ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

March 31, 2022

ADVISORY COMMITTEE ON BANKRUPTCY RULES

March 31, 2022, Virtual Meeting

Discussion Agenda

1. Greetings and introductions (Judge Dow).

Tab 1 Committee Roster. 7
Subcommittee Liaisons. 12
Chart Tracking Proposed Rules Amendments. 16
Pending Legislation Chart. 22

2. Approval of minutes of September 14, 2021, virtual meeting (Judge Dow).

Tab 2 Draft minutes. 29

3. Oral reports on meetings of other committees:

   A. Standing Committee – January 4, 2022 (Judge Dow, Professors Gibson, and Bartell).

Tab 3A1 Draft minutes of the Standing Committee meeting. 47

Tab 3A2 March 2022 Report of the Standing Committee to the Judicial Conference. 73

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

   C. Advisory Committee on Civil Rules – October 5, 2021 (Judge McEwen).

   D. Bankruptcy Committee – December 7-8, 2021 (Judge Alquist).

4. Report of the Emergency Rule Subcommittee (Judge Wu).

   A. Consider comments on proposed new Bankruptcy Rule 9038 (Professor Gibson).

Tab 4A March 4, 2022, memo by Professor Gibson. 97

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

   A. Consider Suggestion 21-BK-G to amend Rule 1007(b)(7) and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2) (Professor Bartell).

Tab 5A February 28, 2022, memo by Professor Bartell. 105

   B. Consider comments on proposed amendments to Bankruptcy Rule 3002.1 (Professor Gibson).

Tab 5B March 4, 2022, memo and summary of comments by Professor Gibson. 111

6. Report of the Forms Subcommittee (Judge Kahn).

A. Consider comments and recommendation for final approval of proposed amendments to Official Form 101 (Suggestions 21-BK-A and 21-BK-I) (Professor Bartell).

Tab 6A February 28, 2022, memo by Professor Bartell. 145
Official Form 101.

B. Consider comments and recommendation for final approval of proposed amendments to Official Forms 309E1 and 309E2 (Professor Bartell).

Tab 6B February 28, 2022, memo by Professor Bartell. 157
Official Forms 309E1, 309E2, and committee note.

C. Consider recommendation to retire Official Form 423 (Suggestion 20-BK-G) if proposed amendment to Rule 1007(b)(7) goes forward (Professor Bartell).

Tab 6C February 28, 2022, memo by Professor Bartell. 165

D. Consider Suggestion 22-BK-A to amend proof of claim attachment– Form 410A (Professor Bartell).

Tab 6D February 28, 2022, memo by Professor Bartell. 169
Official Form 410A, Instructions, and committee note.

E. Comments on proposed amendments to Official Form 417A (Professor Gibson).

Tab 6E March 4, 2022, memo by Professor Gibson. 178
Official Form 417A and committee note.

F. Comments on new forms related to Rule 3002.1 (Official Forms 410C13-1N, 410C13-1R, 410C13-10C; 410C13-10NC; 410C13-1N, and 410C13-10R) (Professor Gibson).

Tab 6F March 4, 2022, memo and summary of comments by Professor Gibson. 183

7. Report of the Technology and Cross Border Insolvency Subcommittee (Judge Oetken).

A. Suggestion 20-BK-E from CACM (Judge Fleissig) for rule amendment establishing minimum procedures for electronic signatures of debtors and others. Related Suggestions 21-BK-H, and 21-BK-I (Professor Gibson).

Tab 7A March 4, 2022, memo by Professor Gibson. 192

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

   A. Consider possible amendments addressing the timing of post-judgment motions in bankruptcy proceedings initially heard in the district court (Professor Gibson).

      Tab 8A March 4, 2022, memo by Professor Gibson. 201

   B. Consider comments on proposed amendments to Rule 8003 (Professor Gibson).

      Tab 8B March 4, 2022, memo by Professor Gibson. 210

   C. Consider comments on proposed amendments to Rule 3011(Suggestion 20-BK-G) (Professor Bartell).

      Tab 8C February 28, 2022, memo by Professor Bartell. 218

   D. Consider recommendation to publish an amendment Rule 8006(g) (Suggestion 21-BK-M) (Professor Bartell).

      Tab 8D February 28, 2022, memo by Professor Bartell. 221

   E. Consider Suggestion 21-BK-O for a new rule (Rule 8023.1) to address substitution of parties in bankruptcy appeals (Professor Bartell).

      Tab 8E February 28, 2022, memo by Professor Bartell. 224

9. Report of the Restyling Subcommittee (Judge Krieger).

   A. Consider comments on restyled rules Parts III, IV, V, and VI (Professor Bartell).

      Tab 9A March 1, 2022, memo by Professor Bartell. 231
      Restyled Rules 3000-6000 series with committee notes
      and summary of comments.

   B. Consider recommendation for publication restyled rules Parts VII, VIII, and IX (Professor Bartell).

      Tab 9B March 1, 2022, memo by Professor Bartell.....................................385
      Restyled Rules 7000-9000 series with committee notes.

10. Future meetings: The next meeting will be in Washington, DC, on September 15, 2022.

11. New Business.

12. 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 **Wednesday, March 23, 2022.**

1. Privacy, Public Access, and Appeals Subcommittee (Judge Ambro).

   A. Recommendation of no action regarding suggestions 21-BK-N and 21-BK-L for rule and form amendments concerning unclaimed funds (Professor Bartell).

   Consent Tab 1A February 28, 2022, memo by Professor Bartell.......................604

TAB 1

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure (Standing Committee)

Chair	**Reporter**
Honorable John D. Bates United States District Court Washington, DC	Professor Catherine T. Struve University of Pennsylvania Law School Philadelphia, PA

Advisory Committee on Appellate Rules

Chair	**Reporter**
Honorable Jay S. Bybee United States Court of Appeals Las Vegas, NV	Professor Edward Hartnett Seton Hall University School of Law Newark, NJ

Advisory Committee on Bankruptcy Rules

Chair	**Reporter**
Honorable Dennis R. Dow United States Bankruptcy Court Kansas City, MO	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill Chapel Hill, NC
	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

Advisory Committee on Civil Rules

Chair	**Reporter**
Honorable Robert M. Dow, Jr. United States District Court Chicago, IL	Professor Edward H. Cooper University of Michigan Law School Ann Arbor, MI
	Associate Reporter
	Professor Richard L. Marcus University of California Hastings College of Law San Francisco, CA

RULES COMMITTEES — CHAIRS AND REPORTERS

Advisory Committee on Criminal Rules

Chair

Honorable Raymond M. Kethledge
United States Court of Appeals
Ann Arbor, MI

Reporter

Professor Sara Sun Beale
Duke University School of Law
Durham, NC

Associate Reporter

Professor Nancy J. King
Vanderbilt University Law School
Nashville, TN

Advisory Committee on Evidence Rules

Chair

Honorable Patrick J. Schiltz
United States District Court
Minneapolis, MN

Reporter

Professor Daniel J. Capra
Fordham University School of Law
New York, NY

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair	Reporter
Honorable Dennis R. Dow United States Bankruptcy Court Kansas City, MO	Professor S. Elizabeth Gibson University of North Carolina at Chapel Hill Chapel Hill, NC
	Associate Reporter
	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

Members	
Honorable Thomas L. Ambro United States Court of Appeals Wilmington, DE	Honorable Rebecca B. Connelly United States Bankruptcy Court Harrisonburg, VA
Honorable Bernice B. Donald United States Court of Appeals Memphis, TN	Honorable David A. Hubbert Acting Assistant Attorney General, Tax Division (ex officio) United States Department of Justice Washington, DC
Honorable Ben Kahn United States Bankruptcy Court Greensboro, NC	Honorable Marcia S. Krieger United States District Court Denver, CO
Honorable Catherine P. McEwen United States Bankruptcy Court Tampa, FL	Debra L. Miller, Esq. Chapter 13 Bankruptcy Trustee South Bend, IN
Honorable J. Paul Oetken United States District Court New York, NY	Jeremy L. Retherford, Esq. Balch & Bingham LLP Birmingham, AL
Damian S. Schaible, Esq. Davis Polk & Wardwell LLP New York, NY	Professor David A. Skeel University of Pennsylvania Law School Philadelphia, PA
Tara Twomey, Esq. National Consumer Bankruptcy Rights Center San Jose, CA	Honorable George H. Wu United States District Court Los Angeles, CA

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Liaisons

Ramona D. Elliott, Esq.
(*U.S. Trustees*)
Executive Office for U.S. Trustees
Washington, DC

Honorable Laurel M. Isicoff
(*Committee on the Administration of the Bankruptcy System*)
United States Bankruptcy Court
Miami, FL

Honorable William J. Kayatta, Jr.
(*Standing*)
United States Court of Appeals
Portland, ME

Clerk of Court Representative

Kenneth S. Gardner
Clerk
United States Bankruptcy Court
Denver, CO

Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date		End Date
Dennis Dow Chair	B	Missouri (Western)	Member: Chair:	2014 2018	---- 2022
Thomas L. Ambro	C	Third Circuit		2016	2022
Rebecca B. Connelly	B	Virginia (Western)		2021	2023
Bernice B. Donald	C	Sixth Circuit		2019	2022
David A. Hubbert*	DOJ	Washington, DC		----	Open
Ben Kahn	B	North Carolina (Middle)		2021	2023
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	2024
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	2024
S. Elizabeth Gibson Reporter	ACAD	North Carolina		2008	Open
Laura B. Bartell Associate Reporter	ACAD	Michigan		2017	2022

Principal Staff: Scott Myers 202-502-1820

Bridget Healy 202-502-1820

* Ex-officio - Acting Assistant Attorney General, Tax Division

Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective October 1, 2021

<table>
<tr><td>Business Subcommittee
Judge Catherine Peek McEwen, Chair
Judge Thomas Ambro
Judge Benjamin Kahn
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</td><td>CARES ACT Emergency Rules Taskforce
Judge George H. Wu, Chair
Debra L. Miller, Esq.
Damian S. Schaible, Esq.
Ramona D. Elliott, Esq., EOUST liaison
Kenneth S. Gardner, ex officio</td></tr>
<tr><td>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</td><td>Forms Subcommittee
Judge Benjamin Kahn, 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.</td></tr>
<tr><td>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</td><td>Restyling Subcommittee
Judge Marcia S. Krieger, Chair
Judge A. Benjamin Goldgar
Judge Benjamin Kahn
Debra L. Miller, Esq.
Tara Twomey, Esq.
Ramona D. Elliott, Esq., EOUST liaison
Kenneth S. Gardner, ex officio</td></tr>
<tr><td>Technology and Cross Border Insolvency Subcommittee
Judge J. Paul Oetken, Chair
Judge Rebecca Buehler Connelly
Judge Benjamin Kahn
Professor David Skeel
Ramona D. Elliott, Esq., EOUST liaison
Molly Johnson, Esq.
Carly Giffin, Esq.</td><td></td></tr>
<tr><td></td><td></td></tr>
<tr><td>Appellate Rules Liaison:
Judge Bernice Bouie Donald</td><td>Bankruptcy Committee Liaison:
Judge Rebecca Buehler Connelly</td></tr>
<tr><td>Civil Rules Liaison:
Judge Catherine Peek McEwen</td><td>Joint E-Filing Deadline Liaison:
Judge Catherine Peek McEwen
Jeremy L. Retherford, Esq.</td></tr>
</table>

Updated January 11, 2022

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. Robert J. Conrad, Jr. (*Criminal*) Hon. Carolyn B. Kuhl *(Standing)* Hon. Sara Lioi *(Civil)*

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Senior Research Associate
(Civil)

Tim Reagan, Esq.
Senior Research Associate
(Standing)

Effective December 1, 2021

REA History:

- No contrary action by Congress
- Adopted by Supreme Court and transmitted to Congress (Apr 2021)
- Approved by Judicial Conference (Sept 2020) and transmitted to Supreme Court (Oct 2020)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 3	Amendment addresses the relationship between the contents of the notice of appeal and the scope of the appeal. The structure of the rule is changed to provide greater clarity, expressly rejecting the *expressio unius* approach, and adds a reference to the merger rule.	AP 6, Forms 1 and 2
AP 6	Amendment conforms the rule to amended Rule 3.	AP 3, Forms 1 and 2
AP Forms 1 and 2	Amendments conform the forms to amended 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	Subdivision (c) amended to replace 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	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	Amendment conforms the rule to recent amendments to Rule 8012 and Appellate Rule 26.1.	AP 26.1, BK 8012
BK 9036	Amendment requires 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.	

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2022

Current Step in REA Process:

- Transmitted to Supreme Court (Oct 2021)

REA History:

- Approved by Judicial Conference (Sept 2021 unless otherwise noted)
- Approved by Standing Committee (June 2021 unless otherwise noted)
- Published for public comment (Aug 2020 – Feb 2021 unless otherwise noted)

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:

- Transmitted to Supreme Court (Oct 2021)

REA History:

- Approved by Judicial Conference (Sept 2021 unless otherwise noted)
- Approved by Standing Committee (June 2021 unless otherwise noted)
- Published for public comment (Aug 2020 – Feb 2021 unless otherwise noted)

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 were published along with the SBRA Rules in order to give the public a full opportunity to comment. The proposed change to Form 122B was approved at all stages after the public comment period closed in February 2021, and when into effect December 1, 2021. There were no comments on the remaining SBRA forms and they remain in effect as approved in 2019.	
CV 7.1	An amendment to subdivision (a) was published for public comment in Aug 2019 – Feb 2020. 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 amendments to (a) and (b) were approved by the Standing Committee in Jan 2021, and approved by the Judicial Conference in Mar 2021. 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 FRAP 26.1 (effective Dec 2019) and Bankruptcy Rule 8012 (effective Dec 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.	AP 26.1 and BK 8012
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 specificity in the current rule with regard to expert witness disclosures, while maintaining reciprocal structure of the current rule.	

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2023

Current Step in REA Process:

- Published for public comment (Aug 2021 – Feb 2022)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 2	Proposed amendment developed in response to § 15002(b)(6) of the CARES Act, which 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.	BK 9038, CV 87, and CR 62
AP 4	The proposed amendment is designed to make Rule 4 operate with Civil Rule 6(b)(2) if that rule is ever in effect by adding a reference to Civil Rule 59 in subdivision (a)(4)(A)(vi).	CV 87 (Emergency CV 6(b)(2))
BK 3002.1 and five new related Official Forms	The proposed rule amendment and the five related forms (410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R) are designed to increase disclosure concerning the ongoing payment status of a debtor's mortgage and of claims secured by a debtor's home in chapter 13 case.	
BK 3011	Proposed new subdivision (b) would require courts to provide searchable access to unclaimed funds on local court websites	
BK 8003 and Official Form 417A	Proposed rule and form amendments are designed to conform to amendments to FRAP 3(c) clarifying that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment, or appealable order or degree.	AP 3
BK 9038 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which 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.	AP 2, CV 87, and CR 62
BK Restyled Rules (Parts III-VI)	The second set, approximately 1/3 of current Bankruptcy Rules, restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The first set of restyled rules (Parts I & II) were published in 2020, and the anticipated third set (Parts VII-IX) are expected to be published in 2022, with the full set of restyled rules expected to go into effect no earlier than December 1, 2024.	
Official Form 101	Updates are made to lines 2 and 4 of the form to clarify how the debtor should report the names of related separate legal entities that are not filing the petition. If approved by the Advisory Committee, the Standing Committee, and the Judicial Conference, the proposed change to Form 101 will go into effect December 1, 2022.	
Official Forms 309E1 and 309E2	Form 309E1, line 7 and 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. If approved by the Advisory Committee, the Standing Committee, and the Judicial Conference, the proposed change to Forms 309E1 and 309E2 will go into effect December 1, 2022.	
CV 15	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. A literal reading of "A party may amend its pleading once as a matter of course 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 (beginning on the 22nd day after service of the pleading and extending to service of the responsive pleading or pre-answer motion) within which amendment as of right is	

Effective (no earlier than) December 1, 2023

Current Step in REA Process:

- Published for public comment (Aug 2021 – Feb 2022)

Rule	Summary of Proposal	Related or Coordinated Amendments
	not permitted. The proposed amendment would preclude this interpretation by replacing the word "within" with "no later than."	
CV 72	The proposed amendment 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).	
CV 87 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which 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.	AP 2, BK 9038, and CR 62
CR 62 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which 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.	AP 2, BK 9038, and CV 87
EV 106	The proposed amendment would allow a completing statement to be admissible over a hearsay objection and cover unrecorded oral statements.	
EV 615	The proposed amendment limits an exclusion order to the exclusion of witnesses from the courtroom. A new subdivision would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony." Finally, the proposed amendment clarifies that the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion is limited to one officer or employee.	
EV 702	The proposed amendment would amend Rule 702(d) to require the court to find that "the expert's opinion reflects a reliable application of the principles and methods to the facts of the case." In addition, the proposed amendment would explicitly add the preponderance of the evidence standard to Rule 702(b)–(d).	

