**(e) Procedure for Sending Information to Beneficial Holders of Securities.** At the hearing under (a), the court must: (1) determine the adequacy of the procedures for sending the documents and information listed in (d)(1) to beneficial holders of stock, bonds, debentures, notes, and other securities; and (2) issue any appropriate orders.
(f) NOTICE AND TRANSMISSION OF DOCUMENTS TO ENTITIES SUBJECT TO AN INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and	**(f) Sending Information to Entities Subject to an Injunction.** **(1)** *Timing of the Notice*. This Rule 3017(f) applies if, under a plan, an entity that is not a creditor or equity

ORIGINAL	REVISION
an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with: (1) at least 28 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and (2) to the extent feasible, a copy of the plan and disclosure statement.	security holder is subject to an injunction against conduct not otherwise enjoined by the Code. At the hearing under (a), the court must consider procedures to provide the entity with at least 28 days' notice of: (A) the time to file an objection; and (B) the date of the confirmation hearing. **(2)** ***Contents of the Notice.*** The notice must: (A) provide the information required by Rule 2002(c)(3); and (B) if feasible, include a copy of the plan and disclosure statement.

ORIGINAL	REVISION
Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case	**Rule 3017.1. Disclosure Statement in a Small Business Case**
(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall: (1) fix a time within which the holders of claims and interests may accept or reject the plan; (2) fix a time for filing objections to the disclosure statement; (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and (4) fix a date for the hearing on confirmation.	**(a) Conditionally Approving a Disclosure Statement.** In a small business case, the court may, on motion of the plan proponent or on its own, conditionally approve a disclosure statement filed under Rule 3016. Before doing so, the court must: (1) set the time within which the claim holders and interest holders may accept or reject the plan; (2) set the time to file an objection to the disclosure statement; (3) if a timely objection is filed, set the date for the hearing on final approval of the disclosure statement; and (4) set a date for the confirmation hearing.
(b) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).	**(b) Effect of a Conditional Approval.** Rule 3017(a)–(c) and (e) do not apply to a conditionally approved disclosure statement. But conditional approval is considered approval in applying Rule 3017(d).
(c) FINAL APPROVAL. (1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.	**(c) Time to File an Objection; Date of a Hearing.** **(1)** ***Notice.*** Notice must be given under Rule 2002(b) of the time to file an objection and the date of a hearing to consider final approval of the disclosure statement. The notice may

ORIGINAL	REVISION
(2) *Objections*. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. (3) *Hearing*. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.	be combined with notice of the confirmation hearing. **(2)** ***Time to File an Objection to the Disclosure Statement.*** An objection to the disclosure statement must be filed before the disclosure statement is finally approved or by an earlier date set by the court. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. A copy must also be sent to the United States trustee. **(3)** ***Hearing on an Objection to the Disclosure Statement.*** If a timely objection to the disclosure statement is filed, the court must hold a hearing on final approval either before or combined with the confirmation hearing.

ORIGINAL	REVISION
Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan**
(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.	**(a) In General.** (1) *Who May Accept or Reject a Plan.* Within the time set by the court under Rule 3017, a claim holder or equity security holder may accept or reject a Chapter 9 or Chapter 11 plan under § 1126. (2) *Claim Based on a Security of Record.* Subject to (b), an equity security holder or creditor whose claim is based on a security of record may accept or reject a plan only if the equity security holder or creditor is the holder of record: (A) on the date the order approving the disclosure statement is entered; or (B) on another date the court sets after notice and a hearing and for cause. (3) *Changing or Withdrawing an Acceptance or Rejection.* After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. (4) *Temporarily Allowing a Claim or Interest.* Even if an objection to a claim or interest has been filed, the court may, after notice and a hearing, temporarily allow a claim or interest in an amount that the court considers proper for voting to accept or reject a plan.
(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. An equity security holder or creditor whose claim is based on a security of record who accepted or	**(b) Treatment of Acceptances or Rejections Obtained Before the Petition Was Filed.** (1) *Acceptance or Rejection by a Nonholder of Record.* An equity security holder or creditor who

ORIGINAL	REVISION
rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.	accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan under § 1126(b) if the equity security holder or creditor: (A) has a claim or interest based on a security of record; and (B) was not the security's holder of record on the date specified in the solicitation of the acceptance or rejection. (2) *Defective Solicitations.* A holder of a claim or interest who accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan if the court finds, after notice and a hearing, that: (A) the plan was not sent to substantially all creditors and equity security holders of the same class; (B) an unreasonably short time was prescribed for those creditors and equity security holders to accept or reject the plan; or (C) the solicitation did not comply with § 1126(b).
(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security	**(c) Form for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.** (1) *Form.* An acceptance or rejection of a plan must: (A) be in writing; (B) identify the plan or plans; (C) be signed by the creditor or equity security holder—or an authorized agent; and

ORIGINAL	REVISION
holder may indicate a preference or preferences among the plans so accepted.	(D) conform to Form 314. (2) ***When More Than One Plan Is Distributed.*** If more than one plan is transmitted under Rule 3017, a creditor or equity security holder may accept or reject one or more plans and may indicate preferences among the plans accepted.
(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.	**(d) Partially Secured Creditor.** If a creditor's claim has been allowed in part as a secured claim and in part as an unsecured claim, the creditor may accept or reject a plan in both capacities.

ORIGINAL	REVISION
Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3019. Chapter 9 or 11—Modifying a Plan**
(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.	**(a) Modifying a Plan Before Confirmation.** In a Chapter 9 or 11 case, after a plan has been accepted and before confirmation, the plan proponent may file a modification. The modification is considered accepted by any creditor or equity security holder who has accepted it in writing. For others who have not accepted it in writing but have accepted the plan, the modification is considered accepted if, after notice and a hearing, the court finds that it does not adversely change the treatment of their claims or interests. The notice must be served on: • the trustee; • any appointed committee; and • any other entity the court designates.
(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification	**(b) Modifying a Plan After Confirmation in an Individual Debtor's Chapter 11 Case.** (1) *In General.* When a plan in an individual debtor's Chapter 11 case has been confirmed, a request to modify it under § 1127(e) is governed by Rule 9014. The request must identify the proponent, and the proposed modification must be filed with it. (2) *Time to File an Objection; Service.* (A) *Time.* Unless the court orders otherwise for creditors who are not affected by the proposed modification, the clerk—or the court's designee—must give the debtor, trustee, and creditors at least 21 days' notice, by mail, of: (i) the time to file an objection; and

ORIGINAL	REVISION
shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.	(ii) if an objection is filed, the date of a hearing to consider the proposed modification. (B) *Service.* Any objection must be served on: • the debtor; • the entity proposing the modification; • the trustee; and • any other entity the court designates. A copy of the notice, modification, and objection must also be sent to the United States trustee.

ORIGINAL	REVISION
Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3020. In a Chapter 11 Case, Depositing Funds Before the Plan is Confirmed; Confirmation in a Chapter 9 or 11 Case**
(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.	**(a) Chapter 11—Depositing Funds Before the Plan is Confirmed.** Before a plan is confirmed in a Chapter 11 case, the court may order that the funds required to be distributed upon confirmation be deposited with the trustee or debtor in possession. The funds must be kept in a special account and used only to make the distribution.
(b) OBJECTION TO AND HEARING ON CONFIRMATION IN A CHAPTER 9 OR CHAPTER 11 CASE. (1) *Objection.* An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014. (2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.	**(b) Chapter 9 or 11—Objecting to Confirmation; Confirmation Hearing.** **(1)** ***Objecting to Confirmation.*** In a Chapter 9 or 11 case, an objection to confirmation is governed by Rule 9014. The objection must be filed and served within the time set by the court and be served on: • the debtor; • the trustee; • the plan proponent; • any appointed committee; and • any other entity the court designates. **(2)** ***Copy to the United States Trustee.*** In a Chapter 11 case, the objecting party must send a copy of the objection to the United States trustee within the time set to file an objection. **(3)** ***Hearing on the Objection; Procedure If No Objection Is Filed.*** After notice and a hearing as provided in Rule 2002, the court must rule on confirmation. If no objection is timely filed, the court may, without receiving

ORIGINAL	REVISION
	evidence, determine that the plan was proposed in good faith and not by any means forbidden by law.
(c) ORDER OF CONFIRMATION. (1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction. (2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code. (3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).	**(c) Confirmation Order.** **(1)** *Form of the Order; Injunctive Relief.* A confirmation order must conform to Form 315. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order must: (A) describe the acts enjoined in reasonable detail; (B) be specific in its terms regarding the injunction; and (C) identify the entities subject to the injunction. **(2)** *Notice of Confirmation.* Notice of entry of a confirmation order must be promptly mailed to: • the debtor; • the trustee; • creditors; • equity security holders; • other parties in interest; and • if known, identified entities subject to an injunction described in (1). **(3)** *Copy to the United States Trustee.* In a Chapter 11 case, a copy of the order must be sent to the United States trustee under Rule 2002(k).
(d) RETAINED POWER. Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.	**(d) Retained Power to Issue Future Orders Relating to Administration.** After a plan is confirmed, the court may continue to issue orders needed to administer the estate.

ORIGINAL	REVISION
(e) STAY OF CONFIRMATION ORDER. An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(e) Staying a Confirmation Order.** Unless the court orders otherwise, a confirmation order is stayed for 14 days after its entry.

ORIGINAL	REVISION
Rule 3021. Distribution Under Plan	**Rule 3021. Distributing Funds Under a Plan**
Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.	**(a) In General.** After confirmation and when any stay under Rule 3020(e) expires, payments under the plan must be distributed to: • creditors whose claims have been allowed; • interest holders whose interests have not been disallowed; and • indenture trustees whose claims under Rule 3003(c)(5) have been allowed. **(b) Definition of "Creditors" and "Interest Holders."** In this Rule 3021: (1) "creditors" includes record holders of bonds, debentures, notes, and other debt securities as of the initial distribution date, unless the plan or confirmation order states a different date; and (2) "interest holders" includes record holders of stock and other equity securities as of the initial distribution date, unless the plan or confirmation order states a different date.

ORIGINAL	REVISION
Rule 3022. Final Decree in Chapter 11 Reorganization Case	**Rule 3022. Chapter 11—Final Decree**
After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.	After the estate is fully administered in a Chapter 11 case, the court must, on its own or on a party in interest's motion, enter a final decree closing the case.

Bankruptcy Rules Restyling

4000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART IV—THE DEBTOR: DUTIES AND BENEFITS	**PART IV. THE DEBTOR'S DUTIES AND BENEFITS**
Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements	**Rule 4001. Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Using Cash Collateral; Obtaining Credit; Various Agreements**
(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY. (1) *Motion*. A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. (2) *Ex Parte Relief*. Relief from a stay under § 362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the	**(a) Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.** (1) ***Motion.*** A motion under § 362(d) for relief from the automatic stay—or a motion under § 363(e) to prohibit or condition the use, sale, or lease of property—must comply with Rule 9014. The motion must be served on: (A) the following, as applicable: (i) a committee elected under § 705 or appointed under § 1102; (ii) the committee's authorized agent; or (iii) the creditors included on the list filed under Rule 1007(d) if the case is a Chapter 9 or Chapter 11 case and no committee of unsecured creditors has been appointed under § 1102; and (B) any other entity the court designates. (2) ***Relief Without Notice.*** Relief from a stay under § 362(a)—or a request under § 363(e) to prohibit or condition the use, sale, or lease of property—may be granted without prior notice only if: (A) specific facts—shown by either an affidavit or a verified motion—

ORIGINAL	REVISION
reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) or § 363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion. (3) *Stay of Order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	clearly demonstrate that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party or its attorney can be heard in opposition; and (B) the movant's attorney certifies to the court in writing what efforts, if any, have been made to give notice and why it should not be required. (3) ***Notice of Relief; Motion for Reinstatement or Reconsideration.*** (A) *Notice of Relief.* A party who obtains relief under (2) and under § 362(f) or § 363(e) must: (i) immediately give oral notice both to the debtor and to the trustee or the debtor-in-possession; and (ii) promptly send them a copy of the order granting relief. (B) *Motion for Reinstatement or Reconsideration.* On 2 days' notice to the party who obtained relief under (2)—or on shorter notice as the court may order—the adverse party may move to reinstate the stay or reconsider the order prohibiting or conditioning the use, sale, or lease of property. The court must proceed expeditiously to hear and decide the motion. (4) ***Stay of an Order Granting Relief from the Automatic Stay.*** Unless the court orders otherwise, an order granting a motion for relief from the automatic stay under (1) is stayed for 14 days after it is entered.

ORIGINAL	REVISION
(b) USE OF CASH COLLATERAL. (1) *Motion; Service.* (A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including: (i) the name of each entity with an interest in the cash collateral; (ii) the purposes for the use of the cash collateral; (iii) the material terms, including duration, of the use of the cash collateral; and (iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected. (C) *Service.* The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the	**(b) Using Cash Collateral.** (1) ***Motion; Contents; Service.*** (A) *Motion.* A motion for authorization to use cash collateral must comply with Rule 9014 and must be accompanied by a proposed form of order. (B) *Contents.* The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must list or summarize all material provisions (citing their locations in the relevant documents), including: (i) the name of each entity with an interest in the cash collateral; (ii) how it will be used; (iii) the material terms of its use, including duration; and (iv) all liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no such protection is proposed, an explanation of how each entity's interest is adequately protected. (C) *Service.* The motion must be served on: (i) each entity with an interest in the cash collateral; (ii) all those who must be served under (a)(1)(A); and (iii) any other entity the court designates.

ORIGINAL	REVISION
creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs. (2) *Hearing*. The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice*. Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.	(2) ***Hearings; Notice.*** (A) *Preliminary and Final Hearings*. The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize using only the cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice*. Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates.
(c) OBTAINING CREDIT. (1) *Motion; Service.* (A) *Motion*. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Contents*. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order	**(c) Obtaining Credit.** (1) ***Motion; Contents; Service.*** (A) *Motion*. A motion for authorization to obtain credit must comply with Rule 9014 and must be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Contents*. The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must list or summarize all material provisions of the credit agreement and form of order (citing their locations in the relevant documents), including interest rates, maturity dates, default provisions, liens, and borrowing

ORIGINAL	REVISION
includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below: (i) a grant of priority or a lien on property of the estate under § 364(c) or (d); (ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim; (iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim; (iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay; (v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;	limits and conditions. If the credit agreement or form of order includes any of the provisions listed below in (i)-(xi), the concise statement must also list or summarize each one, describe its nature and extent, cite its location in the proposed agreement and form of order, and identify any that would remain effective if interim approval were to be granted but final relief denied under (2). The provisions are: (i) a grant of priority or a lien on property of the estate under § 364(c) or (d); (ii) the providing of adequate protection or priority for a claim that arose before the case commenced—including a lien on property of the estate, or the use of property of the estate or of credit obtained under § 364 to make cash payments on the claim; (iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the case commenced, or of any lien securing the claim; (iv) a waiver or modification of Code provisions or applicable rules regarding the automatic stay; (v) a waiver or modification of an entity's right to file a plan, seek to extend the time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or

ORIGINAL	REVISION
(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order; (vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien; (viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action; (ix) the indemnification of any entity; (x) a release, waiver, or limitation of any right under § 506(c); or (xi) the granting of a lien on any claim or cause of action arising under §§ 544,[1] 545, 547, 548, 549, 553(b), 723(a), or 724(a). (C) *Service.* The motion shall be served on: (1) any com-mittee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs. (2) *Hearing.* The court	request authorization to obtain credit under § 364; (vi) the establishment of deadlines for filing a plan of reorganization, approving a disclosure statement, holding a hearing on confirmation, or entering a confirmation order; (vii) a waiver or modification of the applicability of nonbankruptcy law regarding perfecting or enforcing a lien on property of the estate; (viii) a release, waiver, or limitation on a claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action; (ix) the indemnification of any entity; (x) a release, waiver, or limitation of any right under § 506(c); or (xi) the granting of a lien on a claim or cause of action arising under § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a). (C) *Service.* The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates. (2) ***Hearings; Notice.*** (A) *Preliminary and Final Hearings.* The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the

1 So in original. Probably should be only one section symbol.

ORIGINAL	REVISION
may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct. (4) *Inapplicability in a Chapter 13 Case.* This subdivision (c) does not apply in a chapter 13 case.	motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize obtaining credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice.* Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates. **(3)** ***Inapplicability in a Chapter 13 Case.*** This subdivision (c) does not apply in a chapter 13 case.
(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT. (1) *Motion; Service.* (A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided	**(d) Various Agreements: Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Providing Adequate Protection; Using Cash Collateral; or Obtaining Credit.** (1) ***Motion; Contents; Service.*** (A) *Motion.* A motion to approve any of the following must be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided for in § 362;

ORIGINAL	REVISION
for in § 362; (iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision. (C) *Service.* The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs. (2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of	(iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate under which the entity consents to creating a lien that is senior or equal to the entity's lien or interest in the property. (B) *Contents.* The motion must include a concise statement of the relief requested, no longer than five pages. If the motion exceeds five pages, it must begin with the statement. The statement must: (i) list or summarize all the agreement's material provisions (citing their locations in the relevant documents); and (ii) briefly list or summarize, cite the location of, and describe the nature and extent of each provision in the proposed form of order, agreement, or other document of the type listed in (c)(1)(B). (C) *Service.* The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates. (2) ***Objection.*** Notice of the motion must be mailed to the parties on whom service of the motion is required and any other entity the court designates. The notice must include the time within which objections may be filed and served on the debtor-in-possession or trustee. Unless the court sets a different time, any objections must be

ORIGINAL	REVISION
this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice. (3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct. (4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.	filed within 14 days after the notice is mailed. (3) ***Disposition Without a Hearing.*** If no objection is filed, the court may enter an order approving or disapproving the agreement without holding a hearing. (4) ***Hearing.*** If an objection is filed or if the court decides that a hearing is appropriate, the court must hold one after giving at least 7 days' notice to: • the objector; • the movant; • the parties who must be served with the motion under (1)(C); and • any other entity the court designates. (5) ***Agreement to Settle a Motion.*** The court may decide that a motion made under (a), (b), or (c) was sufficient to give reasonable notice of the agreement's material provisions and an opportunity for a hearing. If so, the court may order that the procedures prescribed in (1)–(4) do not apply and may approve the agreement without further notice.

ORIGINAL	REVISION
Rule 4002. Duties of Debtor	**Rule 4002. Debtor's Duties**
(a) IN GENERAL. In addition to performing other duties prescribed by the Code and rules, the debtor shall: (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (5) file a statement of any change of the debtor's address.	**(a) In General.** In addition to performing other duties that are required by the Code or these rules, the debtor must: (1) attend and submit to an examination when the court orders; (2) attend a hearing on a complaint objecting to discharge and, if called, testify as a witness; (3) if a schedule of property has not yet been filed under Rule 1007, report to the trustee immediately in writing: (A) the location of any real property in which the debtor has an interest; and (B) the name and address of every person holding money or property subject to the debtor's withdrawal or order; (4) cooperate with the trustee in preparing an inventory, examining proofs of claim, and administering the estate; and (5) file a statement of any change in the debtor's address.
(b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE DOCUMENTATION. (1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341: (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and (B) evidence of social security number(s), or a written statement that such documentation does not exist.	**(b) Individual Debtor's Duty to Provide Documents.** **(1)** ***Personal Identifying Information.*** An individual debtor must bring to the § 341 meeting of creditors: (A) a government-issued identification containing the debtor's picture, or other personal identifying information that establishes the debtor's identity; and (B) evidence of any social-security number, or a written statement that no such evidence exists.

ORIGINAL	REVISION
(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession: (A) evidence of current income such as the most recent payment advice; (B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and (C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or (B). (3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist. (4) *Tax Returns Provided to Creditors.* If a creditor, at least 14 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the	**(2)** ***Financial Documents.*** An individual debtor must bring the following documents (or copies) to the § 341 meeting of creditors and make them available to the trustee—or provide a written statement that they do not exist or are not in the debtor's possession: (A) evidence of current income, such as the most recent payment advice; (B) unless the trustee or the United States trustee instructs otherwise, a statement for each depository or investment account—including a checking, savings, or money-market account, mutual fund or brokerage account—for the period that includes the petition's filing date; and (C) if required by § 707(b)(2)(A) or (B), documents showing claimed monthly expenses. **(3)** ***Tax Return to Be Provided to the Trustee.*** At least 7 days before the first date set for the § 341 meeting of creditors, the debtor must provide the trustee with: (A) a copy of the debtor's federal income-tax return, including any attachments to it, for the most recent tax year ending before the case was commenced and for which the debtor filed a return; (B) a transcript of the return; or (C) a written statement that the documentation does not exist. **(4)** ***Tax Return to Be Provided to a Creditor.*** Upon a creditor's request at least 14 days before the first date set for the § 341 meeting of creditors, the debtor must provide the creditor with the tax information specified in (3).

ORIGINAL	REVISION
meeting of creditors under § 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist. (5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.	The debtor must do so at least 7 days before the meeting. **(5)** ***Safeguarding Confidential Tax Information.*** The debtor's obligation to provide tax returns under (3) and (4) is subject to procedures established by the Director of the Administrative Office of the United States Courts for safeguarding confidential tax information.