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- To be published for public comment (Aug 2022 – Feb 2023)

REA History:

- Approved by Standing Committee (January 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 32	Conforming proposed amendment to (g) to reflect the consolidation of Rules 35 and 40.	Rules 35 and 40
AP 35	The proposed amendment would transfer the contents of the rule to Rule 40 to consolidate the rules for panel rehearings and rehearings en banc together in a single rule.	Rule 40
AP 40	The proposed amendments address panel rehearings and rehearings en banc together in a single rule, consolidating what had been separate provisions in Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 would be transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.	Rule 35
Appendix: Length Limits Stated in the Federal Rules of Appellate Procedure	Conforming proposed amendments would reflect the consolidation of Rules 35 and 40 and specify that the limits apply to a petition for initial hearing en banc and any response, if requested by the court.	Rules 35 and 40.
BK 7001	The proposed amendment would exempt from the list of adversary proceedings in Rule 7001, "a proceeding by an individual debtor to recover tangible personal property under § 542(a)."	
CV 12	The proposed amendment would clarify that a federal statute setting a different time should govern as to all subparts of the rule, not just to subpart (a).	

Revised March 1, 2022

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
Mutual Fund Litigation Reform Act	**H.R. 699** *Sponsor:* Emmer (R-MN)	CV 8 & 9	**Bill Text:** https://www.congress.gov/117/bills/hr699/BILLS-117hr699ih.pdf **Summary:** This bill provides a heightened pleading standard for actions alleging breach of fiduciary duty under the Investment Company Act of 1940, requiring that "all facts establishing a breach of fiduciary duty" be "state[d] with particularity."	• 2/2/21: Introduced in House; referred to Judiciary Committee and Financial Services Committee • 3/22/21: Referred to the Subcommittee on Courts, Intellectual Property, and the Internet

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Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
PROTECT Asbestos Victims Act of 2021	**S. 574** *Sponsor:* Tillis (R-NC) *Co-sponsors:* Cornyn (R-TX) Grassley (R-IA)	BK	**Bill Text:** https://www.congress.gov/117/bills/s574/BILLS-117s574is.pdf **Summary:** Would amend 11 USC § 524(g) "to promote the investigation of fraudulent claims against [asbestosis trusts] …" and would allow outside parties to make information demands on the administrators of such trusts regarding payment to claimants. If enacted in its current form S. 574 may require an amendment to Rule 9035. The bill would give the United States Trustee a number of investigative powers with respect to asbestosis trusts set up under § 524 even in the districts in Alabama and North Caroline. Rule 9035 on the other hand, reflects the current law Bankruptcy Administrators take on US trustee functions in AL and NC and states that the UST has no authority in those districts.	• 3/3/2021: Introduced in Senate; referred to Judiciary Committee
Sunshine in the Courtroom Act of 2021	**S.818** *Sponsor:* Grassley (R-IA) *Co-sponsors*: Blumenthal (D-CT) Cornyn (R-TX) Durbin (D-IL) Klobuchar (D-MN) Leahy (D-VT) Markey (D-MA)	CR 53	**Bill Text:** https://www.congress.gov/117/bills/s818/BILLS-117s818is.pdf **Summary:** This is described as a bill "[t]o provide for media coverage of Federal court proceedings." The bill would allow presiding judges in the district courts and courts of appeals to "permit the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge provides." The Judicial Conference would be tasked with promulgating guidelines. This would impact what is allowed under Federal Rule of Criminal Procedure 53 which says that "[e]xcept as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom."	• 3/18/21: Introduced in Senate; referred to Judiciary Committee • 6/24/21: Scheduled for mark-up; letter being prepared to express opposition by the Judicial Conference and the Rules Committees • 6/24/21: Ordered to be reported without amendment favorably by Judiciary Committee

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Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Litigation Funding Transparency Act of 2021	**S. 840** *Sponsor:* Grassley (R-IA) *Co-sponsors:* Cornyn (R-TX) Sasse (R-NE) Tillis (R-NC) **H.R. 2025** *Sponsor:* Issa (R-CA)		**Bill Text:** https://www.congress.gov/117/bills/s840/BILLS-117s840is.pdf [Senate] https://www.congress.gov/117/bills/hr2025/BILLS-117hr2025ih.pdf [House] **Summary:** Requires disclosure and oversight of TPLF agreements in MDL's and in "any class action."	• 3/18/21: Introduced in Senate and House; referred to Judiciary Committees • 5/3/21: Letter received from Sen. Grassley and Rep. Issa • 5/10/21: Response letter sent to Sen. Grassley from Rep. Issa from Judge Bates • 10/19/21: Referred by House Judiciary Committee to Subcommittee on Courts, Intellectual Property, and the Internet
Justice in Forensic Algorithms Act of 2021	**H.R. 2438** *Sponsor:* Takano (D-CA) *Co-sponsor:* Evans (D-PA)	EV 702	**Bill Text:** https://www.congress.gov/117/bills/hr2438/BILLS-117hr2438ih.pdf **Summary:** A bill "[t]o prohibit the use of trade secrets privileges to prevent defense access to evidence in criminal proceedings, provide for the establishment of Computational Forensic Algorithm Testing Standards and a Computational Forensic Algorithm Testing Program, and for other purposes." Section 2 of the bill contains the following two subdivisions that implicate Rules: "(b) PROTECTION OF TRADE SECRETS.— (1) There shall be no trade secret evidentiary privilege to withhold relevant evidence in criminal proceedings in the United States courts. (2) Nothing in this section may be construed to alter the standard operation of the Federal Rules of Criminal Procedure, or the Federal Rules of	• 4/8/21: Introduced in House; referred to Judiciary Committee and to Committee on Science, Space, and Technology • 10/19/21: Referred by Judiciary Committee to Subcommittee on Crime, Terrorism, and Homeland Security

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
			Evidence, as such rules would function in the absence of an evidentiary privilege.” “(g) INADMISSIBILITY OF CERTAIN EVIDENCE.—In any criminal case, evidence that is the result of analysis by computational forensic software is admissible only if— (1) the computational forensic software used has been submitted to the Computational Forensic Algorithm Testing Program of the Director of the National Institute of Standards and Technology and there have been no material changes to that software since it was last tested; and (2) the developers and users of the computational forensic software agree to waive any and all legal claims against the defense or any member of its team for the purposes of the defense analyzing or testing the computational forensic software.”	
Juneteenth National Independence Day Act	S. 475	AP 26; BK 9006; CV 6; CR 45	Established Juneteenth National Independence Day (June 19) as a legal public holiday	• 6/17/21: Became Public Law No: 117-17
Bankruptcy Venue Reform Act of 2021	**H.R. 4193** *Sponsor*: Lofgren (D-CA) *Co-Sponsors:* Buck (R-CO) Perlmutter (D-CO) Neguse (D-CO) Cooper (D-TN) Thompson (D-CA) Burgess (R-TX) Bishop (R-NC) **S. 2827** *Sponsor:* Cornyn (R-TX) *Co-sponsor:* Warren (D-MA)	BK	**Bill Text:** https://www.congress.gov/bill/117th-congress/house-bill/4193/text?r=453 [House] https://www.congress.gov/117/bills/s2827/BILLS-117s2827is.pdf [Senate] **Summary:** Modifies venue requirements relating to Bankruptcy proceedings. Senate version includes a limitation absent from the House version giving “no effect” for purposes of establishing venue to certain mergers, dissolutions, spinoffs, and divisive mergers of entities. Would require the Supreme Court to prescribe rules, under § 2075, to allow an attorney to appear on behalf of a governmental unit and intervene without charge or meeting local rule requirements in Bankruptcy Cases and arising under or related to proceeding before bankruptcy and district courts and BAPS.	• 6/28/21: H.R. 4193 introduced in House; referred to Judiciary Committee • 9/23/21: S. 2827 introduced in Senate; referred to Judiciary Committee

Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Nondebtor Release Prohibition Act of 2021	**S. 2497** *Sponsor*: Warren (D-MA)	BK	**Bill Text:** https://www.congress.gov/bill/117th-congress/senate-bill/2497/text?r=195 **Summary:** Would prevent individuals who have not filed for bankruptcy from obtaining releases from lawsuits brought by private parties, states, and others in bankruptcy by: • Prohibiting the court from discharging, releasing, terminating or modifying the liability of and claim or cause of action against any entity other than the debtor or estate. • Prohibiting the court from permanently enjoining the commencement or continuation of any action with respect to an entity other than the debtor or estate.	• 7/28/21: Introduced in Senate, Referred to Judiciary Committee
Protecting Our Democracy Act	**H.R. 5314** *Sponsor:* Schiff (D-CA) *Co-Sponsors:* [168 co-sponsors] **S. 2921** *Sponsor:* Klobuchar [D-MN] *Co-Sponsors:* Blumenthal [D-CT] Coons [D-DE] Feinstein [D-CA] Hirono [D-HI] Merkley [D-OR] Sanders [I-VT] Warren [D-MA] Wyden [D-OR]	CR 6; CV	**Bill Text:** https://www.congress.gov/bill/117th-congress/house-bill/5314/text [House] https://www.congress.gov/117/bills/s2921/BILLS-117s2921is.pdf [Senate] **Summary:** Various provisions of this bill amend existing rules, or direct the Judicial Conference to promulgate additional rules, including: • Prohibiting any interpretation of Criminal Rule 6(e) that would prohibit disclosure to Congress of certain grand jury materials related to individuals pardoned by the President • Requiring the Judicial Conference to promulgate rules "to ensure the expeditious treatment of" actions to enforce Congressional subpoenas. The bill requires that the rules be transmitted within 6 months of the effective date of the bill.	• 9/21/21: H.R. 5314 introduced in House; referred to numerous committees, including House Judiciary Committee • 9/30/21: S. 2921 introduced in Senate; referred to Committee on Homeland Security and Governmental Affairs • 12/9/21: H.R. 5314 debated and amended in House under provisions of H. Res. 838 • 12/9/21: H.R. 5314 passed by House • 12/13/21: House bill received in Senate

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Name	Sponsor/ Co-Sponsor(s)	Affected Rule	Text, Summary, and Committee Report	Actions
Congressional Subpoena Compliance and Enforcement Act	**H.R. 6079** *Sponsor:* Dean (D-PA) *Co-Sponsors:* Nadler (D-NY) Schiff (D-CA)	CV	**Bill Text:** https://www.congress.gov/117/bills/hr6079/BILLS-117hr6079ih.pdf **Summary:** The bill directs the Judicial Conference to promulgate rules "to ensure the expeditious treatment of" actions to enforce Congressional subpoenas. The bill requires that the rules be transmitted within 6 months of the effective date of the bill.	• 11/26/21: Introduced in House; referred to Judiciary Committee

TAB 2

Draft – Dec. 8, 2021

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 14, 2021
Remotely by Conference Call and Microsoft Teams

The following members attended the meeting:

Circuit Judge Thomas L. Ambro
Bankruptcy Judge Rebecca Buehler Connelly
Circuit Judge Bernice Bouie Donald
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Marcia S. Krieger
Bankruptcy Judge Catherine Peek McEwen
Debra L. Miller, Esq.
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Damian S. Schaible, Esq. (by phone)
Tara Twomey, Esq.
District Judge George H. Wu

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura B. Bartell, associate reporter
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Professor Daniel R. Coquillette, consultant to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Brittany Bunting, Administrative Office
Bridget M. Healy, Esq., Administrative Office
S. Scott Myers, Esq., Administrative Office
Shelly Cox, Administrative Office
Dana Yankowitz Elliott, Administrative Office
Daniel J. Isaacs-Smith, Administrative Office
Susan Jenson, Administrative Office
Burton DeWitt, Rules Law Clerk
Molly T. Johnson, Federal Judicial Center

S. Kenneth Lee, Esq., Federal Judicial Center
Carly E. Griffin, Federal Judicial Center
Nancy Whaley, National Association of Chapter 13 Trustees
Jakub Madej, Research Assistant to Professor Robert Schiller, Yale University
John Hawkinson, freelance journalist

Discussion Agenda

1. **Greetings and Introductions**

Judge Dennis Dow, chair of the Advisory Committee, was unable to attend the meeting because of a family medical emergency, so Scott Myers welcomed the group and thanked them for joining this meeting. He asked everyone to keep microphones muted unless that person is talking. Motions will be passed if there are no objections. Otherwise, members will use the raise hand function for voting and discussions. He introduced new member Judge Benjamin Kahn.

2. **Approval of Minutes of Remote Meeting Held on April 8, 2021**

The minutes were approved by motion and vote after one correction to move David Hubbert's name to the list of committee members.

3. **Oral Reports on Meetings of Other Committees**

(A) ***June 22, 2021 Standing Committee Meeting***

Professor Bartell gave the report.

(1) **Joint Committee Business**

(a) ***Emergency Rules.*** Section 15002(b)(6) of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") , Pub. L. 116-136, 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.)." Each of the Advisory Committees for the Civil, Criminal, Appellate and Bankruptcy Rules presented to the Standing Committee its version of an emergency rule. Professor Dan Capra provided a side-by-side comparison of the rules and discussed the outstanding differences between them. The Standing Committee approved the proposed rules for publication.

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(2) **Bankruptcy Rules Committee Business**

The Standing Committee recommended for final approval:

(1) restyled versions of the 1000 rules series (Part I-Commencing a Bankruptcy Case; The Petition and Order for Relief) and 2000 rules series (Part II-Officers and Administration; Notices; Meetings; Examinations; Elections and Appointments; Final Report; Compensation);

(2) rules to replace the interim rules issued to implement the Small Business Reorganization Act: Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), 1020 (Chapter 11 Reorganization Case for Small Business Debtors), 2009 (Trustees for Estates When Joint Administration Ordered), 2012 (Substitution of Trustee or Successor Trustee; Accounting), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status), 3010 (Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13), 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), 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 or in a Case Under Subchapter V of Chapter 11), 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); and

(3) amendments to Rule 3002(c)(6) (Filing Proof of Claim or Interest), Rule 5005 (Filing and Transmittal of Papers), Rule 7004 (Process; Service of Summons, Complaint), Rule 8023 (Voluntary Dismissal), and Official Form 122B (Chapter 11 Statement of Your Current Monthly Income).

The Standing Committee also recommended for publication:

(1) restyled versions of the 3000 rules series (Part III-Claims; Plans; Distribution to Creditors and Equity Security Holders); the 4000 rules series (Part IV-The Debtor's Duties and Benefits); the 5000 rules series (Part V-Courts and Clerks); and the 6000 rules series (Part VI-Collecting and Liquidating Property of the Estate);

(2) amendments to Rule 3002.1 (Chapter 13 Claim Secured by a Security Interest in the Debtor's Principal Residence); and

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(3) amendments to Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy), Official Form 309E1 (Notice of Chapter 11 Bankruptcy Case (for Individuals or Joint Debtors)), and Official Form 309E2 (Notice of Chapter 11 Bankruptcy Case (for Individuals or Joint Debtors under Subchapter V)), and Official Forms Related to Rule 3002.1 amendments: Form 410C13-1N (Trustee's Midcase Notice of the Status of the Mortgage Claim); Form 410C13-1R (Response to Trustee's Midcase Notice of the Status of the Mortgage Claim); Form 410C13-10C (Motion to Determine the Status of the Mortgage Claim (conduit)); Form 410C13-10NC (Motion to Determine the Status of the Mortgage Claim (nonconduit)); and Form 410C13-10R (Response to Trustee's Motion to Determine the Status of the Mortgage Claim).

Judge Dow also provided the Standing Committee information on the status of:

(1) Interim Rule 4001(c) (Obtaining Credit) to be distributed to the courts if the Administrator of the Small Business Administration authorizes debtors in bankruptcy to obtain certain loans under the Small Business Act;

(2) Director's Form 4100S (Supplemental Proof of Claim for CARES Forbearance Claim);

(3) Consideration of *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021) 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; and

(4) Consideration of Suggestion 20-BK-E from the Committee on Court Administration and Case Management for a rule amendment establishing minimum procedures for electronic signatures of debtors and others.

(B) ***April 7, 2021 Meeting of the Advisory Committee on Appellate Rules***

Because this Committee received a report on the April 7, 2021 meeting of the Appellate Committee at its last meeting, and the next meeting is on October 7, 2021, there was no report.

(C) ***April 23, 2021 Meeting of the Advisory Committee on Civil Rules***

Judge Catherine Peek McEwen provided a report on the April 23, 2021 meeting. The meeting was conducted virtually because of the COVID-19 health emergency.

1. **No Pending Amendments.** There are no amendments to the Civil Rules scheduled to become effective on December 1, 2021.