ORIGINAL	REVISION
Rule 4003. Exemptions	**Rule 4003. Exemptions**
(a) CLAIM OF EXEMPTIONS. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.	**(a) Claiming an Exemption.** A debtor must list the property claimed as exempt under § 522 on Form 106C filed under Rule 1007. If the debtor fails to do so within the time specified in Rule 1007(c), a debtor's dependent may file the list within 30 days after the debtor's time to file expires.
(b) OBJECTING TO A CLAIM OF EXEMPTIONS. (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. (2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney. (3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed. (4) A copy of any objection shall	**(b) Objecting to a Claimed Exemption.** (1) *By a Party in Interest.* Except as (2) and (3) provide, a party in interest may file an objection to a claimed exemption within 30 days after the later of: • the conclusion of the § 341 meeting of creditors; • the filing of an amendment to the list; or • the filing of a supplemental schedule. On a party in interest's motion filed before the time to object expires, the court may, for cause, extend the time to file an objection. (2) *By the Trustee for a Fraudulently Claimed Exemption.* If the debtor has fraudulently claimed an exemption, the trustee may file an objection within one year after the case is closed. The trustee must deliver or mail the objection to: • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.

ORIGINAL	REVISION
be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.	(3) *Objection Based on § 522(q).* An objection based on § 522(q) must be filed: (A) before the case is closed; or (B) if an exemption is first claimed after a case has been reopened, before the reopened case is closed. (4) *Distributing Copies of the Objection.* A copy of any objection, other than one filed by the trustee under (b)(2), must be delivered or mailed to: • the trustee; • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.
(c) BURDEN OF PROOF. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.	**(c) Burden of Proof.** In a hearing under this Rule 4003, the objecting party has the burden of proving that an exemption was not properly claimed. After notice and a hearing, the court must determine the issues presented.
(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to	**(d) Avoiding a Lien or Other Transfer of Exempt Property.** A proceeding under § 522(f) to avoid a lien or other transfer of exempt property must be commenced by motion under Rule 9014, or by serving a Chapter 12 or 13 plan on the affected creditors as Rule 7004 provides for serving a summons and complaint. As an exception to (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

ORIGINAL	REVISION
a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.	

ORIGINAL	REVISION
Rule 4004. Grant or Denial of Discharge	**Rule 4004. Granting or Denying a Discharge**
(a) TIME FOR OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.	**(a) Time to Object to a Discharge; Notice.** (1) *Chapter 7.* In a Chapter 7 case, a complaint—or a motion under § 727(a)(8) or (9)—objecting to a discharge must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (2) *Chapter 11.* In a Chapter 11 case, a complaint objecting to a discharge must be filed on or before the first date set for the hearing on confirmation. (3) *Chapter 13.* In a Chapter 13 case, a motion objecting to a discharge under § 1328(f) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (4) *Notice to the United States Trustee, the Creditors, and the Trustee.* At least 28 days' notice of the time so fixed must be given to: • the United States trustee under Rule 2002(k); • all creditors under Rule 2002(f); • the trustee; and • the trustee's attorney.
(b) EXTENSION OF TIME. (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired. (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and	**(b) Extending the Time to File an Objection.** (1) *Motion Before the Time Expires.* On a party in interest's motion and after notice and a hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired. (2) *Motion After the Time Has Expired.* After the time to object has

ORIGINAL	REVISION
before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.	expired and before a discharge is granted, a party in interest may file a motion to extend the time to object if: (A) the objection is based on facts that, if learned after the discharge is granted, would provide a basis for revocation under § 727(d), and the movant did not know those facts in time to object; and (B) the movant files the motion promptly after learning those facts.
(c) GRANT OF DISCHARGE. (1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if: (A) the debtor is not an individual; (B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion to dismiss the case under § 707 is pending; (E) a motion to extend the time for filing a complaint objecting to the discharge is pending; (F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending; (G) the debtor has not paid in full the filing fee prescribed by	**(c) Granting a Discharge.** (1) *Chapter 7.* In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances: (A) the debtor is not an individual; (B) a complaint, or a motion under § 727(a)(8) or (9), objecting to the discharge is pending; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion is pending to dismiss the case under § 707; (E) a motion is pending to extend the time to file a complaint objecting to the discharge; (F) a motion is pending to extend the time to file a motion to dismiss the case under Rule 1017(e)(1); (G) the debtor has not fully paid the filing fee required by 28 U.S.C. § 1930(a), together with any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is

ORIGINAL	REVISION
28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f); (H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7); (I) a motion to delay or postpone discharge under § 727(a)(12) is pending; (J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending; (K) a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or (L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f). (2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain. (3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.	payable to the clerk upon commencing a case—unless the court has waived the fees under 28 U.S.C. § 1930(f); (H) the debtor has not filed a statement showing that a course on personal financial management has been completed—if such a statement is required by Rule 1007(b)(7); (I) a motion is pending to delay or postpone a discharge under § 727(a)(12); (J) a motion is pending to extend the time to file a reaffirmation agreement under Rule 4008(a); (K) the court has not concluded a hearing on a presumption—in effect under § 524(m)—that a reaffirmation agreement is an undue hardship; or (L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f). (2) *Delay in Entering a Discharge in General.* On the debtor's motion, the court may delay entering a discharge for 30 days and, on a motion made within that time, delay entry to a date certain. (3) *Delaying Entry Because of Rule 1007(b)(8).* If the debtor is required to file a statement under Rule 1007(b)(8), the court must not grant a discharge until at least 30 days after the statement is filed. (4) *Individual Chapter 11 or Chapter 13 Case.* In a Chapter 11 case in which the debtor is an individual—or in a Chapter 13 case—the court must not

ORIGINAL	REVISION
(4) In a chapter 11 case in which the debtor is an individual, or a chapter 13 case, the court shall not grant a discharge if the debtor has not filed any statement required by Rule 1007(b)(7).	grant a discharge if the debtor has not filed a statement required by Rule 1007(b)(7).
(d) APPLICABILITY OF RULES IN PART VII AND RULE 9014. An objection to discharge is governed by Part VII of these rules, except that an objection to discharge under §§ 727(a)(8),[2] (a)(9), or 1328(f) is commenced by motion and governed by Rule 9014.	**(d) Applying Part VII Rules and Rule 9014.** The Part VII rules govern an objection to a discharge, except that Rule 9014 governs an objection to a discharge under § 727(a)(8) or (9) or § 1328(f).
(e) ORDER OF DISCHARGE. An order of discharge shall conform to the appropriate Official Form.	**(e) Form of a Discharge Order.** A discharge order must conform to the appropriate Official Form.
(f) REGISTRATION IN OTHER DISTRICTS. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.	**(f) Registering a Discharge in Another District.** A discharge order that becomes final may be registered in another district by filing a certified copy with the clerk of the court for that district. When registered, the order has the same effect as an order of the court where it is registered.
(g) NOTICE OF DISCHARGE. The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.	**(g) Notice of a Final Discharge Order.** The clerk must promptly mail a copy of the final discharge order to those entities listed in (a)(4).

2 So in original. Probably should be only one section symbol.

ORIGINAL	REVISION
Rule 4005. Burden of Proof in Objecting to Discharge	**Rule 4005. Burden of Proof in Objecting to a Discharge**
At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.	At a trial on a complaint objecting to a discharge, the plaintiff has the burden of proof.

ORIGINAL	REVISION
Rule 4006. Notice of No Discharge	**Rule 4006. Notice When No Discharge Is Granted**
If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.	The clerk must promptly notify in the manner provided by Rule 2002(f) all parties in interest of an order: (a) denying a discharge; (b) revoking a discharge; (c) approving a waiver of discharge; or (d) closing an individual debtor's case without entering a discharge.

ORIGINAL	REVISION
Rule 4007. Determination of Dischargeability of a Debt	**Rule 4007. Determining Whether a Debt Is Dischargeable**
(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.	**(a) Who May File a Complaint.** A debtor or any creditor may file a complaint to determine whether a debt is dischargeable.
(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER § 523(c) OF THE CODE. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.	**(b) Time to File.** A complaint, except one under § 523(c), may be filed at any time. If a case is reopened to permit filing the complaint, no fee for reopening is required.
(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	**(c) Chapter 7, 11, 12, or 13—Time to File a Complaint Under § 523(c); Notice of Time; Extension.** Except as (d) provides, a complaint to determine whether a debt is dischargeable under § 523(c) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(d) TIME FOR FILING COMPLAINT UNDER § 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF	**(d) Chapter 13—Time to File a Complaint Under § 523(a)(6); Notice of Time; Extension.** When a debtor files a motion for a discharge under § 1328(b), the court

ORIGINAL	REVISION
TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	must set the time to file a complaint under § 523(a)(6) to determine whether a debt is dischargeable. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.	**(e) Applying Part VII Rules.** The Part VII rules govern a proceeding on a complaint filed under this Rule 4007.

ORIGINAL	REVISION
Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement	**Rule 4008. Reaffirmation Agreement and Supporting Statement**
(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.	**(a) Time to File; Cover Sheet.** A reaffirmation agreement must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The agreement must have a cover sheet prepared as prescribed by Form 427. At any time, the court may extend the time to file the agreement.
(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.	**(b) Supporting Statement.** The debtor's supporting statement required by § 524(k)(6)(A) must be accompanied by a statement of the total income and expenses as shown on Schedules I and J. If the income and expenses shown on the supporting statement differ from those shown on the schedules, the supporting statement must explain the difference.

Bankruptcy Rules Restyling

5000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART V—Courts and Clerks	**PART V. COURTS AND CLERKS**
Rule 5001. Courts and Clerks' Offices	**Rule 5001. Courts and Clerks' Offices**
(a) COURTS ALWAYS OPEN. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.	**(a) Courts Always Open.** Bankruptcy courts are considered always open for filing a pleading, motion, or other paper; issuing and returning process; making rules; or entering an order.
(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.	**(b) Location for Trials and Hearings; Proceedings in Chambers.** Every trial or hearing must be held in open court—in a regular courtroom if convenient. Except as provided in 28 U.S.C. § 152(c), any other act may be performed—or a proceeding held—in chambers anywhere within or outside the district. But unless it is ex parte, a hearing may be held outside the district only if all affected parties consent.
(c) CLERK'S OFFICE. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).	**(c) Clerk's Office Hours.** A clerk's office—with the clerk or a deputy in attendance—must be open during business hours on all days except Saturdays, Sundays, and the legal holidays listed in Rule 9006(a)(6).

ORIGINAL	REVISION
Rule 5002. Restrictions on Approval of Appointments	**Rule 5002. Restrictions on Approving Court Appointments**
(a) APPROVAL OF APPOINTMENT OF RELATIVES PROHIBITED. The appointment of an individual as a trustee or examiner pursuant to § 1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.	**(a) Appointing or Employing Relatives.** (1) *Trustee or Examiner.* A bankruptcy judge must not approve appointing an individual as a trustee or examiner under § 1104 if the individual is a relative of either the judge or the United States trustee in the region in which the case is pending. (2) *Attorney, Accountant, Appraiser, Auctioneer, or Other Professional Person.* A bankruptcy judge must not approve employing under § 327, § 1103, or § 1114 an individual as an attorney, accountant, appraiser, auctioneer, or other professional person who is a relative of the judge. The court may approve employing a relative of the United States trustee in the region in which the case is pending unless, under the circumstances in the case, the relationship makes the employment improper. (3) *Related Entities and Associates.* If an appointment under (1) or an employment under (2) is forbidden, so is appointing or employing: (A) the individual's firm, partnership, corporation, or any other form of business association or relationship; or (B) a member, associate, or professional employee of an entity listed in (A).
(b) JUDICIAL DETERMINATION THAT APPROVAL OF APPOINTMENT OR EMPLOYMENT IS IMPROPER. A bankruptcy judge may not approve the	**(b) Other Considerations in Approving Appointments or Employment.** A bankruptcy judge must not approve appointing a person as a trustee or examiner under (a)(1), or employing a

ORIGINAL	REVISION
appointment of a person as a trustee or examiner pursuant to § 1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.	person under (a)(2), if the person is, or has been, so connected with the judge or the United States trustee as to make the appointment or employment improper.