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2. **Fed. R. Civ. P. 12(a)(4).** The Civil Advisory Committee gave final approval to an amendment to FRCP 12(a)(4) which expands the time from fourteen to sixty days to file a responsive pleading after the court has denied a Rule 12 motion or postponed its disposition until trial if the defendant is a United States officer or employee sued in an individual capacity for an official act or omission. Civil Rule 12(a) is not applicable in bankruptcy, but Fed. R. Bankr. P. 7012(a) specifies that a responsive pleading must be served within 14 days after the court has denied a motion or postpones its disposition until trial. There is currently no different time period for United States actors. The Bankruptcy Advisory Committee should consider taking like action if the Civil Advisory Committee's amendment is adopted.

3. **CARES Act – Rules Emergency.** The Civil Advisory Committee approved for publication Rule 87, the rules emergency proposal.

4. **Privilege Logs and Sealing Court Records – Rules 26(b)(5)(A) and 45(e)(2).** The Discovery Subcommittee is considering proposals to amend Rules 26(b)(5)(A) and 45(e)(2). These rules apply in bankruptcy cases, so we will continue to monitor the Subcommittee's efforts.

5. **Rule 9(b).** The Civil Advisory Committee considered as an information item a suggestion from Dean Spencer (William & Mary) to amend Rule 9(b). The amendment would change the sentence that allows state of mind to be pleaded "generally" by deleting that word and saying instead that state of mind may be pleaded "without setting forth the facts or circumstances from which the condition may be inferred." The goal is to undo the portion of the Supreme Court's *Iqbal* decision holding that although mental state need not be alleged "with particularity," the allegation must still satisfy Rule 8(a) – meaning some facts must be pleaded. Dean Spencer's view is set out at length in a *Cardozo Law Review* article.

This is a question of serious interest to the Bankruptcy Advisory Committee. Rule 9(b) comes up often in bankruptcy (adopted by reference in Fed. R. Bankr. P. 7009) because some of the section 523(a) exceptions to discharge and some of the objections to discharge under § 727 have state of mind elements. The Bankruptcy Advisory Committee will want to watch this proposed amendment closely and consider weighing in when the time comes.

6. **Joint Civil-Appellate Subcommittee on Final Judgment Rule.** The Joint Civil-Appellate Subcommittee (aka "*Hall v. Hall* Subcommittee") appointed to study the effects of the final judgment rule for consolidated actions announced in *Hall v. Hall*, 138 S. Ct. 1118 (2018), received an extensive Federal Judicial Center study of appeals in consolidated actions filed in 2015, 2016, and 2017. It subsequently began informal efforts to ask judges in the Second, Third, Seventh, Ninth, and Eleventh Circuit Courts of Appeals about their experience with *Hall v. Hall*. Only the Second Circuit has dismissed appeals based on *Hall v. Hall*. The Subcommittee will meet again to consider further steps. The initial study was not useful. Consequently, the FJC's Emery Lee devised a different study methodology that he believed would yield better data. His initial findings were released recently. The Subcommittee has not met to discuss them.

7. **IFP Practices and Standards.** The Civil Committee has received various submissions over the past couple of years relating to the great variations in standards employed to qualify for

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in forma pauperis status as among different districts and as among judges in the same district. The Civil Advisory Committee discussed creating a joint subcommittee or other joint study of *in forma pauperis* standards, which could craft a civil rule or provide uniform and good practice guidance on IFP standards.

"Who is poor?" in the eyes of different courts could lead to some poor people having to pay a filing fee for some kinds of cases and some other poor people not having to pay. There are two criteria in 28 U.S.C. § 1930(f)(1) for the filing fees to commence a bankruptcy case, one a bright line (tied to the poverty line) and the other inexact—the debtor is "unable to pay . . . in installments." And there are other filing fees that are waivable by the district or bankruptcy court under § 1930 as well as under other authority, such as appellate fees.

Judge McEwen supports the idea of a joint subcommittee or study and thinks the Bankruptcy Advisory Committee should participate. Judge Bates suggested that the reporters for the various committees discuss whether there is interest in creating a joint subcommittee to consider IFP standards.

The next meeting of the Civil Advisory Committee will be a virtual meeting on October 5, 2021.

(D) ***June 22-23, 2021 Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

The Bankruptcy Committee met by videoconference on June 22-23, 2021. The next meeting is December 7-8, 2021.

The Bankruptcy Committee previously made a legislative proposal on responses to emergencies, which was withdrawn. They are now considering whether a new legislative proposal is appropriate.

The proposed amendments to Rule 3011 on unclaimed funds are currently published for comment, and the Bankruptcy Committee thanks the Advisory Committee for pursuing that proposal.

The *City of Chicago v. Fulton* proposal is also important to the Bankruptcy Committee, and the Bankruptcy Committee will be available to provide feedback on the proposal.

Judge Bates wants to make sure that there is coordination between any proposals by the Bankruptcy Committee and the Advisory Committee with respect to proposals to deal with emergency situations.

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Subcommittee Reports and Other Action Items

4. Report by the Consumer Subcommittee

(A) *Recommendation Concerning Suggestion 21-BK-G for Amendments to Rule 1007(b)(7)*

Professor Bartell provided the report.

Rule 1007(b)(7) requires that, "[u]nless 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 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)."

Bankruptcy Judge Arthur I. Harris of the N.D. Ohio submitted Suggestion 21-BK-G, in which he proposed that use of Official Form 423 not be required. Instead, he suggests that the rule be amended to also allow submission to the court of the Certificate of Debtor Education that is provided to the debtor by the provider of that course.

The Subcommittee agreed with Judge Harris that the certificate of completion issued by the provider should be acceptable evidence of completion of the required course on personal financial management, but recommended that the amendment go further and make that certificate the *only* acceptable evidence. The Subcommittee sees no benefit in allowing debtors to complete an Official Form in lieu of submitting the actual certificate to evidence course completion.

Second, the Subcommittee recommended that a debtor who is not required to complete such a course be explicitly excluded from the requirements of the rule. If the debtor has been excused from completing the course by court order, the court order will provide adequate evidence of that fact and submission of an Official Form seems unnecessary.

Since the draft language of the proposed amendment was circulated, Professor Struve has pointed out that there are a number of other bankruptcy rules that refer to the "statement required by" Rule 1007(b)(7), all of which would have to be modified if the language of Rule 1007(b)(7) were changed to require a certificate rather than a statement. This could be avoided if the draft language replaced the words "certificate of course completion" with "statement of course completion" in both the text of the rule and the committee note.

There were four issues for the Advisory Committee to decide:

1. Should the certificate of compliance be permissible evidence of completion of the financial management course?

2. Should the certificate of compliance be the only permissible evidence of completion of the financial management course?

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3. Should a debtor who is not required to complete a financial management course be required to file something?

4. If the Advisory Committee agrees with the Subcommittee recommendation, should the draft language replace the word "certificate" with "statement"?

On the first two issues, the Advisory Committee supported the approach adopted by the Subcommittee. Deb Miller stated that the certificate is the best evidence of completion of the financial management course and enables the trustee and court to ensure that there has not been a forgery. Judge Donald asked whether anything other than the official form is currently submitted, and whether there are people providing these courses for free. Deb Miller described the resources for low-income debtors to get the course for free. Professor Bartell noted that the rule currently requires submission of Official Form 423. Mr. Schaible asked whether every provider provides a certificate to the debtor, and whether it is in a standard form. Judge Rebecca Connelly replied that they do, and it is. Ramona Elliott said that the EOUST licenses the providers, and a certificate is always generated with a unique bar code. The certificate numbers can be linked to the bar codes to confirm authenticity.

As to the third issue, there was discussion about whether the form would still be needed for those who were excused from filing the report. Various parties pointed out that the court's order on the motion to excuse the debtor from completing the course would already be on the docket, so the form does not provide any additional information. The general consensus was that it was unlikely to be needed, but the matter will be referred to the Forms Subcommittee for consideration.

On the fourth issue, Deb Miller and Judge Kahn stated that they did not think changing the language from certificate to statement was appropriate because the document from the providers is clearly labeled a certificate. There was a suggestion that the language might be changed to "statement of completion of the course in the form of a certificate of completion," but the suggestion generated little enthusiasm. The general consensus was that the other rules referring to the statement required by Rule 1007(b)(7) should be amended to refer to a "certificate."

The Advisory Committee decided to refer this back to the Subcommittee to reconsider the language and propose it for publication at the same time as it proposes possible amendments to the other rules referring to Rule 1007(b)(7), and the Forms Subcommittee should consider the continued need for Official Form 423.

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

Professor Gibson provided the report. 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

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§ 362(a)(3). The Court concluded that a contrary reading would render largely superfluous the provisions of § 542(a) providing for turnover of property of the estate. In a concurring opinion Justice Sotomayor noted that turnover proceedings "can be quite slow" because they must be pursued by adversary proceedings, *id*. at 594, and stated 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.

Since the decision in *Fulton*, the Advisory Committee received suggestion 21-BK-B from 45 law professors for rules amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding for all chapters and all types of property. Another suggestion, 21-BK-C, submitted by three of those law professors proposed amended language from that offered in the original suggestion. Since the Advisory Committee last met, the National Bankruptcy Conference submitted suggestion 21-BK-J in support of the law professors' suggestions, although the language in the Conference's letter was more narrowly focused on chapter 13 and § 542 motions.

The Advisory Committee discussed this topic at its last meeting and asked the Subcommittee to consider the feedback it received and come back with a proposal. The Advisory Committee tentatively expressed its view that a narrower approach than that proposed by the law professors would be preferable.

The Subcommittee gathered information from bankruptcy clerks and from chapter 13 trustees on their practices in dealing with turnover of estate property, both before and after *Fulton*. Professor Gibson described the results of that survey. After reviewing the results of this survey, the Subcommittee considered various limiting principles for a rule allowing more expeditious turnover proceedings, such as limiting it to chapter 13 or certain types of property or property necessary for an effective reorganization. The Subcommittee agreed that the amendment should extend to individual debtors, without regard to the chapter under which they file, and to tangible personal property when turnover is sought under § 542(a). That would still require adversary proceedings for other situations. The Subcommittee concluded that an amendment to Rule 7001(1) would accomplish this result without creating a new rule to create a national turnover procedure.

The Subcommittee recommended an amendment to Rule 7001(1) (which is Rule 7001(a) in the restyled version) to add language excluding from adversary proceedings "a proceeding by an individual debtor to recover tangible personal property under § 542(a)."

Since the proposed amendment was circulated, Professor Struve asked whether the Advisory Committee should consider including proceedings under § 543 (turnover by custodians). Professor Gibson said this may include agents that take possession of property to enforce a lien. For example, a towing company taking possession of a debtor's automobile, or a sheriff executing on an automobile, might be deemed a custodian under § 543.

Judge Krieger asked whether the Subcommittee considered the due process implications of changing from an adversary proceeding to a motion practice. Professor Gibson said that she

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did not see a due process concern; the third party gets notice and an opportunity to respond under a motion practice. If the issues get more complicated, the court may incorporate other part VII rules under Rule 9014.

Judge Kahn said creditor rights in property are dealt with by motion all the time, such as cash collateral orders and adequate protection. Dealing with property in the jurisdiction of the bankruptcy court has not traditionally caused due process concerns, dating back to the summary/plenary distinction in jurisdiction under the Bankruptcy Act. He agrees with the recommendation of the Subcommittee. He has two questions: Why not limit to chapter 13? If a turnover order is like an injunction, is there a need to except § 542(a) from Rule 7001(7)?

Professor Gibson responded that a chapter 12 debtor or even a chapter 7 debtor may need to get the car back quickly. And as to the second question, if the turnover is excepted in Rule 7001(1), she did not think it was needed to be expressly excluded in Rule 7001(7) as an injunction.

Judge Connelly agreed that due process was not implicated by changing the turnover proceeding from adversary proceeding to motion. The issues that might arise are manageable in a motion mechanism. The service provisions applicable to adversary proceedings will apply, and the court can apply any other part VII rules. The court can also specify the time to respond. She saw no reason to distinguish between individuals in chapter 13 and those who file under other chapters.

Dave Hubbert supported limiting the proposal to tangible personal property.

As to § 543, Professor Gibson suggested that perhaps it has not been a problem, and it might be best to just publish our proposal and see if we get any comments on it. Judge Connelly noted that the Subcommittee did not consider § 543 and the Advisory Committee should either recommit the suggestion to the Subcommittee or publish it. Deb Miller does not want to expand the proposal any further than necessary. Professor Struve said that she thought the proposal was terrific and that it could be modified in the future if creditors shifted property into the hands of custodians. Judge McEwen said that in her district § 543 actions are already by motion.

The Advisory Committee approved the proposed amendments to Rule 7001(1), and committee note and directed that they be submitted to the Standing Committee for publication.

5. **Report by the Forms Subcommittee**

Professor Gibson provided the report.

The Advisory Committee received Suggestion 21-BK-K from Charles A. King, an attorney for the City of Chicago. Mr. King practices bankruptcy law in the Northern District of Illinois, a district that uses the national chapter 13 plan form—Official Form 113. Based on what he considers to be inappropriate treatment of the City's claims that were secured by statutory liens, Mr. King suggested that a portion of Part 3.1 of the form be revised. Specifically, he contends that the following plan statement regarding the effect of lifting the automatic stay is

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contrary to the Bankruptcy Code and produces consequences that were likely unintended by the Advisory Committee:

> If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan.

The Subcommittee reviewed the history of the lift-stay provision in Part 3.1 of Form 113, and concluded that the impact on creditors other than the creditor that sought relief from the stay was intended by the drafters and was not inconsistent with § 1325(a)(5)(B) of the Code. The purpose of the provision is to require secured creditors to look to the collateral (rather than the plan) for payment of their secured claims once the stay has been lifted with respect to that collateral. Mr. King simply disagrees with that decision.

The Subcommittee noted that only a few districts use Official Form 113 rather than their own local form, and the provision in question is not one that Rule 3015.1 requires local forms to include. Its impact is therefore limited. Because the provision is consistent with the Code and seems to be operating as intended, the Subcommittee recommended that the Advisory Committee take no further action on the suggestion. The Advisory Committee agreed to take no action on the suggestion.

6. **Report by the Technology and Cross-Border Insolvency Subcommittee**

Judge Oetken and Professor Gibson presented the report.

Rule 5005 requires electronic filings, but does not deal with what counts as a valid electronic signature for individuals who do not have a CM/ECF account. 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 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 matter was assigned to this Subcommittee. Subsequently two more suggestions filed by Sai, 21-BK-H and 21-BK-I, made related points.

The Subcommittee is still in the fact-finding stage of its deliberations. Dave Hubbert and Ramona Elliott are engaged in discussions within the Department of Justice about its views on the issues raised by the suggestions and whether those views have changed since 2014, when DOJ opposed a proposed amendment to Rule 5005(a) that would have allowed the use of debtors' scanned signatures without the retention of the documents bearing the original, "wet" signatures. While no official position has been arrived at, there is an acknowledgment that electronic signature technology has advanced considerably since 2014. Because the Department's position will likely be closely tied to the types of electronic signature products allowed and the security features required, the Subcommittee's exploration and understanding of the technological aspects of electronic signatures will be important.

Ken Lee of the Federal Judicial Center gathered information on the practices of bankruptcy and district courts with respect to requirements for the use and retention of wet signatures of debtors and other non-attorney participants in bankruptcy, civil, and criminal cases, showing the alterations in court practices in response to the COVID-19 pandemic.

The rules now generally require electronic filing by represented entities and authorize local rules to allow electronic filing by unrepresented individuals. Documents that are filed electronically and must be signed by debtors will of necessity bear electronic signatures. They may be in the form of typed signatures, /s/, or images of written signatures, but none is currently sufficient for evidentiary purposes. The issue the Subcommittee has been considering, therefore, is how best to require an evidentially sufficient form of a debtor's signature that appears on an electronically filed document.

Currently, this goal is generally achieved by the requirement in local rules that the attorney retain the original document with the wet signature for a period of years. This method works, although it has the drawback of making the attorney the custodian of potential evidence against his client—a situation that in the past has caused concerns for both prosecutors and debtors' attorneys.

A solution that provides for an acceptable electronic signature on the document that is filed—rather than a retention requirement—is what CACM seems to have in mind. Its suggestion refers to "the ability of those without CM/ECF filing privileges in bankruptcy cases to electronically sign documents that are submitted to the court." A drawback of this approach, however, is that it would require adequate e-signature technology in the software that many bankruptcy lawyers use for the creation and filing of forms that debtors must sign, such as the petition and schedules. Such software may not currently exist, and a rule that requires the development and purchase of new software is not desirable.

Although the Subcommittee was not prepared to make a formal recommendation to the Advisory Committee, it presented possible amendments to Rule 5005(a) that would create a national retention requirement of either wet signatures or electronic signatures in an evidentially acceptable form. Subdivision (a)(2)(C), governing signatures, could be amended to provide for

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persons who are not CM/ECF account holders. Such amendments could impose a national retention period, but it also allows the retention of electronic signatures. It could further declare that, if the requirements are met, the electronic signature that is filed constitutes the debtor's signature. That statement allows electronically filed documents signed by represented debtors to comply with rules and statutes that require the debtor to sign.

As to unrepresented debtors, the Subcommittee recommended no action in response to Sai's suggestion to revisit the electronic filing rights of pro se debtors. But because courts are authorized to allow pro se debtors to file electronically, an all-encompassing amendment about electronic signatures needs to include such filers.

If a court allows pro se debtors to file electronically through CM/ECF, they are covered by Rule 5005(a)(2)(C), and their electronic signature would be treated the same as an attorney with a CM/ECF account.

If a court allows pro se debtors to file by other means—such as by email or through an eSR program—then there needs to be a method of authenticating the electronic signature. A retention requirement is likely ineffectual in this situation. Prosecutors are unlikely to favor a requirement that the pro se debtor retain the document with the wet signature, so unless courts are willing to retain such documents, there would need to be a rule requiring the electronic signature itself to be evidentially sufficient. A rule could require such a debtor to use "a signature affixed through a commercially available electronic signing technology that maintains an audit trail and other security features to ascertain the authentic identity of the signer." However, based on information that Molly Johnson provided the Subcommittee about the need for a DocuSign license, such a requirement is probably feasible only if courts can include such technology in their software for pro se filers because the filers will not have their own license.

Sai has suggested that pro se litigants should not have more onerous signature requirements than CM/ECF requirements. Sai also suggests that electronic filings should be required for all litigants whether or not represented, subject to limited exceptions. The Subcommittee suggests that the filing requirements for pro se litigants should not be pursued now. But the Subcommittee asked the Advisory Committee for feedback on whether the approach with respect to represented litigants was appropriate.

Once the Subcommittee has a concrete proposal that is consistent with the Advisory Committee's views, it would like to seek input from outside groups. These groups would include, among others, other rules advisory committees or their reporters; court officials; the Department of Justice and law enforcement officials; debtors' attorneys; IT experts; and bankruptcy software vendors. Ken Lee from the FJC has agreed to survey some outside groups, and the Subcommittee has discussed the possibility of seeking permission to convene a miniconference on a proposed amendment.

Dave Hubbert reiterated that the Department of Justice does not currently have a firm position on electronic signatures. They need to detect fraud and prove the elements in an appropriate case. With respect to the technology, it ranges from authenticating a signature

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without verifying the identity of the signer, to something like TSA pre-check where there is in-person verification at some point.

Professor Gibson pointed out the § 341 meeting is unique to bankruptcy where there is a way of verifying the debtor's signature that does not exist in other judicial proceedings.

Deb Miller asked whether this proposed rule modification affects the filing by someone with an account where there are subaccounts, like the trustee's office and large firms. Judge Connelly asked whether there is any need to specify a retention period given the requirements imposed on lawyers under state law. Tara Twomey asked how this applies to proofs of claim, which are often filed by pro se litigants. She also asked how it applies to a document with signatures of multiple persons that is electronically filed by one of them. Professor Gibson said that the Subcommittee had focused mostly on debtor signatures.

Judge McEwen asked how DocuSign works. Ken Gardner explained how it works, but noted that someone has to have a DocuSign account, like the lawyer. Professor Coquillette said this is a complicated area and we have to avoid inconsistent regulation with state rule systems.

Judge Isicoff stated that her district requires email confirmation of signature and a mailed-in wet signature retained by the court. Their new rule will require that the wet signature must be retained by the lawyer or by the court (for pro se filers).

Judge Connelly said Rule 5005 already allows local courts to allow pro se litigants to file electronically. What is the purpose in changing the rule? Is there a problem here? Professor Gibson says that all electronically filed documents already have electronic signatures. The rule is addressing what requirements are needed to provide evidentially valid electronic signatures. Currently local rules are handling this issue. She suggested that perhaps a federal rule is needed to provide uniformity.

Scott Myers pointed out that pro se filers who do not use CM/ECF accounts for filing are not covered by the existing rule.

Judge McEwen said that her district has a local rule dealing with multiple signatures. That same rule has a retention requirement for certain types of papers.

Ken Gardner thinks we need to make this simple. He asked why we cannot offer limited filing access to CM/ECF for pro se filers. He suggested that we could require that everyone have a login that constitutes a signature. Professor Gibson asked about the represented debtor. Ken Gardner thinks the § 341 meeting confirms the signature and that should be satisfactory evidence. Judge McEwen said this does not work for remote § 341 meetings conducted by telephone. Scott Myers said that a limited filing account could really help pro se debtors. Judge Kahn likes the idea of limited filing accounts for pro se debtors. With respect to represented debtors, he does not think the § 341 meeting solves everything because many documents are signed after the § 341 meeting. Deb Miller said that her district requires retention of wet signatures on everything.

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The Subcommittee will consider all the input from the Advisory Committee.

7. **Information Items**

(A) ***Restyling Subcommittee***

Judge Krieger and Professor Bartell provided the report. The 7000 series of restyled rules is almost finalized for publication. The style consultants have prepared initial drafts of the 8000 and 9000 series, which will be considered by the Subcommittee at its next meetings. All three series will be ready for approval for publication at the next Advisory Committee meeting.

Rules in the 1000-5000 series that have been amended since the restyling project began have also been restyled by the style consultants and reviewed by the Subcommittee and are almost finalized. The Subcommittee expects to make a recommendation to the Advisory Committee about publication of those rules at its next meeting.

8. **Future meetings**

The spring 2022 meeting has been scheduled for March 31-April 1, 2022.

9. **New Business**

There was no new business.

10. **Adjournment**

The meeting was adjourned at 12:45 p.m.

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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. Advisory Committee.

A. Recommendation of amendment to Rule 9006(a)(6) to add "Juneteenth Independence Day" to list of Federal holidays (Professor Bartell).

2. Business Subcommittee.

A. Recommendation of no action regarding Suggestion 21-BK-F from Judge Catherine Peek McEwen to shorten the deadline to file schedules in Chapter 11, Subchapter V (Professor Bartell).

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TAB 3

TAB 3A1

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
January 4, 2022

The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) met by videoconference on January 4, 2022. The following members were in attendance:

Judge John D. Bates, Chair
Elizabeth J. Cabraser, Esq.
Judge Jesse M. Furman
Robert J. Giuffra, Jr., Esq.
Judge Frank Mays Hull
Judge William J. Kayatta, Jr.
Peter D. Keisler, Esq.
Judge Carolyn B. Kuhl
Professor Troy A. McKenzie
Judge Patricia A. Millett
Hon. Lisa O. Monaco, Esq.*
Judge Gene E.K. Pratter
Kosta Stojilkovic, Esq.
Judge Jennifer G. Zipps

Professor Catherine T. Struve attended as reporter to the Standing Committee.

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 B. 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 Standing Committee included: Professors Daniel R. Coquillette, Bryan A. Garner, and Joseph Kimble, consultants to the Standing Committee; Bridget Healy, Rules Committee Staff Acting Chief Counsel; Julie Wilson and Scott Myers, Rules Committee Staff Counsel; Brittany Bunting and Shelly Cox, Rules Committee Staff; Burton S. DeWitt, Law Clerk to the Standing Committee; Judge John S. Cooke, Director of the Federal

* Prior to the lunch break, Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Lisa O. Monaco. Deputy Attorney General Monaco represented DOJ after the lunch break. Andrew Goldsmith was also present on behalf of the DOJ.

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Judicial Center (FJC); Emery G. Lee, Senior Research Associate at the FJC; and Dr. Tim Reagan, Senior Research Associate at the FJC.

OPENING BUSINESS

Judge Bates called the virtual meeting to order and welcomed everyone. He welcomed new Standing Committee members Elizabeth Cabraser and Professor Troy McKenzie. He also noted that Deputy Attorney General Lisa O. Monaco would attend the afternoon session of the meeting and thanked the other Department of Justice (DOJ) representatives for joining. In addition, Judge Bates thanked the members of the public who were in attendance for their interest in the rulemaking process.

Judge Bates next acknowledged Julie Wilson, who would be leaving the Administrative Office of the U.S. Courts (AO) at the end of January. Judge Bates thanked Ms. Wilson for her years of tremendous service to the rules committees. Professor Struve seconded Judge Bates's sentiments on behalf of the reporters. The reporters and Advisory Committee Chairs expanded on these thanks at later points during the meeting.

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved the minutes of the June 22, 2021 meeting.**

Bridget Healy reviewed the status of proposed rules and forms amendments currently proceeding through each stage of the Rules Enabling Act (REA) process and referred members to the tracking chart beginning on page 56 of the agenda book. The chart lists rule amendments that went into effect on December 1, 2021. It sets out proposed amendments and proposed new rules that were recently approved by the Judicial Conference. Those proposed amendments and new rules were transmitted to the Supreme Court and will go into effect on December 1, 2022, provided they are adopted by the Supreme Court and Congress takes no action to the contrary. The chart also includes proposed amendments and new rules that are at earlier stages of the REA process.

Judge Bates noted that some public comments had been received on proposed emergency rules developed in response to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and that he expected more comments to be received by the close of the public comment period in February. These comments will be reviewed and discussed by the relevant Advisory Committees at their spring meetings.

JOINT COMMITTEE BUSINESS

Electronic Filing by Self-Represented Litigants

Judge Bates introduced this agenda item, which concerns the Advisory Committees' consideration of several suggestions regarding electronic filing by "pro se" (or self-represented) litigants. Noting that he had asked Professor Struve to convene the committee reporters in order to

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coordinate their consideration of those suggestions, he invited Professor Struve to provide an update on those discussions.

Professor Struve thanked the commenters whose suggestions had brought this item back onto the rules committees' docket. She stated that at the group's first virtual meeting (in December 2021), the Advisory Committee reporters and researchers from the FJC had discussed how to formulate a research agenda on this topic. The goal is to share ideas on research questions, even though the four Advisory Committees in question may not necessarily reach identical views or formulate identical proposals for rule amendments.

Judge Bates highlighted the fact that the FJC researchers were being asked to devote time to this project and asked the Standing Committee if any members had any comments or concerns with utilizing the FJC's assistance. No members expressed any concern. Judge Bates also thanked Judge Kuhl for a thoughtful suggestion concerning terminology. Judge Kuhl reported that the state courts see a very high number of self-represented litigants, and that the courts are trying to phase out the use of Latin phrases (such as "pro se") that can be harder for lay people to understand. Judge Bates observed that the Advisory Committee chairs and reporters would take this point into account.

Juneteenth National Independence Day

Judge Bates introduced this agenda item, which concerns the proposal to amend the rules' definition of "legal holiday" to explicitly list Juneteenth National Independence Day. He noted that three of the four relevant Advisory Committees had already approved proposed amendments to add the new holiday to the list of legal holidays in their respective time-computation rules, and that the fourth Advisory Committee expects to do so at its spring 2022 meeting. Those proposals will come to the Standing Committee for consideration at its June 2022 meeting and will likely constitute technical amendments that can be forwarded for final approval without publication and comment.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett provided the report of the Advisory Committee on Appellate Rules, which met via videoconference on October 7, 2021. The Advisory Committee presented an action item along with multiple information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 100.

Action Item

Publication of Proposed Amendment to Rules 35 and 40, and Conforming Amendments to Rule 32 and the Appendix of Length Limits. In this action item, the Advisory Committee sought approval for publication of a package of proposed amendments that would consolidate the contents of Rule 35 into Rule 40 and that would make conforming changes to Rule 32 and to the Appendix of Length Limits. Judge Bybee explained that the Advisory Committee had been considering comprehensive amendments to Rules 35 and 40 for some time. Rule 35 addresses hearings and rehearings en banc, and Rule 40 addresses panel rehearings. The proposed amendments would

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transfer to Rule 40 the contents of Rule 35 so that the provisions regarding panel rehearing and en banc hearing or rehearing could be found in a single rule, Rule 40. Judge Bybee stated that as a result of discussion at the last Standing Committee meeting, the Advisory Committee acted with a freer hand to revise Rule 40 to clarify and simplify the rule. The result is a more linear rule that was unanimously approved by the Advisory Committee. Judge Bybee thanked the style consultants for their work on the proposed amended rule.

Judge Bates asked about the order of the subparts in Rule 40(b)(2). When listing potential reasons for rehearing en banc, would it not make more sense to list, first, instances when the panel decision conflicts with a decision of the Supreme Court, and then, instances when the decision creates a conflict within the circuit, and finally, instances when the decision creates a conflict with another court? Judge Bybee stated that the Advisory Committee considered the order when drafting the rule. The main reason behind the proposed structure is that an initial consideration for a court of appeals is to maintain consistency within its own docket. Hence, the Advisory Committee chose to list intra-circuit inconsistencies first (in 40(b)(2)(A)). Professor Hartnett agreed with Judge Bybee and added that subparagraph 40(b)(2)(A) is different because it addresses a situation that does not provide grounds for the Supreme Court to grant certiorari.

Judge Bates turned the discussion to proposed amended Rule 40(d)(1), which sets the presumptive deadline for filing a rehearing petition but provides for the alteration of that deadline "by order or local rule." He asked whether any circuits have local rules that alter that deadline and he questioned whether such local rulemaking was desirable. Professor Hartnett stated that this feature was carried over from current Rules 35(c) and 40(a)(1). A judge member noted that the 14-day limit to file a petition for rehearing is short, particularly for pro se prisoner litigants. In her circuit, there is a local rule that sets the limit at 21 days. This member recommended against precluding circuits from affording litigants a longer period by local rule.

A practitioner member asked whether the proposed Rule 40(g) should say "[t]he provisions of Rule 40(b)(2)(D) . . ." instead of just "[t]he provisions of Rule 40(b)(2)." As written, Rule 40(b)(2)(A)-(C) all refer to "the panel decision," which would be inapplicable in a petition for initial hearing en banc. Judge Bybee agreed that the wording of Rule 40(b)(2)(A) would not apply literally to a request for initial hearing en banc, but the intent of the Advisory Committee was to allow for an initial hearing en banc when there is an intra-circuit inconsistency. Judge Bybee noted that in his circuit, initial hearings en banc sometimes occur sua sponte when a panel notices two inconsistent opinions of the circuit and refers the inconsistency to the en banc court. The practitioner member agreed that it makes sense to be inclusive if there is a concern about intra-circuit conflict.

The practitioner member asked about Rule 40(b)(2)(C)'s use of the phrase "authoritative decision" when discussing a panel decision's conflict with a decision from another circuit. This phrase is not used elsewhere in the rule. Judge Bybee responded that this phrasing would rule out rehearing requests based on conflicts with unpublished decisions from other circuits. Professor Hartnett agreed that this provision was designed to exclude petitions asserting conflicts merely with unpublished (i.e., nonprecedential) opinions from other circuits. In response to a follow-up question, Judge Bybee acknowledged that the omission of "authoritative" from Rule 40(b)(2)(A) means that that provision can extend to intra-circuit splits involving unpublished decisions.

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The same practitioner member pointed out that Rule 40(d)(5) bars oral argument on whether to grant a rehearing petition and asked whether this prohibition should be revised to allow for local rules or orders to the contrary. In his recent experience, a circuit had ordered argument on whether to grant a petition for rehearing – and subsequently issued a decision that both granted the petition for rehearing and reached a different outcome on the merits. Such a process can be useful, this member said, so why remove this flexibility? Judge Bybee explained that the rule is drafted to discourage requests for argument on whether to grant rehearing. Professor Hartnett added that, under Rule 2, the court has authority to suspend the prohibition on oral arguments by order in a case. Based on these responses, the practitioner member stated that he did not see a need to revise proposed Rule 40(d)(5).

A judge member asked a pair of drafting questions. First, he asked why the proposed new title for Rule 40 ("Rehearing; En Banc Determination") used the word "determination." Professor Hartnett explained that "en banc determination" was selected to encompass an initial hearing en banc, which would not be a "rehearing." Second, the judge member noted that the timing provision in current Rule 35(c) says "must be filed" but the timing provision in current Rule 40(a)(1) says "may be filed." He asked why proposed Rule 40(d)(1) used "may be filed" (on lines 105 and 112 of the draft at page 128 of the agenda book). Professor Hartnett responded that one possible reason was to avoid the use of a word ("must") that might lead lay readers to think that the rule was requiring the filing of a rehearing petition. A judge member agreed that pro se litigants might misread "must" as a requirement that they file a petition for a rehearing even if they do not desire a rehearing, while "may" clarifies that they can file a petition, and if they do so, they must do so within fourteen days. The Standing Committee, along with Judge Bybee, Professor Hartnett, and the style consultants, discussed the competing virtues of "may" and "must," as well as a suggestion from the style consultants to change to "any petition … must" (at lines 103-05) rather than "a petition … must." As a result of the discussion, Judge Bybee and Professor Hartnett agreed to change "a" to "any" in line 103 and "may" to "must" in line 105. As to the use of "may" in line 112, further discussion noted that keeping this as "may" would parallel the use of "must" and "may" in, respectively, Rules 4(a)(1)(A) and 4(a)(1)(B). Ultimately the decision was made to retain "may" at line 112.