ORIGINAL	REVISION
Rule 5003. Records Kept By the Clerk	**Rule 5003. Records to Be Kept by the Clerk**
(a) BANKRUPTCY DOCKETS. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.	**(a) Bankruptcy Docket.** The clerk must keep a docket in each case and must: (1) enter on the docket each judgment, order, and activity, as prescribed by the Director of the Administrative Office of the United States Courts; and (2) show the date of entry for each judgment or order.
(b) CLAIMS REGISTER. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.	**(b) Claims Register.** When it appears that there will be a distribution to unsecured creditors, the clerk must keep in a claims register a list of the claims filed in the case.
(c) JUDGMENTS AND ORDERS. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.	**(c) Judgments and Orders.** (1) *In General.* In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a copy of: (A) every final judgment or order affecting title to, or a lien on, real property; (B) every final judgment or order for the recovery of money or property; and (C) any other order the court designates. (2) *Indexing with the District Court.* On a prevailing party's request, a copy of the following must be kept and indexed with the district court's civil judgments: (A) every final judgment or order affecting title to, or a lien on, real or personal property; and

ORIGINAL	REVISION
	(B) every final judgment or order for the recovery of money or property.
(d) INDEX OF CASES; CERTIFICATE OF SEARCH. The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.	**(d) Index of Cases; Certificate of Search.** (1) *Index of Cases.* The clerk must keep an index of cases and adversary proceedings in the form and manner prescribed by the Director of the Administrative Office of the United States Courts. (2) *Searching the Index; Certificate of Search.* On request, the clerk must search the index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court—and if so, whether a discharge has been entered.
(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address.[1] The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a	**(e) Register of Mailing Addresses of Federal and State Governmental Units and Certain Taxing Authorities.** (1) *In General.* The United States—or a state or a territory where the court is located—may file a statement designating its mailing address. A taxing authority (including a local taxing authority) may also file a statement designating an address for serving requests under § 505(b). The designation must describe where to find further information about additional requirements for serving a request. (2) *Register of Mailing Address.* (A) *In General.* In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a register of the mailing addresses

[1] This passage looks garbled. Please check our suggested revision.—Style Consultants.

ORIGINAL	REVISION
separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.	of the governmental units listed in the first sentence of (1) and a separate register containing the addresses of taxing authorities for serving requests under § 505(b). (B) *Number of Entries.* The clerk need not include in any register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. But if more than one mailing address is included, the clerk must also include information that would enable a user to determine when each address is applicable. Mailing to only one applicable address provides effective notice. (C) *Keeping the Register Current.* The clerk must update the register annually, as of January 2 of each year. (D) *Mailing Address Presumed to Be Proper.* A mailing address in the register is conclusively presumed to be proper. But a failure to use that address does not invalidate notice that is otherwise effective under applicable law.
(f) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.	**(f) Other Books and Records.** The clerk must keep any other books and records required by the Director of the Administrative Office of the United States Courts.

ORIGINAL	REVISION
Rule 5004. Disqualification	**Rule 5004. Disqualifying a Bankruptcy Judge**
(a) DISQUALIFICATION OF JUDGE. A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.	**(a) From Presiding Over a Proceeding, Contested Matter, or Case.** A bankruptcy judge's disqualification is governed by 28 U.S.C. § 455. The judge is disqualified from presiding over a proceeding or contested matter in which a disqualifying circumstance arises—and, when appropriate, from presiding over the entire case.
(b) DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION. A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.	**(b) From Allowing Compensation.** The bankruptcy judge is disqualified from allowing compensation to a relative or to a person who is so connected with the judge as to make the judge's allowing it improper.

ORIGINAL	REVISION
Rule 5005. Filing and Transmittal of Papers	**Rule 5005. Filing Papers and Sending Copies to the United States Trustee**
(a) FILING. (1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices. (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 local rule that includes reasonable exceptions.	**(a) Filing Papers.** **(1)** ***With the Clerk.*** Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending: • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other papers. The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or any local rule or practice. **(2)** ***With a Judge of the Court.*** A judge may personally accept for filing a paper listed in (1). The judge must note on the paper the date of filing and promptly send it to the clerk. **(3)** ***Electronic Filing and Signing***. (A) *By a Represented Entity—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. (B) *By an Unrepresented Individual—*

ORIGINAL	REVISION
(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.	*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 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.
(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE. (1) The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending. (2) The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee. (3) Nothing in these rules shall	**(b) Sending Copies to the United States Trustee.** All papers required to be sent to the United States trustee must be mailed or delivered to the office of the United States trustee or other place within the district that the United States trustee designates. An entity, other than the clerk, that sends a paper to the United States trustee must promptly file a verified statement identifying the paper and stating the date it was sent. The clerk need not send a copy of a paper to a United States trustee who requests in writing that it not be sent.

ORIGINAL	REVISION
require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.	
(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.	**(c) When a Paper Is Erroneously Filed or Delivered.** **(1)** *Paper Intended for the Clerk.* If a paper intended to be filed with the clerk is erroneously delivered to a person listed below, that person must note on it the date of receipt and promptly send it to the clerk: • the United States trustee; • the trustee; • the trustee's attorney; • a bankruptcy judge; • a district judge; • the clerk of the bankruptcy appellate panel; or • the clerk of the district court. **(2)** *Paper Intended for the United States Trustee.* If a paper intended for the United States trustee is erroneously delivered to the clerk or to another person listed in (1), the clerk or that person must note on it the date of receipt and promptly send it to the United States trustee. **(3)** *Applicable Filing Date.* In the interests of justice, the court may order that the original date of receipt shown on a paper erroneously delivered under (1) or (2) be deemed the date it was filed with the clerk or sent to the United States trustee.

ORIGINAL	REVISION
Rule 5006. Certification of Copies of Papers	**Rule 5006. Providing Certified Copies**
The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.	Upon payment of the prescribed fee, the clerk must issue a certified copy of the record of any proceeding or any paper filed with the clerk.

ORIGINAL	REVISION
Rule 5007. Record of Proceedings and Transcripts	**Rule 5007. Record of Proceedings and Transcripts**
(a) FILING OF RECORD OR TRANSCRIPT. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.	**(a) Filing Original Notes, Tape Recordings, and Other Original Records of a Proceeding; Transcripts.** (1) ***Records.*** The reporter or operator of a recording device must certify the original notes of testimony, tape recordings, and other original records of a proceeding and must promptly file them with the clerk. (2) ***Transcripts.*** A person who prepares a transcript must promptly file a certified copy with the clerk.
(b) TRANSCRIPT FEES. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.	**(b) Fee for a Transcript.** The fee for a copy of a transcript must be charged at the rate prescribed by the Judicial Conference of the United States. No fee may be charged for filing the certified copy.
(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.	**(c) Sound Recording or Transcript as Prima Facie Evidence.** In any proceeding, a certified sound recording or a transcript of a proceeding is admissible as prima facie evidence of the record.

ORIGINAL	REVISION
Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors	**Rule 5008. Chapter 7—Notice That a Presumption of Abuse Has Arisen Under § 707(b)**
If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.	**(a) Notice to Creditors.** When a presumption of abuse under § 707(b) arises in a Chapter 7 case of an individual with primarily consumer debts, the clerk must, within 10 days after the petition is filed, so notify the creditors in accordance with Rule 2002(f)(1)(J). **(b) Debtor's Statement.** If the debtor does not file a statement indicating whether a presumption has arisen, the clerk must, within 10 days after the petition is filed, so notify creditors and indicate that further notice will be given if a later-filed statement shows that the presumption has arisen. If the debtor later files such a statement , the clerk must promptly notify the creditors.

ORIGINAL	REVISION
Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied	**Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied**
(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.	**(a) Closing a Chapter 7, 12, or 13 Case.** The estate in a Chapter 7, 12, or 13 case is presumed to have been fully administered when: (1) the trustee has filed a final report and final account and has certified that the estate has been fully administered; and (2) within 30 days after the filing, no objection to the report has been filed by the United States trustee or a party in interest.
(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).	**(b) Chapter 7 or 13—Notice of a Failure to File a Statement About Completing a Course on Personal Financial Management.** This rule (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a). The clerk must promptly notify the debtor that the case will be closed without entering a discharge unless the statement is filed within the time prescribed by Rule 1007(c).
(c) CASES UNDER CHAPTER 15. A foreign representative in a proceeding recognized under § 1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in	**(c) Closing a Chapter 15 Case.** **(1)** ***Foreign Representative's Final Report.*** In a proceeding recognized under § 1517, when the purpose of a foreign representative's appearance is completed, the representative must file a final report describing the nature and results of the representative's activities in the court. **(2)** ***Giving Notice of the Report.*** The representative must send a copy of the report to the United States trustee, give notice of its filing, and file a certificate

ORIGINAL	REVISION
the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.	with the court indicating that the notice has been given, to: (A) the debtor; (B) all persons or bodies authorized to administer the debtor's foreign proceedings; (C) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and (D) any other entity the court designates. **(3)** *Presumption of Full Administration.* If the United States trustee or a party in interest does not file an objection within 30 days after the certificate is filed, the case is presumed to have been fully administered.
(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.	**(d) Order Declaring a Lien Satisfied.** This rule (d) applies in a Chapter 12 or 13 case when a claim secured by property of the estate is subject to a lien under applicable nonbankruptcy law. The debtor may move for an order declaring that the secured claim has been satisfied and the lien has been released under the terms of the confirmed plan. The motion must be served—in the manner provided by Rule 7004 for serving a summons and complaint—on the claim holder and any other entity the court designates.

ORIGINAL	REVISION
Rule 5010. Reopening Cases	**Rule 5010. Reopening a Case**
A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.	On the debtor's or another party in interest's motion, the court may, under § 350(b), reopen a case. In a reopened Chapter 7, 12, or 13 case, the United States trustee must not appoint a trustee unless the court determines that one is needed to protect the interests of the creditors and the debtor, or to ensure that the reopened case is efficiently administered.