A practitioner member suggested that the wording of proposed Rule 40(c) seemed (in comparison to the current rule) to liberalize the standard for granting rehearing en banc. New Rule 40(c) says it "[o]rdinarily … will be ordered only if" a specified condition is met, whereas current Rule 35(a) says that it "is not favored and ordinarily will not be ordered unless" a specified condition is met. Saying "will not be ordered unless" would help emphasize that en banc rehearing is not preferred. Relatedly, the same member noted that the phrase "rehearing en banc is not favored" had been moved to proposed Rule 40(a), and he suggested that phrase should appear in Rule 40(c). Professor Hartnett stated that the first of the member's points was a style issue on which the Advisory Committee had deferred to the style consultants. As to the second point, Professor Hartnett explained that the Advisory Committee had moved "rehearing en banc is not favored" up to Rule 40(a) for emphasis. He recalled that an earlier draft may have featured that phrase in both Rule 40(a) and Rule 40(c), and he suggested that the Advisory Committee would prefer to include the phrase in both subparts (even if redundant) rather than simply moving it to Rule 40(c). Judge Bybee agreed with Professor Hartnett but noted he had no objection to including

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"rehearing en banc is not favored" in both Rule 40(a) and Rule 40(c). A judge member who had participated in the Advisory Committee discussions voiced support for including the phrase in both places. In response to the practitioner member's first point, Professor Garner suggested changing "ordered" to "allowed" in line 98 ("[o]rdinarily … will be allowed only if"). Such a change would recognize that the court has discretion, but is not required, to order an en banc rehearing if one of the four criteria is met.

A judge member thanked the Advisory Committee and thought the proposed amended rule is more user friendly and clearer. She suggested that reinserting the word "panel" in the title would clarify the rule, particularly for self-represented litigants. Professor Hartnett and Judge Bybee agreed with the suggestion to add "panel" back into the title. Judge Bates voiced his support for adding the word "panel" back into the title as well; he observed that might assist users of the table of contents.

A judge member, stating that adverbs are over-used, questioned the use of "ordinarily" in the phrase about when rehearing en banc will be ordered; this member expressed a preference for "may be allowed." A different judge member disagreed and thought the word "ordinarily" should be retained. In rare cases the court may want to grant rehearing en banc even though none of the stated criteria are met. A practitioner member concurred in the latter view and said that "ordinarily" usefully preserves the court's discretion both in Rule 40(c) and in proposed Rule 40(d)(4), which provides that the court "ordinarily" will not grant rehearing without ordering a response to the petition. Judge Bates agreed that "ordinarily" should be retained.

After further discussion, Judge Bybee requested approval for publication of the proposed transfer of Rule 35's contents to Rule 40, the proposed amendments to Rule 40, and the proposed conforming amendments to Rule 32 and the Appendix of Length Limits. The rule amendments being voted on would include the following changes to Rule 40 compared with the version shown at pages 122-132 in the agenda book: (1) insertion of "Panel" in the title; (2) correction of typographical errors on lines 77, 85, and 86; (3) on lines 97-98, replacing "Ordinarily, rehearing en banc will be ordered" with "Rehearing en banc is not favored and ordinarily will be allowed;" (4) on line 103, changing "a" to "any," and (5) on line 105, changing "may" to "must"

Upon motion by a member, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendments to Rules 35 and 40, with the changes as noted above, and conforming amendments to Rule 32 and the Appendix of Length Limits.**

Information Items

Amicus Disclosures. Judge Bybee invited Professor Hartnett to introduce the information item concerning potential amendments to Rule 29's disclosure requirements. Professor Hartnett underscored the Advisory Committee's interest in obtaining the Standing Committee's feedback on this topic. The Advisory Committee began a review of Rule 29 in 2019 following the introduction in both houses of Congress of the Assessing Monetary Influence in the Courts of the United States Act (AMICUS Act). In 2021, Senator Sheldon Whitehouse and Representative

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Henry C. "Hank" Johnson, Jr. requested that the Advisory Committee review Rule 29's disclosure requirements for organizations that file amicus briefs.

Professor Hartnett explained that the question of amicus disclosures involves important and complicated issues. One issue is that insufficient amicus disclosure requirements can enable parties to evade the page limits on briefs or permit an amicus to file a brief that appears independent of the parties but is not. Another issue is that, without sufficient disclosures, one person or a small number of people with deep pockets can fund multiple amicus briefs and give the misleading impression of a broad consensus. Countervailing concerns include First Amendment rights of persons who do not wish to reveal their identity.

Professor Hartnett stated that there are many approaches the Advisory Committee could take in amending Rule 29, depending on how these various issues are resolved. One approach is that the Advisory Committee could move forward with minimal amendments such as adding "drafting" to the current rule's disclosure requirement concerning persons that "contributed money that was intended to fund preparing or submitting the brief" – to foreclose the contention that this disclosure requirement only reaches funding for the costs of printing and filing a brief.

He advised that a more extensive revision to Rule 29 is possible, and he noted three issues that the Advisory Committee is reviewing. First, Rule 29 could be amended to address contributions beyond funds earmarked for a particular brief. However, if the Advisory Committee goes down this road, it raises the question of the contribution threshold that would trigger disclosure requirements. The sketch of a potential rule on page 106 of the agenda book would trigger disclosure if a party (or its counsel) contributed at least 10 percent of the amicus's gross annual revenue. That 10 percent trigger is borrowed from Rule 26.1, which deals with corporate disclosures. The purposes of the two rules are different, but the 10 percent number provides a starting point for the discussion.

Professor Hartnett noted that a second issue is whether any increased disclosure requirements should apply only to relationships between the parties and an amicus, or whether such increased requirements should also encompass disclosures relating to the relationship between non-parties and an amicus. Finally, he stated that the Advisory Committee is also looking at the issue of whether to retain the current rule's exemption from disclosure for nonparty members of an amicus. An exclusion avoids some of the constitutional issues regarding membership lists, but if any disclosure requirement excludes members, it would make it easy to avoid disclosure by converting contributions into membership fees.

Judge Bates noted that this is a particularly important and sensitive subject, and specifically so because it comes through the Supreme Court to the Advisory Committee. Judge Bates asked if members had any comments or suggestions.

A practitioner member stated that the three issues Professor Hartnett noted are important to consider, and the Advisory Committee should try to find middle ground. A broader amendment, particularly with respect to disclosure regarding non-parties, may not be successful.

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A judge member believed the Advisory Committee was asking the right questions and was right on point with its conclusions. Another judge member agreed that the Advisory Committee was heading in the right direction. As a judge, he would rather know who was behind a brief, though he noted that the importance of that question does get greatly overstated. He suggested that seeking the "middle ground" might prove to be quite a challenge because actors might structure their transactions to evade the disclosure requirement.

A practitioner member thought the middle ground route would be preferable. The member also noted that there is an uptick in the motions to file amicus briefs in district courts now, particularly in multi-district litigation and other complex litigation, and the district courts have less experience in dealing with amicus filings. Judge Bates noted the absence of any national rule governing amicus filings in the district court and observed that this may be a matter for other Advisory Committees and the Standing Committee to consider in the future. A judge member suggested that it is important for the Civil Rules to address amicus filings in the district courts, particularly to deal with the possibility that an amicus might file a brief for the purpose of triggering a recusal. (Discussion of amicus filings in the district court recurred later in the meeting, during the Civil Rules Advisory Committee's presentation, as noted below.) Another judge member suggested that it would be helpful to know more about the AMICUS Act's prospects of enactment.

A practitioner member noted that amicus filings often face a time crunch and increasing the disclosure requirements risks dissuading amici from undertaking the effort. For an organization with many members – such as a banking association – detailed disclosures could be burdensome.

A judge member suggested that one approach might be to adopt a rule that invites voluntary disclosures – that is, an amicus would either identify its principal members and funders or state that it is choosing not to disclose. This voluntary standard avoids constitutional issues while also allowing parties to disclose the information.

A judge member stated she liked the 10 percent rule. It is a significant trigger for recusal concerns, and it is already in use in the corporate disclosure requirements. Moreover, if the disclosure would require a judge to either recuse herself or to deny leave to file an amicus brief, it seems very "head-in-the-sand" to not require that disclosure.

A practitioner member stressed the importance of the distinction between parties and non-parties. As to parties, he observed that it is very easy to see the concern about a party using an amicus filing as an additional opportunity to make an argument. However, in practice there is a lot of coordination between amici and parties. Parties seek out potential amici whose voices they would like to get before the court. Though it is important to enforce the rule's current requirements, practical experience illustrates the limits of what can be done by rulemaking. As to non-parties, it would be useful for the court to know if there is a dominant, hidden figure lurking behind an amicus. But if the rule were to go beyond that level of detail, one would have to ask what problem the rule is trying to solve. If the court has never heard of the amicus, the court can simply assess the amicus brief on its own merits.

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Judge Bybee thanked the Standing Committee members for their comments and stated that he would relay them to the Advisory Committee.

Judge Bates asked for comments on the other information items outlined in the Advisory Committee's report in the agenda book. There were no further comments.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz and Professor Capra provided the report of the Advisory Committee on Evidence Rules, which last met in Washington, DC on November 5, 2021. The Advisory Committee's report presented multiple information items but no action items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 302.

Information Items

Rules Published for Public Comment in August 2021. Judge Schiltz reminded the Standing Committee that proposed amendments to Rules 106, 615, and 702 had been published for public comment in August 2021. The proposed amendments to Rule 702, which clarify the court's gatekeeping role for admitting expert testimony, will be controversial. The Advisory Committee has received a number of comments on that proposal and expects to hear testimony on it at its upcoming January 2022 hearing. Judge Schiltz stated that courts have frequently misconstrued Rule 702 requirements as going only to the weight, and not the admissibility, of the expert's testimony; those judges will admit the testimony if they think that a reasonable juror could conclude that the requirements are met. The proposed amendments to the rule emphasize that the court must determine that the reliability-based requirements for expert testimony are established by a preponderance of the evidence, and that the trial court must evaluate whether the expert's conclusion is properly derived from the basis and methodology that the expert has employed. The latter aspect of the proposal is designed to address the problem of overstatement by experts.

Judge Schiltz provided some detail concerning the comments received regarding Rule 702. He explained that there is some opposition, particularly from members of the plaintiffs' bar, to the concept of amending the rule. Judge Schiltz said that the Advisory Committee is unlikely to accept this point of view, because it believes that Rule 702 needs clarification. Courts frequently issue decisions interpreting Rule 702 incorrectly. Conversely, comments from the defense bar say that the Advisory Committee has not done enough to clarify the rule, and that the committee note should be more explicit that certain decisions are wrong and are rejected. The Advisory Committee does not think specifically singling out incorrect decisions in the committee note is the correct approach.

When discussing a draft of the proposed amendments, some Advisory Committee members had expressed concern that under the proposal as then formulated ("if the court finds"), some judges might think they need to make formal findings on the record that all the requirements of the rule are met, even if no party objects to the expert testimony. To address this concern, the proposed amendment as published for comment instead uses the phrase "if the proponent has demonstrated." A number of commentators have objected to this change. These comments note

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that the very problem the amendment is designed to fix is that often the judge delegates this responsibility to jurors when it should be the judge who determines whether the requirements are met. According to these commentators, because this language does not say who needs to make the determination, it does not in fact provide the clarification that the amended rule is intended to convey. Judge Schiltz asked whether the Standing Committee had comments on the proposed amendments to Rule 702 for the Advisory Committee's consideration at its next meeting.

A practitioner member noted that in mass tort litigation, there are complaints among defense lawyers that courts do not sufficiently screen expert testimony, choosing instead to say that objections go to weight, not admissibility. There are limits to how much can be done to legislate this issue, so the member agrees with the Advisory Committee's decision not to specifically criticize incorrect decisions in the committee note. However, some emphasis on enhancing the judicial role, even if only in situations where the testimony's admissibility is central and contested, would not be too much of an imposition on the court.

Rule 611 – Illustrative Aids. Judge Schiltz introduced this information item as one that the Advisory Committee will likely submit to the Standing Committee in June 2022 with a request for approval to publish for public comment. He explained that illustrative aids are not specifically addressed by any rules. Judges, himself included, often struggle to distinguish demonstrative evidence (offered to prove a fact) from illustrative aids. Additionally, judges have very different rules on whether parties must disclose illustrative aids prior to use at trial, as well as whether (and how) they can go to the jury. Finally, judges have different rules on whether illustrative aids are or can be part of the record. Judge Schiltz noted that there is a companion proposal to amend Rule 1006, which deals with summaries, that is also under consideration by the Advisory Committee.

A judge member applauded the proposed changes to Rule 611 and Rule 1006. He suggested that to the extent that the proposed addition to Rule 611 (as set out on pages 304-05 of the agenda book) sets conditions for the use of an illustrative aid, it seems odd to include items (3) and (4). Those two provisions—the prohibition on providing the aid to the jury over a party's objection unless the court finds good cause; and the requirement that the aid be entered into the record—are not conditions on the use of an illustrative aid but rather regulations of what happens after the use of the illustrative aid. Professor Capra agreed with the judge member that items (3) and (4) should be part of a separate subdivision.

A practitioner member noted that he does not turn over opening or closing slide presentations prior to using them in arguments. Also, during examination of a witness, he will often have an easel where he can write down highlights of the testimony as it is given. He asked whether these types of aids would be covered by the proposed rule. If these are considered illustrative aids, it is important to draft the rule in a way that does not discourage their use. Professor Capra acknowledged the validity of this concern, noted that these questions have been part of the Advisory Committee's discussions, and agreed that it would be important to ensure that the notice requirement would not be unduly rigid as applied to such situations. Judge Schiltz stated that the practitioner members on the Advisory Committee had expressed a similar concern, but the judge members favored requiring advance notice. Without advance notice, judges could have to deal with objections interpolated in the middle of an opening statement. In sum, Judge Schiltz

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stated, this is a challenging issue, but the Advisory Committee is very focused on the pros and cons of the notice requirement.

Another practitioner member emphasized that trial practice has moved toward very slick presentations, for openings and closings, with expert witnesses, and even with fact witnesses. He stated that advance disclosure to opposing counsel can be a good idea; otherwise, if counsel shows the jury slides that mischaracterize the evidence, there is a real risk of a mistrial. The member said that judges often impose notice requirements for slides used in opening arguments, although they may be more flexible about closing arguments. Slides have become crucial in trial practice. Something might be lost by disclosing, he said, but disclosure avoids sharp practices. Judge Schiltz stated that he requires attorneys to provide advance disclosure, but the disclosure can be made five minutes beforehand. A judge member concurred; in her view, this is a case management issue on which it is difficult to write a rule. The judge has to know the case and require advance disclosures by the lawyers.

Professor Bartell noted the proposed rule text does not define "illustrative aid." For example, if a lawyer stands 20 feet away from the witness and asks, "can you see my glasses," one might say that is illustrative. She suggested being careful to cabin the rule's scope.

Rule 1006 Summaries. Judge Schiltz introduced this information item as a companion proposal to the proposed amendment to Rule 611. Rule 1006 provides that certain summaries are admissible as evidence if the underlying records are admissible and if they are too voluminous to be conveniently examined at trial. This rule is often misapplied. Some judges erroneously instruct the jury that a summary admitted under Rule 1006 is not evidence. Some judges will not admit a Rule 1006 summary unless all the underlying records have been admitted into evidence, which runs contrary to the purpose of Rule 1006. Other judges do the opposite and will not allow Rule 1006 summaries if any of the underlying records have been admitted into evidence. The confusion over Rule 1006 is closely related to the confusion over illustrative aids, and the Advisory Committee hopes to clarify both topics.

Rule 611 – Safeguards to Apply When Jurors Are Allowed to Pose Questions to Witnesses. Judge Schiltz provided the update on this information item, explaining that the proposed amendment would list the safeguards that a court must use when it allows jurors to ask questions. The proposed rule would not take any position on whether jurors should be allowed to ask questions, but rather would provide a floor of safeguards that must apply if the judge does allow juror questions. These safeguards were taken from caselaw.

A judge member stated that it makes sense to have a rule regarding juror questions because it is an important and perilous area. He noted that there are various possible approaches to juror questions; one is to allow the lawyers to take the juror's question under advisement and allow the lawyers to decide whether they will cover that topic in their own questioning of the witness. This seems like it might often be the prudent course, but proposed Rule 611(d)(3) appears to foreclose it. Professor Capra said he would look into this issue. His understanding was that judges that permit juror questions generally read the questions to the witness, and then allow for follow-up questioning from counsel.