ORIGINAL	REVISION
Rule 5011. Withdrawal and Abstention from Hearing a Proceeding	**Rule 5011. Motion to Withdraw a Case or Proceeding or to Abstain from Hearing a Proceeding; Staying a Proceeding**
(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.	**(a) Withdrawing a Case or Proceeding.** A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) must be heard by a district judge.
(b) ABSTENTION FROM HEARING A PROCEEDING. A motion for abstention pursuant to 28 U.S.C. § 1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.	**(b) Abstaining from Hearing a Proceeding.** A motion requesting the court to abstain from hearing a proceeding under 28 U.S.C. § 1334(c) is governed by Rule 9014. The motion must be served on all parties to the proceeding.
(c) EFFECT OF FILING OF MOTION FOR WITHDRAWAL OR ABSTENTION. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. § 1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.	**(c) Staying a Proceeding After a Motion to Withdraw or Abstain.** A motion filed under (a) or (b) does not stay proceedings in a case or affect its administration. But a bankruptcy judge may, on proper terms and conditions, stay a proceeding until the motion is decided. **(d) Motion to Stay a Proceeding.** A motion to stay a proceeding must ordinarily be submitted first to the bankruptcy judge. If it—or a motion for relief from a stay—is filed in the district court, the motion must state why it has not been first presented to or obtained from the bankruptcy judge. The district judge may grant relief on terms and conditions the judge considers proper.

ORIGINAL	REVISION
Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases	**Rule 5012. Chapter 15—Agreement to Coordinate Proceedings**
Approval of an agreement under § 1527(4) of the Code shall be sought by motion. The movant shall attach to the motion a copy of the proposed agreement or protocol and, unless the court directs otherwise, give at least 30 days' notice of any hearing on the motion by transmitting the motion to the United States trustee, and serving it on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct.	An agreement to coordinate proceedings under § 1527(4) may be approved on motion with an attached copy of the agreement or protocol. Unless the court orders otherwise, the movant must give at least 30 days' notice of any hearing on the motion by sending a copy to the United States trustee and serving it on: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entity the court designates.

Bankruptcy Rules Restyling

6000 Series

Preface

This revision is a restyling of the Federal Rules of Bankruptcy Procedure to provide greater clarity, consistency, and conciseness without changing practice and procedure.

ORIGINAL	REVISION
PART VI—COLLECTION AND LIQUIDATION OF THE ESTATE	**PART VI. COLLECTING AND LIQUIDATING PROPERTY OF THE ESTATE**
Rule 6001. Burden of Proof As to Validity of Postpetition Transfer	**Rule 6001. Burden of Proving the Validity of a Postpetition Transfer**
Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.	An entity that asserts the validity of a postpetition transfer under § 549 has the burden of proof.

ORIGINAL	REVISION
Rule 6002. Accounting by Prior Custodian of Property of the Estate	**Rule 6002. Custodian's Report to the United States Trustee**
(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.	**(a) Custodian's Report and Account.** A custodian required by § 543 to deliver property to the trustee must promptly file and send to the United States trustee a report and account about the property of the estate and its administration.
(b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.	**(b) Examining the Administration.** After the custodian's report and account has been filed and the superseded administration has been examined, the court must, after notice and a hearing, determine whether the custodian's administration has been proper and disbursements have been reasonable.

ORIGINAL	REVISION
Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts	**Rule 6003. Delay in Granting Certain Applications and Motions Made Immediately After the Petition Is Filed**
Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: (a) an application under Rule 2014; (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or (c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.	**(a) In General.** Unless relief is needed to avoid immediate and irreparable harm, the court must not, within 21 days after the petition is filed, grant an application or motion to: (1) employ a professional person under Rule 2014; (2) use, sell, or lease property of the estate, including a motion to pay all or a part of a claim that arose before the petition was filed; (3) incur any other obligation regarding the property of the estate; or (4) assume or assign an executory contract or unexpired lease under § 365. **(b) Exception.** This rule does not apply to a motion under Rule 4001.

ORIGINAL	REVISION
Rule 6004. Use, Sale, or Lease of Property	**Rule 6004. Use, Sale, or Lease of Property**
(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code.	**(a) Notice.** (1) *In General*. Notice of a proposed use, sale, or lease of property that is not in the ordinary course of business must be given: (A) under Rule 2002(a)(2), (c)(1), (i), and (k); and (B) in accordance with § 363(b)(2), if applicable. (2) *Exceptions*. Notice under (a) is not required if (d) applies or the proposal involves cash collateral only.
(b) OBJECTION TO PROPOSAL. Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.	**(b) Objection.** Except as provided in (c) and (d), an objection to a proposed use, sale, or lease of property must be filed and served at least 7 days before the date set for the proposed action or within the time set by the court. Rule 9014 governs the objection.
(c) SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS. A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.	**(c) Motion to Sell Property Free and Clear of Liens and Other Interests; Objection.** A motion for authority to sell property free and clear of liens or other interests must be made in accordance with Rule 9014 and served on the parties who have the liens or other interests. The notice required by (a) must include: (1) the date of the hearing on the motion; and (2) the time to file and serve an objection on the debtor in possession or trustee.
(d) SALE OF PROPERTY UNDER $2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt	**(d) Notice of an Intent to Sell Property Valued at Less Than $2500; Objection.** If all the nonexempt property of the estate

ORIGINAL	REVISION
property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code, the United States trustee and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 14 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.	—in the aggregate—has a gross value less than $2500, a notice of an intent to sell the property that is not in the ordinary course of business must be served on: • creditors; • indenture trustees; • any committees elected under § 705 or appointed under § 1102; • the United States trustee; and • other persons as the court orders. A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. Rule 9014 governs the objection.
(e) HEARING. If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.	**(e) Notice of a Hearing on an Objection.** The date of a hearing on an objection under (b) or (d) may be set in the notice under (a).
(f) CONDUCT OF SALE NOT IN THE ORDINARY COURSE OF BUSINESS. (1) *Public or Private Sale.* All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy	**(f) Conducting a Sale That Is Not in the Ordinary Course of Business.** **(1)** ***Public Auction or Private Sale.*** (A) *Itemized Statement Required.* A sale that is not in the ordinary course of business may be made by public auction or private sale. Unless it is impracticable, when the sale is completed, an itemized statement must be filed that shows: • the property sold; • the name of each purchaser; and • the amount paid for each item or lot, or if sold in bulk, for the entire property. (B) *If by Auction.* If the property is sold by auction, the auctioneer must file

ORIGINAL	REVISION
thereof to the United States trustee. (2) *Execution of Instruments.* After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.	the itemized statement and send a copy to the United States trustee and to either the trustee, debtor in possession, or Chapter 13 debtor. (C) *If by Private Sale.* If the property is not sold by auction, the trustee, debtor in possession, or Chapter 13 debtor must file the itemized statement and send a copy to the United States trustee. **(2)** ***Signing the Sale Documents.*** When a sale is complete, the debtor, trustee, or debtor in possession must sign any document that is necessary or court-ordered to transfer the property to the purchaser.
(g) SALE OF PERSONALLY IDENTIFIABLE INFORMATION. (1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court may direct. The motion shall be transmitted to the United States trustee. (2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than seven days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the appointment,	**(g) Selling Personally Identifiable Information.** **(1)** ***Request for a Consumer-Privacy Ombudsman.*** A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) must include a request for an order directing the United States trustee to appoint a consumer-privacy ombudsman under § 332. Rule 9014 governs the motion. It must be sent to the United States trustee and served on: • any committee elected under § 705 or appointed under § 1102; • in a Chapter 11 case in which no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and • other entities as the court orders. **(2)** ***Notice That an Ombudsman Has Been Appointed.*** If a consumer-privacy ombudsman is appointed, the United States trustee must give notice of the appointment at least 7 days

ORIGINAL	REVISION
including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	before the hearing on any motion under § 363(b)(1)(B). The notice must give the name and address of the person appointed and include the person's verified statement that sets forth any connection with: • the debtor, creditors, or any other party in interest; • their respective attorneys and accountants; • the United States trustee; and • any person employed in the United States trustee's office.
(h) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE OF PROPERTY. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.	**(h) Staying an Order Authorizing the Use, Sale, or Lease of Property.** Unless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered.

ORIGINAL	REVISION
Rule 6005. Appraisers and Auctioneers	**Rule 6005. Employing an Appraiser or Auctioneer**
The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.	A court order approving the employment of an appraiser or auctioneer must set the amount or rate of compensation. An officer or employee of the United States judiciary or United States Department of Justice is not eligible to act as an appraiser or auctioneer. No residence or licensing requirement disqualifies a person from being employed.

ORIGINAL	REVISION
Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease	**Rule 6006. Assuming, Rejecting, or Assigning an Executory Contract or Unexpired Lease**
(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.	**(a) Procedure in General.** A proceeding to assume, reject, or assign an executory contract or unexpired lease—other than as part of a plan—is governed by Rule 9014.
(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.	**(b) Requiring a Trustee, Debtor in Possession, or Debtor to Assume or Reject a Contract or Lease.** In a Chapter 9, 11, 12, or 13 case, Rule 9014 governs a proceeding by a party to an executory contract or unexpired lease to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease.
(c) NOTICE. Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.	**(c) Notice of a Motion.** Notice of a motion under (a) or (b) must be given to: • the other party to the contract or lease; • other parties in interest as the court orders; and • except in a Chapter 9 case, the United States trustee.
(d) STAY OF ORDER AUTHORIZING ASSIGNMENT. An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(d) Staying an Order Authorizing an Assignment.** Unless the court orders otherwise, an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed for 14 days after the order is entered.

ORIGINAL	REVISION
(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.	**(e) Combining in One Motion a Request Involving Multiple Contracts or Leases.** **(1)** *Limitations.* The trustee must not seek authority to assume or assign multiple executory contracts or unexpired leases in one omnibus motion unless: (A) they are all between the same parties or are to be assigned to the same assignee; (B) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (C) the court allows the motion to be filed. **(2)** *Exception for Authority to Reject.* Subject to (f), a trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one omnibus motion.
(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall: (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; (2) list parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including the curing of defaults, for each requested assumption or assignment; (4) specify the terms, including the identity of each assignee and the	**(f) Content of an Omnibus Motion.** A motion to reject—or, if permitted under (e), a motion to assume or assign—multiple executory contracts or unexpired leases that are not between the same parties must: (1) state in a conspicuous place that the parties' names and their contracts or leases are listed in the motion; (2) list the parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including how a default will be cured, for each requested assumption or assignment; (4) specify the terms, including the assignee's identity and the adequate assurance of future performance by each assignee, for each requested assignment;

ORIGINAL	REVISION
adequate assurance of future performance by each assignee, for each requested assignment; (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.	(5) be numbered consecutively with other omnibus motions to reject, assume, or assign executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.
(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.	**(g) Determining the Finality of an Order Regarding an Omnibus Motion.** The finality of an order regarding any executory contract or unexpired lease included in an omnibus motion must be determined as though the contract or lease were the subject of a separate motion.