Judge Bates asked whether proposed Rule 611(d)(1)(D) should be a bit broader. He suggested that instead of saying that no "negative inferences" should be drawn, it should say "no inferences" should be drawn. Professor Capra agreed that "negative" should be omitted. Following up on Judge Bates's suggestion, a judge member added that it would be better to be even broader and suggested that Rule 611(d)(1)(D) say that no inference should be drawn from anything the judge does with a juror's question (whether asking, not asking, or rephrasing it). Judge Bates stated his agreement with the judge member's suggestion.

A judge member asked a question about Rule 611(d)(1). As she read the rule, it seems to prohibit juror questions outright unless the judge provides the required instructions "before any witnesses are called." She asked how the rule would handle instances where the issue of juror questioning arises mid-trial; also, she wondered whether this timing requirement should be placed elsewhere in the rule. Professor Capra promised to take this issue into account.

Judge Schiltz referred the Standing Committee to the Advisory Committee's report in the agenda book for information regarding the remainder of the information items, and there were no further comments.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Dennis Dow and Professors Gibson and Bartell provided the report of the Advisory Committee on Bankruptcy Rules, which last met via videoconference on September 14, 2021. The Advisory Committee presented one action item and 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 157.

Action Item

Rule 7001. Judge Dow introduced this action item to request approval to publish for public comment an amendment to Rule 7001. The proposed amendment responds to Justice Sotomayor's suggestion in her concurring opinion in *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021), that the rulemakers "consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned," because the delay in resolving turnover proceedings can present a problem for a debtor's ability to recover the car that the debtor needs to get to work in order to earn money to fund a Chapter 13 plan. Before the Advisory Committee had a chance to address Justice Sotomayor's comment, a group of law professors submitted a suggestion, which later was generally endorsed by another suggestion submitted by the National Bankruptcy Conference. The law professors recommended a new rule to allow all turnover proceedings to be brought by motion rather than adversary proceeding. The Advisory Committee decided on a narrower approach tailored to the issues raised by Justice Sotomayor and proposed amending Rule 7001 to provide that turnover of tangible personal property of an individual debtor could be sought by motion as opposed to adversary proceeding. The Advisory Committee decided not to adopt a national procedure for these turnover motions, preferring instead to allow them to remain governed by local rules.

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An academic member stated that this rule will be a huge improvement over current procedure. He asked what would happen, under the proposal, in a Chapter 7 case when the trustee is seeking turnover of tangible property. The member expressed an expectation that the motion procedure would not apply to the trustee's turnover proceeding, because the proposal only extends to proceedings "by an individual debtor." Judge Dow agreed that under the proposed amendment, the trustee would need to seek turnover by adversary proceeding.

Upon motion, seconded by another, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 7001.**

Information Items

Rule 9006(a)(6) (Legal Holidays). Judge Dow stated that the Advisory Committee has approved a technical amendment to Rule 9006(a)(6) adding Juneteenth National Independence Day to the list of legal holidays. The Advisory Committee is not asking for approval at this time; rather, it will make that request in June 2022 in coordination with the other Advisory Committees' parallel proposals.

Electronic Signatures. Judge Dow introduced this information item, which concerns electronic signatures by debtors and others who do not have a CM/ECF account. Judge Dow noted that this issue connects to the question of electronic filing by self-represented litigants, but he observed that the working group of reporters and FJC researchers is addressing the latter topic, so the Advisory Committee's focus in this information item was on the electronic-signature topic. The Advisory Committee is looking at the practice of requiring the debtor's counsel to retain a wet signature for documents signed by the debtor and filed electronically. Previously, when the Advisory Committee last considered amendments to Rule 5005(a) that would have allowed the filing of debtors' scanned signatures without the retention of the original "wet" signature, the DOJ raised concerns with technologies available for verifying those signatures. The Advisory Committee has asked the DOJ whether its concerns have been alleviated by intervening technical advances. The pandemic has given us some experience with courts relaxing the wet-signature-retention requirement, and the FJC is assisting the Advisory Committee in studying the issue. There is a preliminary draft of a possible amendment to Rule 5005(a) on page 161 of the agenda book.

Professor Gibson stated the Advisory Committee found this to be a challenging problem. With documents that are filed electronically, what constitutes a valid signature for purposes of the rules? Under all rule sets, a CM/ECF account holder's signature is associated with that holder's unique account. A filing made through the account holder's account, and authorized by that person, constitutes the person's signature. But that does not address the common situation in bankruptcy where the *attorney* is filing a document with the *debtor's* signature, as the debtor is not the account holder. (Also, a pro se litigant might be allowed by some courts to submit documents through some electronic means other than CM/ECF—for instance, via email.) The Advisory Committee is not sure where it stands with wet signature requirements, but it is continuing to explore. Professor Gibson also noted that the Advisory Committee needs to learn more about lawyers' views concerning the requirement that the attorney for a represented debtor retain a wet signature.

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An academic member noted that the DOJ's concern the last time this issue came before the Advisory Committee was that without a requirement for the retention of a wet signature, the Department's experts in bankruptcy fraud prosecutions would not be able to verify the authenticity of a signature. He asked whether the possible change in approach now would flow from a change in what a handwriting expert was willing to testify to, or whether it would flow from the advent of electronic methods for verifying the signature. Professor Gibson answered that technology has improved since the last time the Advisory Committee addressed this issue, and now there are electronic-signing software programs that offer a means to trace electronic signatures back to the signer. DOJ has told the Advisory Committee that the proposal is no longer dead from the beginning, meaning there does not always have to be a wet signature for its experts to be able to verify the authenticity of the signature. But it depends on the technology. Software that enables verification of electronic signatures may not currently be incorporated into the software that consumer lawyers are using to prepare bankruptcy filings. The technology exists, however. Therefore, the Advisory Committee felt it is worth pursuing the amendment. Judge Dow noted that the Advisory Committee has included the DOJ in the discussions of this item from the outset and has stressed to the DOJ that its input is necessary.

Professor Coquillette applauded Professor Gibson's attention to state ethics requirements and cautioned that the Advisory Committee needs to be careful not to amend the rules in ways that could conflict with state-law professional-responsibility requirements. State-law professional-responsibility requirements may, for example, address the lawyer's retention of a client's "wet" signature.

Deputy Attorney General Monaco said she is hopeful that the Department can work through some of the technology issues that this proposal would raise. The Department has convened an internal working group to review the issue.

A judge member noted that he understands the point that the Advisory Committee does not want to have rules that require adoption of new software, but might the rules incentivize it? What if the rule says that if counsel use software that enables electronic signature verification, then they do not have to retain a wet signature? That could be a good development.

Restyling. Judge Dow introduced the final information item: an update on the restyling project. The project is going well. Parts I and II have gone through the entire process up to (but not including) transmission to the Judicial Conference, which will happen once the remaining parts have also passed through the entire process. Parts III through VI are out for public comment and are on track to go to the Standing Committee at the next meeting. Parts VII, VIII, and IX will come to the Advisory Committee this spring and should be ready for Standing Committee approval for publication this summer.

Professor Bartell added that while the restyling project has been ongoing, some of the restyled rules have been subsequently amended. The Advisory Committee still needs to decide how it wants to handle these amended rules. One possibility will be to request to republish for public comment all the restyled rules that have been subsequently amended.

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Professor Kimble stated that the style consultants will conduct one final top-to-bottom review of all the restyled rules for consistency and any other minor issues. They are currently doing so for Parts I and II.

Judge Bates thanked the style consultants for their work on the restyling project.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Robert Dow and Professors Cooper and Marcus provided the report of the Advisory Committee on Civil Rules, which last met via videoconference on October 5, 2021. The Advisory Committee presented one action item and three information items. The Advisory Committee briefly noted other items on its agenda, one of which elicited discussion. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 184.

Action Item

Publication of Rule 12(a). Judge Dow introduced the only action item, a proposed amendment to Rule 12(a) that the Advisory Committee was requesting approval to publish for public comment. Rule 12(a) sets the time to serve responsive pleadings. Rule 12(a)(1) recognizes that a federal statute setting a different time should govern, but subdivisions 12(a)(2) and (3) do not recognize the possibility of conflicting statutes. However, there are in fact statutes that set times shorter than the time set by Rule 12(a)(2). While not every glitch in the rules requires a fix, this is one that would be an easy fix. The Advisory Committee decided unanimously to request publication for public comment.

Professor Cooper added there is an argument that Rule 12(a)(2) as currently drafted supersedes the statutes that set a shorter response time, and the Advisory Committee never intended such a supersession. In addition to fixing the glitch, the proposed amendment will avoid the potential awkwardness of arguments concerning unintended supersession.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 12(a).**

Information Items

Multi-District Litigation (MDL) Subcommittee. Judge Dow introduced the work of the MDL Subcommittee as the first information item. Two major topics remain on the subcommittee's agenda. First, the subcommittee is looking at the idea of an "initial census" (what used to be known as "early vetting")—that is, methods for the MDL transferee judge to get a handle on the cases that are included in the MDL. There are three current MDLs where some version of this is in use—the *Juul MDL* before Judge Orrick in the Northern District of California, the *3M MDL* before Judge Rodgers in the Northern District of Florida, and the *Zantac MDL* before Judge Rosenberg (who chairs the MDL Subcommittee) in the Southern District of Florida. Second, the subcommittee is reviewing issues concerning the court's role in the appointment and compensation of leadership

counsel. Several meetings ago, the Advisory Committee discussed what it called a "high impact" sketch of a potential new Rule 23.3 that would extensively address court appointment of leadership counsel, establishment of a common benefit fund to compensate lead counsel, and court rulings on attorney fees. More recently, the subcommittee has been considering a sketch of a "lower impact" set of rules amendments that focuses on Rules 16(b) and 26(f). It would deal with both the initial census and issues of appointing, managing, and compensating leadership counsel throughout an MDL proceeding.

The approach taken in the lower impact sketch is similar to what the Advisory Committee did with Rule 23 a few years ago: operate at a high level of generality and not try to prescribe too much, but put prompts in the rules so that lawyers and judges know from day one a lot of the important things that they will encounter over the number of years it will take for an MDL to conclude. The subcommittee is trying to preserve flexibility. Much of what is in the rule sketch will not apply in any single given MDL. The prompts in the rule will guide MDL participants, and the committee note will provide more detail on how the court might apply these prompts. The subcommittee has met with Lawyers for Civil Justice and will meet with American Association for Justice and others in the coming months.

Professor Marcus observed, with respect to the call for rulemaking with respect to matters such as attorney compensation in MDLs, that rulemaking on such topics is challenging. One approach would be to amend Rule 26(f) so as to require the lawyers to address such matters in their proposed discovery plan; this could then inform the judge's consideration of how to address those matters in the Rule 16(b) order. As to oversight of the settlement, Judge Dow noted that the subcommittee initially considered giving the judge oversight of the substance of the settlement, but now is focusing instead on whether to provide for judicial oversight of the process for arriving at the settlement. In current practice, some judges exert indirect influence on the settlement, for example through their orders appointing leadership counsel. But whether to make rules concerning settlement in MDLs is the most controversial issue the subcommittee is considering, and its members do not agree on how best to proceed. Professor Cooper added that the rules do not currently define what obligations, if any, leadership counsel has to plaintiffs other than their own clients.

Judge Bates said he agrees with the Civil Rules Committee report's observation that the absence of any mention of MDLs in the Civil Rules is striking, given that MDLs make up a third or more of the federal civil caseload. He commended the Advisory Committee and subcommittee on their work on these issues.

A judge member suggested that the Advisory Committee consider addressing appointment of special masters. The role that courts have delegated to special masters in some large MDLs is significant. If the Advisory Committee addresses special masters, a rule could deal with whether and when special masters should have *ex parte* communications with counsel. There is the potential for an appearances problem if the special master is viewed as favoring one side or the other. A poor decision concerning the use of a special master can have significant consequences. Professor Marcus noted that Rule 53 requires that the order appointing a special master must address the circumstances, if any, in which the master may engage in *ex parte* communications.

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However, the question then is whether Rule 53 is sufficient to address the issue in the MDL context.

A judge member thanked the subcommittee for its work on the MDL rules. He expressed skepticism concerning the desirability of rules specific to MDLs, noting that one size does not fit all as the cases range from quite simple to large and complicated. The current rules are flexible and capacious enough to accommodate the differences. Judge Chhabria's point (in the *Roundup MDL*) concerning the transferee judge's learning curve is well taken, but the judge member questioned whether a rule change could really make that learning curve any easier.

Apart from that big-picture skepticism, this judge member also made some more specific suggestions. First, the question of who should speak for the plaintiffs during the early meet-and-confer is a big one, and whether any rule should address that is a worthy issue that may warrant treatment if the Advisory Committee is going to be addressing MDLs. Second, in some MDLs the court has appointed lead counsel on the defense side, and the judge member queried whether the rules should address that. Third, if the rules will be amended to address table-setting issues that counsel and the court should consider early on, one such issue is whether there will be a master consolidated complaint and what its effect will be (a topic touched on in *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 n.3 (2015)). Fourth, the judge member stressed that the common benefit fund order should be clear as to whether plaintiffs' lawyers will be required to submit to the common benefit fund a portion of their fees arising from the settlement of cases pending in other courts; he expressed doubt, however, as to whether the question of court authority to impose such a requirement is an appropriate topic for rulemaking. Lastly, the member noted that in the current rule sketch of proposed Rule 16(b)(5)(F) provided in the agenda book (at p. 197) it seemed a little odd to require the court in an initial order to provide a method for the court to give notice of its assessment of the fairness of the process that led to any proposed settlement.

A practitioner member stated that the judge member whose comments preceded hers had raised all the issues that she had in mind. She suggested that the Rule 16 approach is particularly well taken. It will cause more lawyers to read Rule 16 earlier and to pay attention to it. Rule 16 is "the Swiss Army knife" for active case management, and it is precisely the right context for adding provisions to deal with MDLs. Right now, judges are innovating in their MDL case-management orders, but that procedural common law is not as well disseminated as it should be amongst the people who need it the most: transferee judges and the lawyers practicing before them. If Rule 16 addresses MDL practice, judges will cite the rule in their orders, and in turn these orders will more likely be published and found in searches. Moreover, the proposed approach will not stifle the flexibility that exists in the absence of a rule. No two MDLs are the same. She noted that she wishes there were a repository of all MDL case-management orders. Getting MDLs into the rules in a very flexible way may confer at least some of that benefit.

Professor Coquillette seconded Professor Cooper's point concerning the significance of conflict-of-interest issues with lead counsel in MDLs. Questions percolate regarding American Bar Association (ABA) Model Rule 1.7. The rulemakers should always be aware that attorney conduct is subject to another regulatory system, which applies broadly because most federal courts adopt by local rule either the ABA Model Rules or the rules of attorney conduct of the State in which they sit. Professor Marcus noted the added complication that the lawyers in an MDL may

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be based in many different states. Professor Coquillette observed that the ABA Model Rules do have a choice-of-law provision, but it can be challenging to apply.

An academic member expressed his appreciation for the work of the subcommittee and reporters on this. He echoed the suggestion that, in this area, less is more. With the complexity and variation of MDLs, encasing things in formal rules is probably not a good idea. The goal should be to provide transparency and give some guidance to judges who do not have prior experience in MDLs. However, it would be a mistake to try to make something concrete when it should be plastic. Thus, the Manual for Complex Litigation seems to be the natural place to locate much of the guidance concerning best practices. This member also cautioned against trying to assimilate MDLs to Rule 23 class actions. Class action practice should not be the model for MDLs, because MDLs require flexibility.

Judge Bates acknowledged that the range of MDLs is daunting and that is a reason to question whether rules that apply to all MDLs can be formulated. However, that view is in tension with the Federal Rules of Civil Procedure themselves, which are a set of rules that apply to an even wider variety of cases.

A judge member echoed the comment on having a "best practices" guide outside the rules, and stated that the Advisory Committee should resist writing rules specific to MDLs.

Another judge member applauded the effort to continue to think about this important but difficult topic. The draft Rule 16(b)(5) is a little unusual in that it is a precatory statement about what a judge should consider, but it does not give the judge any additional tools that the judge does not already have. In this sense, the sketch of Rule 16(b)(5) resembles the Manual for Complex Litigation. This member suggested that, instead, the focus should be on whether there are tools that MDL transferee judges want but do not currently have, and whether those tools are something that an amendment under the Rules Enabling Act process can provide. Judge Dow observed that although a new edition of the Manual for Complex Litigation is in process, it will be several years before it comes out. The Judicial Panel on Multidistrict Litigation, likewise, has tried to provide guidance on best practices, but has held conferences only intermittently. He noted that the Standing Committee's discussion overall evinced more support for the low-impact (Rule 16) approach than the high-impact (Rule 23.3) approach. Director Cooke reported that the FJC is in the preliminary stages of organizing a committee to assist in the preparation of a new edition of the Manual for Complex Litigation.

Discovery Subcommittee. Judge Dow briefly discussed the Discovery Subcommittee's work on privilege log issues. Plaintiffs' and defendants' lawyers have very different views as to whether the current rules present problems. However, there are areas of consensus—that it could be valuable to encourage the parties to discuss privilege-log issues early on, perhaps with the

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judge's guidance, and that a system of rolling privilege logs is useful. These areas are the subcommittee's current focus.

Judge Dow also noted the subcommittee's work on sealing. The AO is already reviewing issues related to sealing documents. The Advisory Committee is going to hold off on further consideration of sealing issues and will monitor the progress of the broader AO project.

Rule 9(b) Subcommittee. Judge Dow introduced the work of the new Rule 9(b) Subcommittee (chaired by Judge Lioi). The subcommittee is considering a proposal by Dean Benjamin Spencer to amend Rule 9(b)'s provision concerning pleading conditions of the mind ("[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally"). The subcommittee has had its first meeting and will report to the Advisory Committee at its March meeting.

Other Items

Judge Dow briefly noted a multitude of other projects under consideration by the Advisory Committee, including proposals regarding Rules 41, 55, and 63, as well as one regarding amicus briefs in district courts and one involving the standards and procedures for granting petitions to proceed as a poor person ("in forma pauperis"). Judge Dow also noted that the Advisory Committee is awaiting public comments on the proposed new emergency rule, Rule 87.

Professor Cooper asked whether amicus practice in the district court may present very different questions from amicus practice in appellate courts. In addition to the relative rarity of amicus filings in the district court, he suggested there might be more of a risk that an amicus's participation could interfere with the parties' opportunity to shape the record and develop the issues germane to the litigation in the district court. The discussion during the Appellate Rules Committee's presentation left Professor Cooper concerned about drafting a Civil Rule to address amicus issues.

Judge Bates agreed that amicus filings in the district court could present different issues. He doubted whether there would be many instances where anything in an amicus brief could help to develop the record of the case. For example, in an administrative review case, the record is already set by what was before the administrative agency. And in most other civil cases, the factual record will be developed by the parties through discovery. On the other hand, amicus filings could help to frame or identify issues.

A judge member noted that he too was skeptical about addressing amicus filings in the Civil Rules. This seems to be a solution in search of a problem. If an organization wants to file an amicus brief, it requests leave to file the brief, and the judge decides whether to grant leave and how to handle ancillary issues such as affording the parties an opportunity to respond. Especially given that amicus filings in the district courts are relatively rare, why should the Civil Rules

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address this topic when they do not address the general topic of briefs? The judge member also noted that having a rule regarding amicus briefs might encourage people to file more of them.

Judge Bates echoed the judge member's skepticism. Amicus briefs in district courts are almost all filed in just a few courts nationwide, including the District of Columbia (which has a local rule) and the Southern District of New York. This may be something where it is best to leave the practice to local rules in the few courts that see most of the amicus briefs.

Judge Dow stated that he agreed with the comments of the judge member and of Judge Bates. He noted that if a person has the resources to draft an amicus brief, it will have the resources to figure out how to request leave to file it.

A practitioner member stated that amicus briefs are being filed with increasing frequency in MDLs. This is not to say that there should be a Civil Rule on point, but it may be useful to keep in mind that the Appellate Rules' treatment of amicus briefs can be a useful resource for district judges. This member stated that amicus filings in the district court may sometimes attempt to contribute to the record by requesting judicial notice of particular matters; and amicus filings might sometimes add to the complexity in MDLs that are already complex enough. However, trying to craft a Civil Rule to address such issues may be borrowing trouble.

Professor Hartnett returned to the concern (that a member had raised during the discussion of the Appellate Rules Committee's report) that an amicus filing might be made in the district court with the goal of triggering the judge's recusal. Appellate Rule 29 allows the court of appeals to disallow or strike an amicus brief when that brief would require a judge's disqualification. Amicus filings designed to trigger recusal—if they became a common practice—would be more dangerous at the district court level when the case is before a single judge.

Another practitioner member stated that it would be a big mistake to have a national rule governing amicus briefs in district courts. Amicus briefs can be taken for what they are worth, and judges can either read them or not read them. To regulate this on a national basis just does not make sense.

Turning to matters covered in the Civil Rules Committee's written report, Judge Bates noted the Civil Rules Committee's decision not to proceed with a proposal to amend Rule 9 to set a pleading standard for certain claims under the Americans with Disabilities Act. He requested that the Civil Rules Committee coordinate with the Rules Committee Staff at the AO to communicate this decision to Congress. The proposal in question, he noted, initially came from members of the Senate.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Kethledge and Professors Beale and King presented the report of the Advisory Committee on Criminal Rules, which met in Washington, DC on November 4, 2021. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 258.

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Information Items

Grand Jury Secrecy Under Rule 6(e). Judge Kethledge described the Advisory Committee's decision not to proceed with a proposed amendment to Rule 6 regarding an exception to grand jury secrecy for materials of exceptional historical or public interest. The Advisory Committee had received multiple proposals for such an exception. Both the Rule 6 Subcommittee (chaired by Judge Michael Garcia) and the full Advisory Committee extensively considered the proposals. The subcommittee held an all-day miniconference where it heard a wide range of perspectives, including from former prosecutors, defense attorneys, the general counsel for the National Archives, a historian, Public Citizen Litigation Group, and the Reporters Committee for Freedom of the Press. The subcommittee thereafter met by phone four times. It had two main tasks. First, it tried to draft the best proposed amendment. Second, it had to decide whether to recommend to the full Advisory Committee whether to proceed with a proposed amendment. The draft rule that the subcommittee worked out would have allowed disclosure only 40 years after a case was closed, and only if the grand jury materials had exceptional historical importance. However, a majority of the subcommittee decided not to recommend that the full Advisory Committee proceed with an amendment.

At its fall 2022 meeting, the Advisory Committee discussed the matter fully and voted 9-3 not to proceed with an amendment. Judge Kethledge noted that the Advisory Committee benefited from a wealth and broad range of relevant experience on the part of its members. The Advisory Committee understood the proposal's appeal and found it to present a close question. The members identified "back end" concerns – that is to say, possible risks that could arise at the time of the disclosure of the grand jury materials – and noted that those concerns could be addressed (although not fully avoided) by employing safeguards. However, Advisory Committee members were concerned that on the "front end" – that is, when a grand jury proceeding is contemplated or ongoing – the potential for later disclosure pursuant to the proposed exception would complicate conversations with witnesses and jeopardize the witnesses' cooperation. A number of members also noted that this exception would be different in kind from those that are currently in the rule. The other exceptions relate to the use of grand jury materials for other criminal prosecutions or national security interests. Historical interest would be an altogether different kind of exception. There was the sense that a historical significance exception would signal a relaxation of grand jury secrecy and could lead to unintended consequences. The grand jury is an ancient institution that advances its purposes in ways that we are often unaware of; this heightens the risk of unintended consequences from a rule amendment. The DOJ has consistently supported a historic significance exception, but all eight former federal prosecutors on the Advisory Committee opposed having an amendment along these lines. In sum, the Advisory Committee voted to not make an amendment, subject to input from the Standing Committee.

Judge Bates stated that he thought this was a carefully considered decision by the Advisory Committee.

A practitioner member expressed agreement with the recommendation not to proceed. This is a hard issue, and he recognizes the appeal of having an exception, but as a former federal prosecutor who is now on the other side of the bar, he does not feel comfortable having an

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exception that only touches certain cases, namely those of exceptional historical interest, and therefore treats some grand jury participants differently than others.

A judge member praised the Advisory Committee's report for its thoroughness. This member asked how categorically the Advisory Committee had rejected the possibility of disclosures of very old materials of great public interest. Did the Advisory Committee believe that, had there been a grand jury investigation into the assassination of President Lincoln, disclosing those grand jury materials now would create "front end" problems with the cooperation of current-day witnesses? Judge Kethledge stated that it was the sense of the Advisory Committee that it should not add a new exception to Rule 6, even for material of great historical interest. One can think of examples where one would be glad for materials of such strong historical interest to be disclosed, but that does not mean that there should be a rule permitting such disclosure. As an analogy, take President Lincoln suspending habeas corpus during the Civil War. Many people would say they are glad that he did so because things may have turned out differently if he had not done so. Yet at the same time, most people would not want a general rule allowing the President to suspend habeas corpus when he sees fit.

Additionally, Judge Kethledge noted that although the Advisory Committee decided not to recommend a rule amendment, that does not exclude the possibility of common-law development of an exception. There is a circuit split as to whether federal courts have inherent authority to authorize disclosure of grand jury materials. Justice Breyer thought that the Advisory Committee should resolve the circuit split via rulemaking. However, Judge Kethledge stated his view, which he believed the Advisory Committee shares, that the underlying question of inherent authority was outside the purview of Rules Enabling Act rulemaking. If the Supreme Court resolves the circuit split in favor of recognizing inherent authority to authorize disclosure, the courts will be free to take a case-by-case approach.

Professor Beale added that a number of Advisory Committee members had noted that they felt comfortable with the state of the law prior to *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019), *cert. denied*, 140 S. Ct. 597 (2020), and *Pitch v. United States*, 953 F.3d 1226 (11th Cir. 2020) (en banc), *cert. denied*, 141 S. Ct. 624 (2020), and probably would have concluded (as the Advisory Committee had in 2012) that there was not a problem with courts very occasionally authorizing disclosure. Yet writing it out in a rule is fundamentally different: It would change the calculus and change the context under which the grand jury would operate going forward. It is unclear how changing that calculus and context would affect the grand jury as an institution.

A judge member said he thought that the Advisory Committee should consider a rule. He recalled from the Advisory Committee's discussions a shared sense that it is actually a good thing that grand jury materials have been released in certain cases of exceptional historical significance. The problem under the current regime is the circuit-to-circuit variation on whether disclosure is ever possible. Additionally, by not resolving the issue the Advisory Committee is just kicking the can down the road. If the Supreme Court rules that courts lack inherent authority to authorize disclosures not provided for in the Rule, then there will be renewed pressure for a rule amendment. If the Supreme Court instead rules that courts do have such inherent authority, there will still be demands for a rule amendment so as to provide a common approach to disclosure decisions. Therefore, either way, the rulemakers will end up having to take up this issue again.

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The same member also stated he was less persuaded by the argument that an exception for materials of exceptional historical interest will dissuade witnesses from testifying. As it is, there are exceptions to grand jury secrecy, including—in some circuits—a multifactor test for whether to release grand-jury materials to the defendant once the defendant has been indicted. Thus, prosecutors already are unable to tell witnesses that there are no circumstances under which their testimony could become public. Furthermore, the comment that certain organizations, such as Al Qaeda or gangs, have long memories is a red herring: These are not the types of cases of exceptional historical interest that would fit within the contemplated exception. The member closed, however, by thanking the Advisory Committee for its thoughtful consideration of the issue.

Professor Hartnett advocated precision in the use of the phrase "inherent authority." It can mean two different things: first, the court's authority to act in the absence of authorization by a statute or rule; and second, the court's authority to act despite a statute or rule that purports to prohibit it from acting. The latter type of inherent authority is much narrower and its scope presents a constitutional question. Judge Kethledge acknowledged this distinction, but noted that the question addressed by the Advisory Committee was only whether to adopt a provision of positive law, in the Criminal Rules, recognizing the exception in question.

Clarification of Court's Authority to Release Redacted Versions of Grand Jury-Related Judicial Opinions. Judge Kethledge introduced this information item, which stems from a suggestion by Chief Judge Howell and former Chief Judge Lamberth of the District of Columbia District Court. The suggestion requested that Rule 6(e) be amended to clarify the court's authority to issue opinions that discuss and potentially reveal matters before the grand jury. Both the subcommittee and entire Advisory Committee considered the issue. The Advisory Committee's conclusion was that the issue is not yet ripe. There has not been any indication so far that redaction is inadequate as a means to avoid contentions that the release of a judicial opinion somehow violates Rule 6. Absent any recent contentions that the release of a judicial opinion violated Rule 6, the Advisory Committee did not think it should act on the suggestion at this time.

Rule 49.1 and CACM Guidance Referenced in the Committee Note. Judge Kethledge introduced this information item, which arises from a suggestion by Judge Furman. Judge Furman suggested amending Rule 49.1 and its committee note to clarify that courts cannot allow parties to file under seal documents to which the public has either a common law or First Amendment right of access. The Advisory Committee appointed a subcommittee to review the issue. Judge Kethledge noted that in his experience, there does seem to be a problem of parties filing documents under seal that should not be so filed.

Judge Furman clarified that the issue is more with the committee note than the text of the rule. The committee note specifies that a financial affidavit in connection with a request for representation under the Criminal Justice Act should be filed under seal. This is in tension with the approach of most courts, which have found that these affidavits are judicial documents and therefore subject to a public right of access under the Constitution. However, at least one court in reliance on the committee note has allowed defendants to file CJA-related financial affidavits under seal.

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OTHER COMMITTEE BUSINESS

Legislative Report. The Rules Law Clerk delivered a legislative report. The chart in the agenda book at page 332 summarized most of the relevant information, but an additional bill had been introduced since the finalization of the agenda book. The AMICUS Act, which had been introduced in the previous Congress, was reintroduced in December, albeit with some differences compared to the previous version. As relevant to the Standing Committee, the new bill would apply to any potential amicus in the Courts of Appeals or Supreme Court, regardless of how many briefs it filed in a given year. The Rules Law Clerk also specifically noted the Protecting Our Democracy Act, which had passed the House in December 2021 and now awaits action in the Senate. That bill would prohibit any interpretation of Criminal Rule 6(e) that would prohibit disclosure to Congress of grand jury materials related to the prosecution of certain individuals that the President thereafter pardons. Additionally, the bill would direct the Judicial Conference to promulgate under the Rules Enabling Act rules to facilitate the expeditious handling of civil suits to enforce Congressional subpoenas.

Judiciary Strategic Planning. Judge Bates addressed the Judiciary Strategic Planning item, which appeared in the agenda book at page 339. The Judicial Conference has asked all its committees to provide any feedback on lessons learned over the past two years that may assist it in planning for future pandemics, natural disasters, and other crises that threaten to significantly impact the work of the courts.

Judge Bates asked the Standing Committee whether there was anything the members thought the Standing Committee should focus on in responding to the Judicial Conference. No members had any comments or questions regarding this item.

Judge Bates then asked the Standing Committee members whether there was any concern with delegating to him, Professor Struve, and the Rules Committee Staff the matter of communicating with the Judicial Conference. With no objections raised, Judge Bates said that he would consider that the approval of the Standing Committee.

Judicial Conference Committee Self-Evaluation Questionnaire. Every five years, the Judicial Conference requires all its committees to complete a self-evaluation. Judge Bates stated that he had circulated to the Standing Committee members a draft of that response.

The main item to address in the current draft is the modest adjustments to the jurisdictional statement for the Standing Committee and the Advisory Committees. First, the draft deletes the reference to receiving rule amendment suggestions "from bench and bar" because the Advisory Committees receive suggestions from others as well. Second, the draft clarifies that the Standing Committee, rather than the Advisory Committees, approves rules for publication for public comment. Third, the draft's descriptions of the duties of the Standing Committee and Advisory Committees have been revised to reflect the discussion of those duties in the Judicial Conference's procedures governing the rulemaking process.

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Judge Bates asked the Standing Committee whether there were any comments regarding the draft response to the Judicial Conference's committee self-evaluation questionnaire. There were none.

Judge Bates requested that the Standing Committee members delegate to him, Professor Struve, the Advisory Committee chairs, and the Rules Committee Staff the matter of responding to the self-evaluation questionnaire. Judge Bates noted that the Advisory Committee chairs had already weighed in on the draft response. With no objections raised, Judge Bates said that he would consider that the approval of the Standing Committee.

Update on Judiciary's Response to COVID-19 Pandemic. Julie Wilson provided an update on the judiciary's response to the COVID-19 pandemic. She observed that the federal judge members of the Standing Committee had access to a number of resources on this topic via the "JNet" (the federal judiciary's intranet website). There is a COVID-19 task force studying a wide range of items relevant to the judiciary's response to the pandemic. Its current focus is on issues related to returning to the workplace. The task force has a virtual judiciary operations subgroup ("VJOS") that includes representatives from the courts, federal defenders' offices, and DOJ, and it is studying the use of technology for remote court operations. Ms. Wilson noted that she has highlighted for the VJOS participants the relevant Criminal Rules concerning remote versus in-person participation, and she predicted that suggestions on this topic are likely to reach the rulemakers in the future.

CONCLUDING REMARKS

Before adjourning the meeting, Judge Bates thanked the Standing Committee members and other attendees for their patience and attention. The Standing Committee will next meet on June 7, 2022. Judge Bates expressed the hope that the meeting would take place in person in Washington, DC.