ORIGINAL	REVISION
Rule 6007. Abandonment or Disposition of Property	**Rule 6007. Abandoning or Disposing of Property; Objections**
(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.	**(a) Notice by the Trustee or Debtor in Possession.** (1) ***Notice.*** Unless the court orders otherwise, the trustee or debtor in possession must give notice of a proposed abandonment or disposition of property to: • the United States trustee; • creditors; • indenture trustees; and • any committees elected under § 705 or appointed under § 1102. (2) ***Objection.*** A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders.
(b) MOTION BY PARTY IN INTEREST. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. Unless otherwise directed by the court, the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other	**(b) Motion by a Party in Interest.** (1) ***Service.*** A party in interest may file and serve a motion to require the trustee or debtor in possession to abandon property of the estate. Unless the court orders otherwise, the motion (and any notice of the motion) must be served on: • the trustee or debtor in possession; • the United States trustee; • creditors; • indenture trustees; and • any committees elected under § 705 or appointed under § 1102.

ORIGINAL	REVISION
entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court.	(2) *Objection.* A party in interest may file and serve an objection within 14 days after service or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders. (3) *Order.* If the court grants the motion to abandon property, the order effects the trustee's or debtor in possession's abandonment without further notice—unless the court orders otherwise.
[(c) HEARING]	

ORIGINAL	REVISION
Rule 6008. Redemption of Property from Lien or Sale	**Rule 6008. Redeeming Property from a Lien or a Sale to Enforce a Lien**
On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.	On motion by the debtor, trustee, or debtor in possession and after a hearing on notice as the court may order, the court may authorize property to be redeemed from a lien or from a sale to enforce a lien under applicable law.

ORIGINAL	REVISION
Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession	**Rule 6009. Prosecuting and Defending the Debtor's Interests**
With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.	With or without court approval, the trustee or debtor in possession may: (a) appear in any action or proceeding by or against the debtor and act on the debtor's behalf; or (b) commence and prosecute in any tribunal an action or proceeding on the estate's behalf.

ORIGINAL	REVISION
Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety	**Rule 6010. Avoiding an Indemnifying Lien or a Transfer to a Surety**
If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.	This rule applies if a lien voidable under § 547 has been dissolved by furnishing a bond or other obligation and the surety has been indemnified by the transfer or creation of a lien on the debtor's nonexempt property. The surety must be joined as a defendant in any proceeding to avoid that transfer or lien. The proceeding is governed by the rules in Part VII.

ORIGINAL	REVISION
Rule 6011. Disposal of Patient Records in Health Care Business Case	**Rule 6011. Claiming Patient Records Scheduled for Destruction in a Health-Care-Business Case**
(a) NOTICE BY PUBLICATION UNDER § 351(1)(A). A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall: (1) identify with particularity the health care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained; (3) state how to claim the patient records; and (4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.	**(a) Notice by Publication About the Records.** A notice by publication about destroying or claiming patient records under § 351(1)(A) must not identify any patient by name or contain other identifying information. The notice must: (1) identify with particularity the health-care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, e-mail address, and website (if any) of the person from whom information about the records may be obtained; (3) state how to claim the records and the final date for doing so; and (4) state that if they are not claimed by that date, they will be destroyed.
(b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where the health care facility is located, and to any	**(b) Notice by Mail About the Records.** (1) *Required Information*. Subject to applicable nonbankruptcy law relating to patient privacy, a notice by mail about destroying or claiming patient records under § 351(1)(B) must: (A) include the information described in (a); and (B) direct a family member or other representative who receives the notice to tell the patient about it. (2) *Mailing*. The notice must be mailed to: • the patient;

ORIGINAL	REVISION
insurance company known to have provided health care insurance to the patient.	• any family member or other contact person whose name and address have been given to the trustee or debtor for providing information about the patient's health care; • the Attorney General of the State where the health-care facility is located; and • any insurance company known to have provided health-care insurance to the patient.
(c) PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.	**(c) Proof of Compliance with Notice Requirements.** Unless the court orders the trustee to file a proof of compliance with § 351(1)(B) under seal, the trustee must keep proof of compliance for a reasonable time, but not file it.
(d) REPORT OF DESTRUCTION OF RECORDS. The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.	**(d) Report on the Destruction of Unclaimed Records.** Within 30 days after a patient's unclaimed records have been destroyed under § 351(3), the trustee must file a report that certifies the destruction and explains the method used. The report must not identify any patient by name or by other identifying information.

Committee Note [for Rule 1001]

The Bankruptcy Rules are the fifth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence took effect in 2011. The restyled Bankruptcy Rules apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, Civil and Evidence Rules.

General Guidelines. Guidance in drafting, usage, and style was provided by Bryan Garner, Guidelines for Drafting and Editing Court Rules, Administrative Office of the United States Courts (1996) and Bryan Garner, Dictionary of Modern Legal Usage (2d ed. 1995). See also Joseph Kimble, Guiding Principles for Restyling the Civil Rules, in Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure, at page x (Feb. 2005) (available at https://www.michbar.org/file/barjournal/article/documents/pdf4article909.pdf and https://www.michbar.org/file/barjournal/article/documents/pdf4article921.pdf); Joseph Kimble, Lessons in Drafting from the New Federal Rules of Civil Procedure, 12 Scribes J. Legal Writing 25 (2008-2009).

Formatting Changes. Many of the changes in the restyled Bankruptcy Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed.

Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. The restyled rules also minimize the use of inherently ambiguous words. The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. The restyled rules also remove words and concepts that are outdated or redundant.

Rule Numbers. The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

No Substantive Change. The style changes to the rules are intended to make no changes in substantive meaning. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee also declined to modify "sacred phrases"— those that have become so familiar in practice that to alter them would be unduly disruptive to practice and expectations. An example in the Bankruptcy Rules would be “meeting of creditors.”

Legislative Rules. In those cases in which Congress enacted a rule by statute, in particular Rule 2002(n) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357), Rule 3001(g) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 361) and Rule 7004(h) (Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), the Committee has not restyled the rule.

Committee Note [for all Rules]

The language of Rule ___ has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Committee Note [for Rule 3001]

The language of most provisions in Rule 3001 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. Rule 3001(g) has not been restyled (except to add a title) because it was enacted by Congress, P.L. 98-353, 98 Stat. 361, Sec. 354 (1984). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

TAB 11

TAB 11A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: FORM FOR CARES FORBEARANCE CLAIMS

DATE: JANUARY 29, 2021

The CARES Act, which was enacted on March 27, 2020, authorizes "a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency [to] request forbearance [which must be granted] on the Federally backed mortgage loan, regardless of delinquency status." Pub. Law 116-136, § 4022(b)(1). A similar provision applies to borrowers with a federally backed multifamily mortgage. *Id.* § 4023(a). At the end of the forbearance period, the borrower must repay the deferred amounts. How that obligation should be dealt with in an ongoing chapter 13 case has presented difficulties.

The recently enacted Consolidated Appropriations Act, 2021 ("CAA") contains provisions that address the treatment of CARES forbearance claims in chapter 13 cases. Section 1001(d) of Title X of the bill amends § 501 of the Bankruptcy Code to add a new subsection (f), which allows an "eligible creditor" to file a supplemental proof of claim for a CARES forbearance claim in a chapter 13 case. The term "eligible creditor" is defined as "a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5)." And "CARES forbearance claim" means "a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible

creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057)."

The proof of claim for such a supplemental claim must be filed within 120 days from the end of the forbearance period. CAA § 1001(d)(2) (amending Code § 502(b)(9)). The new § 501(d)(2)(B) specifies information that must be included in a CARES forbearance proof of claim if the debtor and creditor have agreed to a modification or deferral of the underlying mortgage loan obligation in connection with a forbearance:

> "(i) the relevant terms of the modification or deferral;
>
> (ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and
>
> (iii) a description of the payments to be deferred until the date on which the mortgage loan matures."

The CAA also amends § 1329 of the Code to permit modification of a chapter 13 plan in order to provide for a CARES forbearance claim.

All of these amendments to §§ 501, 502, and 1329 are temporary. They sunset one year from the date of enactment of the CAA—on December 27, 2021.

Advisory Committee member Deb Miller proposed that a new proof of claim form be adopted for CARES forbearance claims. She drafted a form, which the Subcommittee reviewed and revised. It recommends that the Advisory Committee approve the form that is being circulated with this memo as a Director's Form, which will take effect when posted and remain in effect until December 27.

Ms. Miller informed the Subcommittee that mortgage servicers desire such a form. It will assist them in the implementation of the new statutory procedure by spelling out the information that they are required to provide. That will also be helpful to courts, trustees,

debtors, and other parties because it will increase the likelihood that the required information will be provided.

The Subcommittee concluded that creation of a Director's Form issued by the Administrative Office of the Courts after review by the Advisory Committee, instead of an Official Form, is the best way to proceed. A Director's Form does not have to be published or approved by the Standing Committee or Judicial Conference. Given the short duration of the statutory provisions for filing forbearance claims, expedition in issuance is desirable. While the Advisory Committee has been given authority to make technical and conforming changes to the Official Forms, those changes have to be retroactively approved by the Standing Committee, and the Judicial Conference has to be given notice of the changes. Issuance of a Director's Form is simpler. Furthermore, it is possible that some courts or servicers might decide that additional or different information should be provided by a servicer filing a CARES forbearance claim. That may be especially true since the form will not be published for comment. Issuance of a Director's Form, rather than an Official Form, will allow such adjustments if needed.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

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

Case number _____

Form 4100S

Supplemental Proof of Claim for CARES Forbearance Claim **02/21**

This Supplemental Proof of Claim is filed in compliance with the requirements of 11 U.S.C. § 501(f)(1) as the debtor was granted a forbearance under the CARES Act (15 U.S.C. § 9056 or 9057). "Creditor" in this form means "eligible creditor" under 11 U.S.C. § 501(f). File this form as a supplement to your proof of claim.

Name of creditor: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address: _____
Number Street

_____

_____
City State ZIP Code

Part 1: Amount of Loan That Was Not Received During Forbearance Period

List of payments not received during forbearance period:

Date:	_____	Amount:	_____	Date:	_____	Amount:	_____
Date:	_____	Amount:	_____	Date:	_____	Amount:	_____
Date:	_____	Amount:	_____	Date:	_____	Amount:	_____
Date:	_____	Amount:	_____	Date:	_____	Amount:	_____
Date:	_____	Amount:	_____	Date:	_____	Amount:	_____

Total of payments due under the forbearance: _____

Part 2: Information About Agreement to Modify or Defer Loan Obligation

Have the debtor and creditor entered into an agreement to modify or defer the loan obligation in connection with the forbearance?

❑ Yes. Include the information required by 11 USC § 501(f)(2)(B)(i)-(iii) and attach copies of the writing outlining the modification or deferral:

- ❍ The loan was modified as follows:
- ❍ The amount of forborne payments and the deferral date:

❑ No. Debtor or their counsel should contact the creditor about any resolutions that may be available to the debtor.

Part 3: Sign Here

The person completing this form must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box:

❑ I am the creditor.

❑ I am the creditor's authorized agent.

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information and reasonable belief.

✘ _____ Date ____/____/_____

Signature

Print _____ Title _____

First Name Middle Name Last Name

Company _____

Address _____

Number Street

_____

City State ZIP Code

Contact phone (_____) _____– _____ Email _____

TAB 11B

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

JOHN D. BATES
CHAIR

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

DENNIS R. DOW
BANKRUPTCY RULES

ROBERT M. DOW, JR.
CIVIL RULES

RAYMOND M. KETHLEDGE
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Honorable John D. Bates, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Dennis R. Dow, Chair Dennis R. Dow
Advisory Committee on Bankruptcy Rules

RE: Bankruptcy Rule 4001(c)

DATE: February 5, 2021

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act of 2021 (the "Act") which included, among other provisions, in section 320(a), enactment of a new Section 364(g) which reads as follows:

> (g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (e)(1) of this section.

> (2) The trustee may incur debt described in paragraph (1) notwithstanding any provision in a contract, prior order authorizing the trustee to incur debt under this section, prior order authorizing the trustee to use cash collateral under section 363, or applicable law that prohibits the debtor from incurring additional debt.
>
> (3) The court shall hold a hearing within 7 days after the filing and service of the motion to obtain a loan described in paragraph (1). Notwithstanding the Federal Rules of Bankruptcy Procedure, at such hearing, the court may grant relief on a final basis.

This amendment is to:

> (A) take effect on the date on which the Administrator [of the Small Business Administration] submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)); and
>
> (B) apply to any case pending on or commenced on or after the date described in subparagraph (A).

Act, § 320(f)(1). If the amendment becomes effective, the Act contains a sunset provision that deletes the new provision from the Code on the date that is two years after the date of enactment of the Act (December 27, 2022). Act, § 320(f)(2)(A)(i).

Impact on Federal Rule of Bankruptcy Procedure 4001(c)

Rule 4001(c)(2) currently reads as follows:

> (2) **Hearing**. The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

The timing set forth in the current rule is inconsistent with the requirements of new § 364(g)(3), should that section come into effect.

Proposed Amendment

The Advisory Committee has recommended the following amendment to Rule 4001(c)(2) as an interim bankruptcy rule:[1]

(2) **Hearing**.

(A) Except as provided in (B), the ~~The~~ court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(B) If the motion seeks authority to obtain credit under §364(g)(1), the court must hold a hearing within 7 days after filing and service of the motion and may grant final relief at such hearing.

Advisory Committee Note

> The rule is amended in response to the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260. That law enacts section 364(g) of the Code which permits certain debtors in possession and trustees to obtain loans under specified provisions of the Small Business Act (15 U.S.C. 636(a)). Section 364(g)(3) requires the court to hold a hearing within 7 days of a motion to obtain such a loan and permits the court to grant final relief at that hearing. Rule 4001(c)(2) is amended to add a new clause (B) conforming the rule to section 364(g)(3) of the statute. Existing Rule 4001(c)(2) is redesignated as Rule 4001(c)(2)(A) and language is inserted at the beginning of that clause making it inapplicable to the motions described in clause (B). The Interim Rule should remain in effect until December 27, 2022, when the requirements of Section 364(g)(3) sunset.

Because the new § 364(g) will go into effect immediately upon the submission of the specified determination to the Director of the Executive Office for United States Trustees, and will apply to all cases pending on that date, the Advisory Committee recommends that the Standing Committee consider and approve the proposed amendment to Interim Rule 4001(c) as soon as possible so that it can be put into effect quickly if the SBA Administrator provides the

[1] Because the effective date of new 11 U.S.C. § 364(g) is uncertain, and the amendment will sunset in less than two years, attempting to amend Rule 4001(c) under the Rules Enabling Act (a process that would take one to two years) is not an option.

written determination to the Director of the EO that would trigger the effectiveness of Section 364(g)(1). Because it may cause confusion if a proposed rule is circulated before the enabling legislation becomes effective, however, the Advisory Committee also recommends that the Standing Committee wait until after the SBA Administrator makes its determination – if that event ever occurs -- before seeking approval of the rule from the Judicial Conference. The Judicial Conference can then recommend that the amended rule be adopted as an interim rule to be implemented by each district as a local rule or standing order to sunset on December 27, 2022. Because of the effective date of the statutory amendment, its limited duration, and the relatively minor nature of the proposed rules amendments, the Advisory Committee recommends that the interim rule be issued without publication.

Action Item: The Advisory Committee recommends that Interim Rule 4001(c) be approved as set out in the attachment to this report and -- if and after the Small Business Administration provides the written determination required under the Consolidated Appropriations Act of 2021 that makes the interim rule necessary -- that the Standing Committee request that the Judicial Conference approve distribution of the interim rule to the district and bankruptcy courts for adoption as a local rule with a sunset date of December 27, 2022.

INTERIM AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

* * * * *

(c) OBTAINING CREDIT.

* * * * *

(2) *Hearing.*

(A) Except as provided in (B), the ~~The~~ court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

[1] New material is underlined in red; matter to be omitted is lined through.

(B) If the motion seeks authority to obtain credit under §364(g)(1), the court must hold a hearing within 7 days after filing and service of the motion and may grant final relief at such hearing.

* * * * *

Committee Note

The rule is amended in response to the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260. That law enacts section 364(g) of the Code which permits certain debtors in possession and trustees to obtain loans under specified provisions of the Small Business Act (15 U.S.C. 636(a)). Section 364(g)(3) requires the court to hold a hearing within 7 days of a motion to obtain such a loan and permits the court to grant final relief at that hearing. Rule 4001(c)(2) is amended to add a new clause (B) conforming the rule to section 364(g)(3) of the statute. Existing Rule 4001(c)(2) is redesignated as Rule 4001(c)(2)(A) and language is inserted at the beginning of that clause making it inapplicable to the motions described in clause (B). The Interim Rule should remain in effect until December 27, 2022, when the requirements of Section 364(g)(3) sunset.

Consent Tab 1

Consent Tab 1A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: BUSINESS SUBCOMMITTEE

SUBJECT: 21-BK-D – PROPOSAL REGARDING RULE 3007

DATE: MAR. 9, 2021

Thomas Moers Mayer has submitted a suggestion with respect to Rule 3007(c) and (e). He notes that Rule 3007(c) precludes joinder of more than one claim in a single objection "unless otherwise ordered by the court or permitted by subdivision (d)." Rule 3007(d) permits the filing of an omnibus objection with respect to claims "if all the claims were filed by the same entity" or the claims are subject to disallowance on grounds listed in the Rule which are non-substantive in nature. The provisions of Rule 3007(d) are expressly "[s]ubject to subdivision (e)," which sets out the requirements for an omnibus objection. Among those requirements is a limit on the number of claims that may be covered by the objection to 100. Rule 3007(e)(6).

Mr. Mayer notes that Delaware Local Rule 3007-1 provides that an omnibus objection may include up to 150 claims, and purports to be adopted by the bankruptcy court of Delaware pursuant to authority granted by the language of Fed. R. Bankr. P. 3007(c) ("unless otherwise ordered by the court").

The issue is whether all omnibus objections, including those authorized by the court under the language of Rule 3007(c), are subject to the limitations set forth in Rule 3007(e), or whether that Rule applies only to omnibus objections described in Rule 3007(d).

History of Rule

The provisions of Rules 3007(c), (d) and (e) were adopted by the Advisory Committee on Bankruptcy Rules in March, 2005 and submitted to the Standing Committee for approval of publication in June, 2005. The agenda book for the Standing Committee includes a description of the proposed amendments in the report from the Bankruptcy Committee, which reads as follows:

> "Rule 3007. The proposed amendment would place restrictions upon, and provide procedures for, omnibus objections to claims. In summary, the proposal would prohibit omnibus objections unless the court permits it or the objection is one of the class of permitted omnibus objections generally consisting of non-substantive objections, such as duplicate claims or late claims."

The discussion of the amendments in the minutes of the Advisory Committee indicate that Rule 3007(d) was intended to provide a list of claims that could be included in an omnibus objection without a court order, and if the claims were not of the (non-substantive) nature

described in Rule 3007(d), they could be joined in an omnibus objection only pursuant to court order under Rule 3007(c). The minutes of the Advisory Committee further indicate that there was significant concern that courts would "opt out" of the proposed amendment. The Advisory Committee therefore rejected language at the beginning of proposed Rule 3007(e) that would have said "Unless otherwise ordered by the court, a pleading that joins objections to more than one claim shall" and instead approved language that read "an objection to claims of more than one creditor shall," intending thereby to make compliance with Rule 3007(e) mandatory for all omnibus objections and not subject to alteration by court order. See Memo from Jeff Morris, Reporter, to Advisory Committee on Bankruptcy Rules, Jan. 29, 2005, included in Agenda Book for Meeting of Advisory Committee on Bankruptcy Rules, March 2005. (The language was later changed to "An omnibus objection shall").

Among the comments submitted in response to publication was one from Mr. Anthony Sabino, a bankruptcy practitioner and professor in New York who recommended adding a new subdivision (g) that would authorize courts to impose additional limits on the use of omnibus claims objections "when the interests of justice so require." The Reporter recommended against any modification in response to this comment:

> "Subdivision (c) of the rule already provides some discretion for the courts with regard to omnibus objections, so a new subdivision (g) may not be necessary. The discretion granted in Subdivision (c) is not quite the same as that suggested by Mr. Sabino, but I believe that the Committee's view was that **the rule should set out the format for the omnibus claims objections and that there generally should not be deviations from that form**. The more that these practices become localized, the less value the rule will be in ensuring that creditors received effective notice of objections to their claims. Therefore, reinserting significant discretion for the courts may be counterproductive to the purposes of the amendment." (emphasis supplied)

Memo to the Advisory Committee from Jeff Morris, Reporter, Feb. 6, 2006, included in Agenda Book for Meeting of Advisory Committee on Bankruptcy Rules, March, 2006. The minutes of the Advisory Committee meeting indicate that it accepted the Reporter's recommendation, because providing additional discretion to the court "would frustrate the goal of creating a uniform, national standard for omnibus claims objections." Minutes of Advisory Committee on Bankruptcy Rules, March, 2006.

The conclusion we reach from reviewing the discussions about Rules 3007(c)-(e) is that Rule 3007(e) was intended to apply to ALL omnibus objections, not merely those described in Rule 3007(d). Although the objections described in Rule 3007(c) are not denominated "omnibus objections" (as are the objections described in Rule 3007(d)), the Advisory Committee clearly viewed them all as omnibus objections (see quoted language from the Reporter above) and Rule 3007(e) applies to "an omnibus objection." The Advisory Committee Note (2007) also supports this conclusion. It describes Rule 30007(c)-(e) as follows:

> Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity,

> or if the objections are based solely on the grounds set out in subdivision (d) of the rule. . . . Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e)."

The Advisory Committee Note does not distinguish between objections to multiple claims under subdivision (d) and under subdivision (c). Both seem to be governed by subdivision (e).

Local Rules and Practice

As Mr. Mayer pointed out, the Bankruptcy Court for the District of Delaware has a local rule, Local Bankruptcy Rule 3007-1, which (among other things) allows no more than 150 claims to be included in an omnibus objection "[a]s authorized by Fed. R. Bankr. P. 3007(c)." Other courts have issued local rules dealing with omnibus objections, see, e.g., D.N.J. Local Bankruptcy Rule 3007-2; W.D.N.C., Adm. Order 732; D. Conn. Local Bankr. Rule 30007-2; N.D. Tex. Local Bankr. Rule 3007-2, but no other court has a local rule that contains provisions governing omnibus objections that are inconsistent with Rule 3007(e). D.Del. Local Bankruptcy Rule 3007-1 explicitly provides in paragraph (a) that "To the extent of any inconsistency between this Local Rule and Fed. R. Bankr. P. 3007, this Local Rule governs omnibus objections to claims."

Mr. Mayer notes that Delaware bankruptcy cases may involve large numbers of claimants, and that Hertz has sought permission to file omnibus objections to as many as 250 claims as a time to facilitate speedy processing of claims objections. Therefore, as Mr. Mayer suggests, it may be "wiser" than Rule 3007(e).

Subsequent to the Subcommittee meeting, Judge Thomas Ambro, member of the Subcommittee, communicated with Judge Brendan Shannon, who conferred with Chief Judge Christopher Sontchi, both of the District of Delaware bankruptcy court. They informed Judge Ambro that the Delaware local rule was adopted several years prior to the 2007 amendment to Federal Rule of Bankruptcy Procedure 3007(e) (which imposed the 100-claim limit) and at the time of its adoption there was no cap on the number of claims that could be included in an omnibus objection. Now that it has been pointed out that the local rule is inconsistent with the federal rule, Judge Sontchi has spoken to the chair of the local rules committee for the district, and the local rule will be amended to reduce the cap to 100 claims consistent with Rule 3007(e).

Recommendation

The restyled version of Rule 3007, which is being proposed for publication at this meeting, explicitly describes the objections described in Rule 3007(c) as "omnibus objections" and, we think, makes it clearer (to the extent that there is any confusion) that Rule 3007(e) is applicable to all omnibus objections. The Subcommittee sees no reason to amend the rule in any other respect.

The Subcommittee recommends no action be taken with respect to this suggestion.

Consent Tab 2

Consent Tab 2A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

SUBJECT: 19-BK-I – RULE 3001 TIME-BARRED CLAIMS

DATE: MAR. 9, 2021

Judge Henry A. Callaway, Chief Bankruptcy Judge for the S.D. Ala., submitted a suggestion, 19-BK-I, that the requirement in Fed. R. Bankr. P. 3001(c)(3) that a proof of claim based upon an open-end or revolving consumer credit agreement provide the "date of an account holder's last transaction" be extended to other types of claims. When, for example, the claim is based on an installment contract entered into many years earlier, the claim may be barred by the statute of limitations if no transaction has occurred during the limitations period. As Judge Callaway wrote, "Without last payment information in the proof of claim, I cannot tell whether the debtor made payments within the [limitations period] and thus determine whether the claim is time-barred. Objections to these claims are usually filed by the chapter 7 or chapter 13 trustee, and the debtor usually does not have any information or is AWOL."

The genesis of Rule 3001(c)(3) was a comment made by Bankruptcy Judge Tom Small of the E.D.N.C. in 2008 (08-BK-J). Judge Small suggested that the Advisory Committee should consider possible rule or form amendments to address the problem of inadequately documented and occasionally time-barred credit card claims filed by bulk debt purchasers. As he put it, "requiring debtors to file objections and to raise affirmative defenses to large numbers of stale claims filed by assignees based on a business model rather than after careful review and evaluation is both burdensome and expensive." He suggested, as one proposal, that the rules require an assignee to either indicate in its proof of claim whether the claim is barred by the applicable statute of limitations (and, if so, why it was not a valid defense) or that no statute of limitations defense was applicable.

A working group of the Subcommittee on Consumer Issues was convened, and the original proposal was to add a sentence to Rule 3001(c)(1) to require that "When a claim is based on an open-end or revolving consumer credit agreement, the last account statement sent to the debtor prior to the filing of the petition shall also be filed with the proof of claim." The Advisory Committee also proposed to amend Official Form 10 (Proof of Claim) accordingly. The Working Group expressly rejected any requirement that the claimant make an affirmative statement about the timeliness of the claim, expressing concerns both about the validity of such a rule under the Bankruptcy Rules Enabling Act (because it would reassign the burden of pleading the timeliness or untimeliness of a claim from the debtor to the claimant), and about the practical demands of such a requirement. Memorandum from S. Elizabeth Gibson to Advisory Committee on Bankruptcy Rules, Feb. 17, 2009, Agenda Book for Advisory Committee for Bankruptcy Rules, Mar. 26-27, 2009).

After extensive comments were made on the proposal, the Subcommittee on Consumer Issues withdrew the proposed amendment to Rule 3001(c)(1) and replaced it with a new subdivision (c)(3) that provides a more extensive list of information that must be provided for a claim based on an open-end or revolving consumer credit agreement.

Rule 3001(c)(3) was never intended to address information to be provided in connection with a proof of claim other than with respect to an open-end or revolving consumer credit agreement. As described in the Advisory Committee Note to Rule 3001 (2012), "[b]ecause a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account. It will also provide a basis for assessing the timeliness of the claim."

Judge Callaway's suggestion really focuses more on the requirements of Rule 3001(c)(2) than on Rule 3001(c)(3). Amendments to Rule 3001 to add Rule 3001(c)(2) were published in 2009, and became effective in 2011. They added the requirement that, in an individual debtor case, a proof of claim be accompanied by an itemized statement specifying prepetition interest, fees, expenses and charges included in the claim, the amount necessary to cure any default with respect to a claim secured by a security interest in the debtor's property, and an escrow account statement for any claim secured by a security interest in the debtor's principal residence for which an escrow account had been established. The amendment also provided for sanctions for failure to provide the required information. The amendments were published at the same time as proposed Rule 3002.1, which required several notices with respect to claims secured by a security interest in the debtor's principal residence in a chapter 13 case.

Extensive comments were submitted in response to these proposed amendments. Some of the comments suggested that additional documentation should be required, and some thought the requirements of the new Rule were too burdensome. The Advisory Committee declined to modify the proposed rule, concluding that it had struck "the correct balance between obtaining additional disclosures needed for the debtor and trustee to understand the claim amounts and avoiding undue burdens on creditors." Minutes of the Committee on Rules of Practice and Procedure, June 14-15, 2010 (Statement of Prof. Gibson).

The suggestion of Judge Callaway would upset that delicate balance. A creditor may file a proof of claim under Section 501 of the Code, and must, according to Rule 3001(c)(1) do so by a written statement setting forth its claim substantially in the form of Form 410. Under Section 502(a), a claim, proof of which is filed under section 501, is "deemed allowed, unless a party in interest … objects." This means that the proof of claim "shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Among the itemized grounds for objection under Section 502(b)(1) is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law," which would include the claim being time-barred. The Supreme Court has made it clear that filing a proof of claim with respect to a claim that is time-barred is not a violation of the Fair Debt Collection Practices Act. Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017). Instead, the appropriate response to such a filing is for a party in interest to object to the claim, and the court to disallow it. As the Court characterized it, "the running of a limitations period constitutes an affirmative defense, a

defense that the debtor is to assert after a creditor makes a 'claim.'" *Id*. at 1412. In a bankruptcy case, it is "likely that an effort to collect upon a stale claim in bankruptcy will be met with resistance, objection, and disallowance." *Id*. at 1414. "The trustee normally bears the burden of investigating claims and pointing out that a claim is stale." *Id*. If the trustee introduces evidence to rebut the presumption, the burden rests with the claimant to establish by a preponderance of the evidence that the claim is valid. *See, e.g., In re* Concepts America, Inc., 2020 WL 6256680, *3 (Bankr. N.D. Ill. Oct. 22, 2020).

The problem identified by Judge Callaway is one that exists for any claim – the debtor may have defenses to the claim, and the debtor may not have the appropriate information to assert those defenses or the ability or interest to do so. In that event, the burden rests on the trustee to object, investigate, and ask the court to disallow the claim. That is the allocation of responsibility contemplated by the Bankruptcy Code and Rules.

The Subcommittee recommends that no action be taken on the suggestion.

Consent Tab 3

Consent Tab 3A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 20-BK-H – 910 CLAIMS ON FORM 410

DATE: MAR. 9, 2021

We received a suggestion, 19-BK-H, from Jaxon Wilson-Aguilar, a Chapter 13 trustee in Seattle, Washington. He is also a member of the Auto Committee of the National Association of Chapter 13 Trustees. He raised two concerns about Form 410 (Proof of Claim).

On Form 410, in line 7, the claimant is asked to specify "How much is the claim?" and a blank is provided with a dollar sign before it. In line 9, the claimant is asked "Is all or part of the claim secured?" and the claimant is asked to check a box for "No" or "Yes. The claim is secured by a lien on property". If the claimant checks "yes," the form goes on to ask for additional information about the claim:

> **Nature of property**:
> □ Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.
> □ Motor vehicle
> □ Other. Describe: _____
>
> **Basis for perfection**: _____
> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
>
> **Value of property**: $_____
> **Amount of the claim that is secured**: $_____
> **Amount of the claim that is unsecured**: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
>
> **Amount necessary to cure any default as of the date of the petition**:
> $_____
>
> **Annual Interest Rate** (when case was filed)_____%
> □ Fixed
> □ Variable

The instructions to Form 410 include the following description of the term "secured":

> **Secured claim under 11 U.S.C. §506(a)**: A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist; for example, see 11 U.S.C. § 1322(b) and the final sentence of 1325(a). Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Mr. Wilson-Aguilar suggested that a vehicle claimant should be required on Form 410 (presumably somewhere in line 9) to indicate that the creditor is seeking the protection of the hanging paragraph of § 1325(a) with respect to its claim, that is, it asserts that its claim is secured by a purchase money security interest and was incurred within the 910-day period preceding the filing date and the collateral consists of a motor vehicle acquired for the personal use of the debtor (a "910 claim"). He also suggested that some modification be made to the form to emphasize that the "amount of the claim that is secured" in line 9 for a non-910 claim cannot exceed the "value of the property" also listed in line 9.

With respect to the first suggestion, Form 410 is used to file proofs of claim not only under chapter 13 but under all other chapters as well, and there is currently nothing in Form 410 that is applicable only to a single chapter of the Bankruptcy Code. Therefore, the Subcommittee declined to recommend this change.

As to the second suggestion made by Mr. Wilson-Aguilar, the instructions to Form 410 quoted above explicitly state that "A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien." Those instructions also make reference to circumstances under which a secured claim may be more than the value of the collateral, including a claim secured by a debtor's principal residence under § 1322(b) and the claims described in the hanging paragraph. **Because the instructions to Form 410 are quite clear about what constitutes a "secured" claim, the Subcommittee declined to recommend any action on this suggestion.**