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TAB 3A2

Agenda E-19
Rules
March 2022

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 4, 2022. 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 S. 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 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; Bridget Healy, Scott Myers, and Julie Wilson, Rules Committee Staff Counsel; Burton DeWitt, Law Clerk to the Standing Committee; John S. Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, Federal

NOTICE
NO RECOMMENDATIONS PRESENTED HEREIN REPRESENT THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

Judicial Center (FJC); and Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, and Andrew Goldsmith, National Coordinator of Criminal Discovery Initiatives, Department of Justice (DOJ).

In addition to its general business, including a review of the status of pending rule amendments in different stages of the Rules Enabling Act process and pending legislation affecting the rules, the Standing Committee received and responded to reports from the five advisory committees. The Committee also received an update on three items of coordinated work among the Appellate, Bankruptcy, Civil, and Criminal Rules Committees: (1) the proposed emergency rules developed in response to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and published for public comment in August 2021; (2) consideration of suggestions to allow electronic filing by pro se litigants; and (3) consideration of amendments to list Juneteenth National Independence Day in the definition of "legal holiday" in the federal rules. Finally, the Committee was briefed on the judiciary's ongoing response to the COVID-19 pandemic.

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Approved for Publication and Comment

The Advisory Committee on Appellate Rules submitted proposed amendments to Rules 32, 35, and 40, and the Appendix of Length Limits, with a recommendation that they be published for public comment in August 2022. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Rule 32 (Form of Briefs, Appendices, and Other Papers)

The proposed amendment to Rule 32 is a conforming amendment that reflects the proposed transfer of Rule 35's contents into a restructured Rule 40. In Rule 32(g)'s list of papers that require a certificate of compliance, the amendment would replace the reference to papers

submitted under Rules 35(b)(2)(A) or 40(b)(1) with a reference to papers submitted under Rule 40(d)(3)(A).

Rule 35 (En Banc Determination)

The proposed amendment to Rule 35 would transfer its contents to Rule 40 in an effort to provide clear guidance in one rule that will cover en banc hearing and rehearing and panel rehearing.

Rule 40 (Petition for Panel Rehearing)

The proposed amendment to Rule 40 would expand that rule by incorporating into it the provisions of current Rule 35. The proposed amended Rule 40 would govern all petitions for rehearing as well as the rare initial hearing en banc.

Proposed amended Rule 40(a) would provide that a party may petition for panel rehearing, rehearing en banc, or both. It sets a default rule that a party seeking both types of rehearing must file the petitions as a single document. Proposed amended Rule 40(b) would set forth the required content for each kind of petition for rehearing; the requirements are drawn from existing Rule 35(b)(1) and existing Rule 40(a)(2).

Proposed amended Rule 40(c)—which is drawn from existing Rules 35(a) and (f)—would describe the reasons and voting protocols for ordering rehearing en banc. Rule 40(c) makes explicit that a court may act sua sponte to order rehearing en banc; this provision also reiterates that rehearing en banc is not favored. Proposed amended Rule 40(d)—drawn from existing Rules 35(b), (c), (d), and existing Rules 40(a), (b), and (d)—would bring together in one place uniform provisions governing matters such as the timing, form, and length of the petition. A new feature in Rule 40(d) would provide that a panel's later amendment of its decision restarts the clock for seeking rehearing.

Proposed Rule 40(e)—which expands and clarifies current Rule 40(a)(4)—addresses the court's options after granting rehearing. Proposed Rule 40(f) is a new provision addressing a panel's authority to act after the filing of a petition for rehearing en banc. Proposed Rule 40(g) carries over (from existing Rule 35) provisions concerning initial hearing en banc.

Appendix of Length Limits Stated in the Federal Rules of Appellate Procedure

The proposed amendments are conforming amendments that would reflect the relocation of length limits for rehearing petitions from Rules 35(b)(2) and 40(b) to proposed amended Rule 40(d)(3).

Information Items

The Advisory Committee met by videoconference on October 7, 2021. In addition to the matters discussed above, agenda items included the consideration of two suggestions related to the filing of amicus briefs, several suggestions regarding in forma pauperis issues, including potential changes to Appellate Form 4 (Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis), and a new suggestion regarding costs on appeal.

Amicus Briefs

The Advisory Committee reported that, in response to a suggestion from Senator Sheldon Whitehouse and Representative Henry Johnson, Jr., it is continuing its consideration of whether additional disclosures should be required for amicus briefs. Proposed legislation regarding disclosures in amicus briefs has been filed in the Senate and House, most recently in December 2021.

The Advisory Committee reported that the question of amicus disclosures involves important and complicated issues. One issue is that insufficient amicus disclosure requirements can enable parties to evade the page limits on briefs or permit an amicus to file a brief that appears independent of the parties but is not. Another issue is that, without sufficient

disclosures, one person or a small number of people with deep pockets can fund multiple amicus briefs and give the misleading impression of a broad consensus. On the other hand, when considering any disclosure requirement, it is necessary to consider the First Amendment rights of those who do not wish to disclose themselves.

The Advisory Committee sought the Committee's feedback on these issues. In doing so, the Advisory Committee highlighted the distinction between disclosure regarding an amicus's relationship to a party and disclosure regarding an amicus's relationship to a nonparty. The Advisory Committee also noted that any proposed amendments to Rule 29 would have to be based on careful identification of the governmental interest being served and be narrowly tailored to serve that interest. Various members of the Committee voiced their perspectives on these issues, and expressed appreciation for the Advisory Committee's ongoing work on these topics.

The Advisory Committee also has before it a separate suggestion regarding amicus briefs and Rule 29. In 2018, Rule 29 was amended to empower a court of appeals to prohibit the filing of an amicus brief or strike an amicus brief if that brief would result in a judge's disqualification. The suggestion proposes adopting standards for when judicial disqualification would require a brief to be stricken or its filing prohibited. This suggestion is under consideration by the Advisory Committee.

<u>Appellate Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis)</u>

The Advisory Committee is continuing to consider suggestions to regularize the criteria for granting in forma pauperis status, including possible revisions to Form 4 of the Federal Rules of Appellate Procedure. It is gathering information on how courts handle such applications, including what standards are applied and how Appellate Form 4 is used.

Costs on Appeal

In a recent decision, the Supreme Court stated that the current rules could specify more clearly the procedure that a party should follow to bring arguments about costs to the court of appeals. *See City of San Antonio v. Hotels.com L. P.*, 141 S. Ct. 1628 (2021). Accordingly, the Advisory Committee created a subcommittee to explore the issue.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted a proposed amendment to Rule 7001 (Types of Adversary Proceedings) with a recommendation that it be published for public comment in August 2022. The Standing Committee unanimously approved the Advisory Committee's recommendation.

The proposed amendment to Rule 7001 addresses a concern raised by Justice Sotomayor in *City of Chicago v. Fulton,* 141 S. Ct. 585 (2021). The *Fulton* Court held 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 from third parties. In a concurring opinion, Justice Sotomayor noted that under current procedures turnover proceedings can be very slow because, under Rule 7001(1), they must be pursued by an adversary proceeding. Addressing the need of chapter 13 debtors, such as those in *Fulton,* to quickly regain possession of a seized car in order to work and earn money to fund a plan, she stated that the Advisory Committee on Rules of Bankruptcy Procedure should consider rule amendments that would ensure prompt resolution of debtors' requests for turnover under § 542(a). Post-*Fulton*, two suggestions were submitted that echo Justice Sotomayor's call for amendments; these suggestions advocate that the rules be amended to allow all turnover

proceedings to be brought by a quicker motion-based practice rather than by adversary proceeding.

Members of the Advisory Committee generally agreed that debtors should not have to wait an average of a hundred days to get a car needed for a work commute, and they supported a motion-based turnover process in that and similar circumstances involving tangible personal property. There was less support, however, for broader rule changes that would allow all turnover proceedings to occur by motion. The Advisory Committee ultimately recommended an amendment to Rule 7001 that would exempt, from the list of adversary proceedings, "a proceeding by an individual debtor to recover tangible personal property under § 542(a)."

Information Items

The Advisory Committee met by videoconference on September 14, 2021. In addition to the recommendation discussed above, the Advisory Committee considered possible rule amendments in response to a suggestion from the Committee on Court Administration and Case Management (CACM Committee) regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account and discussed the progress of the Restyling Subcommittee.

Electronic Signatures

The Bankruptcy Rules now generally require electronic filing by represented entities and authorize local rules to allow electronic filing by unrepresented individuals. Documents that are filed electronically and must be signed by debtors or others without CM/ECF privileges will of necessity bear electronic signatures. They may be in the form of typed signatures, /s/, or images of written signatures, but none is currently deemed to constitute the person's signature for rules purposes. The issue the Advisory Committee has been considering, therefore, is whether the rules should be amended to allow the electronic signature of someone without a CM/ECF

account to constitute a valid signature and, if so, under what circumstances. The Advisory Committee's Technology Subcommittee is studying this issue.

Bankruptcy Rules Restyling Update

The 3000, 4000, 5000, and 6000 series of the restyled Bankruptcy Rules have been published for comment. The Advisory Committee will be reviewing the comments at its spring 2022 meeting.

In fall 2021, the Restyling Subcommittee completed its initial review of the 7000 and 8000 series and began its initial review of the 9000 series. The subcommittee will continue to meet until the subcommittee and style consultants have agreed on draft amendments. The subcommittee expects to present the 7000, 8000, and 9000 series of restyled rules—the final group of the restyled bankruptcy rules—to the Advisory Committee at its spring 2022 meeting with a request that the Advisory Committee approve those proposed amendments and submit them to the Standing Committee for approval for publication.

FEDERAL RULES OF CIVIL PROCEDURE

Rule Approved for Publication and Comment

The Advisory Committee on Civil Rules submitted a proposed amendment to Rule 12 (Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing) with a request that it be published for public comment in August 2022. The Standing Committee unanimously approved the Advisory Committee's request.

Rule 12(a) prescribes the time to serve responsive pleadings. Paragraph (1) provides the general response time, but recognizes that a federal statute setting a different time governs. In contrast, neither paragraph (2) (which sets a 60-day response time for the United States, its agencies, and its officers or employees sued in an official capacity) nor paragraph (3) (which sets

a 60-day response time for United States officers or employees sued in an individual capacity for acts or omissions in connection with federal duties) recognizes the possibility of conflicting statutory response times.

The current language is problematic for several reasons. First, while it is not clear whether any statutes inconsistent with paragraph (3) exist, there are statutes setting shorter times than the 60 days provided by paragraph (2); one example is the Freedom of Information Act. Second, the current language fails to reflect the Advisory Committee's intent to defer to different response times set by statute. Third, the current language could be interpreted as a deliberate choice by the Advisory Committee that the response times set in paragraphs (2) and (3) supersede inconsistent statutory provisions.

The Advisory Committee determined that an amendment to Rule 12(a) is necessary to explicitly extend to paragraphs (2) and (3) the recognition now set forth in paragraph (1), namely, that a different response time set by statute supersedes the response times set by those rules.

Information Items

The Advisory Committee met by videoconference on October 5, 2021. In addition to the action item discussed above, the Advisory Committee considered reports on the work of the Multidistrict Litigation Subcommittee and the Discovery Subcommittee, and was advised of the formation of an additional subcommittee that will consider a proposal to amend Rule 9(b). The Advisory Committee also retained on its agenda for consideration a suggestion for a rule establishing uniform standards and procedures for filing amicus briefs in the district courts, suggestions that uniform in forma pauperis standards and procedures be incorporated into the Civil Rules, and suggestions to amend Rules 41, 55, and 63.

Multidistrict Litigation Subcommittee

Since November 2017, a subcommittee has been considering suggestions that specific rules be developed for multidistrict litigation (MDL) proceedings. Over time, the subcommittee has narrowed the list of issues on which its work is focused to two, namely (1) efforts to facilitate early attention to "vetting" (through the use of "plaintiff fact sheets" or "census"), and (2) the appointment and compensation of leadership counsel on the plaintiff side. To assist in its work, the subcommittee prepared a sketch of a possible amendment to Rule 16 (Pretrial Conferences; Scheduling; Management) that would apply to MDL proceedings. The amendment sketch encourages the court to enter an order (1) directing the parties to exchange information about their claims and defenses at an early point in the proceedings, (2) addressing the appointment of leadership counsel, and (3) addressing the methods for compensating leadership counsel. The subcommittee drafted a sketch of a corollary amendment to Rule 26(f) (Conference of the Parties; Planning for Discovery) that would require that the discovery plan include the parties' views on whether they should be directed to exchange information about their claims and defenses at an early point in the proceedings. For now, the sketches of possible amendments are only meant to prompt further discussion and information gathering. The subcommittee has yet to determine whether to recommend amendments to the Civil Rules.

Discovery Subcommittee

In 2020, the Discovery Subcommittee was reactivated to study two principal issues. First, the Advisory Committee has received suggestions that it revisit Rule 26(b)(5)(A), the rule that requires that parties withholding materials on grounds of privilege or work product protection provide information about the materials withheld. Though the rule does not say so and the accompanying committee note suggests that a flexible attitude should be adopted, the suggestions state that many or most courts have treated the rule as requiring a document-by-

document log of all withheld materials. One suggestion is that the rule be amended to make it clearer that such a listing is not required, and another is that the rule be amended to provide that a listing by "categories" is sufficient.

As a starting point, the subcommittee determined that it needed to gather information about experience under the current rule. In June 2021, the subcommittee invited the bench and bar to comment on problems encountered under the current rule, as well as several potential ideas for rule changes. The subcommittee received more than 100 comments. In addition, subcommittee members have participated in a number of virtual conferences with both plaintiff and defense attorneys.

While the subcommittee has not yet determined whether to recommend rule changes, it has begun to focus on the Rule 26(f) discovery plan and the Rule 16(b) scheduling conference as places where it might make the most sense for the rules to address the method that will be used to comply with Rule 26(b)(5)(A).

The second issue before the subcommittee is a suggestion for a new rule setting forth a set of requirements for motions seeking permission to seal materials filed in court. In its initial consideration of the suggestion, the subcommittee learned that the AO's Court Services Office is undertaking a project to identify the operational issues related to the management of sealed court records. The goals of the project will be to identify guidance, policy, best practices, and other tools to help courts ensure the timely unsealing of court documents as specified by the relevant court order or other applicable law. Input on this new project was sought from the Appellate, District, and Bankruptcy Clerks Advisory Groups and the AO's newly formed Court Administration and Operations Advisory Council (CAOAC). In light of this effort, the subcommittee determined that further consideration of the suggestion for a new rule should be deferred to await the result of the AO's work.

Amicus Briefs

The Advisory Committee has received a suggestion urging adoption of a rule establishing uniform standards and procedures for filing amicus briefs in the district courts. The proposal is accompanied by a draft rule adapted from a local rule in the District Court for the District of Columbia, and informed by Appellate Rule 29 (Brief of an Amicus Curiae) and the Supreme Court Rules. The Advisory Committee determined that the suggestion should be retained on its study agenda. The first task will be to determine how frequently amicus briefs are filed in district courts outside the District Court for the District of Columbia.

Uniform In Forma Pauperis Standards and Procedures

The Advisory Committee has on its study agenda suggestions to develop uniform in forma pauperis standards and procedures. The Advisory Committee believes that serious problems exist with the administration of 28 U.S.C. § 1915, which allows a person to proceed without prepayment of fees upon submitting an affidavit that states "all assets" the person possesses and states that the person is unable to pay such fees or give security therefor. For example, the procedures for gathering information about an applicant's assets vary widely. Many districts use one of two AO Forms, but many others do not. Another problem is the forms themselves, which have been criticized as ambiguous, as seeking information that is not relevant to the determination, and as invading the privacy of nonparties. Further, the standards for granting leave to proceed in forma pauperis vary widely, not only from court to court but often within a single court as well.

The Advisory Committee retained the topic on its study agenda because of its obvious importance and because it is well-timed to the ongoing work of the Appellate Rules Committee (discussed above) relating to criteria for granting in forma pauperis status. There is clear potential for improvement, but it is not yet clear whether that improvement can be effectuated

through the Rules Enabling Act process.

Rule 41(a) (Dismissal of Actions – Voluntary Dismissal)

Rule 41(a) governs voluntary dismissals without court order. The Advisory Committee is considering a suggestion that Rule 41(a) be amended to make clear whether it does or does not permit dismissal of some, but not all claims in an action. There exists a division of decisions on the question whether Rule 41(a)(1)(A)(i) authorizes dismissal by notice without court order and without prejudice of some claims but not others. That provision states, in relevant part, that "the plaintiff may dismiss an action without a court order by filing … a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . ." The preponderant view is that the rule authorizes dismissal only of all claims and that anything less is not dismissal of "an action"; however, some courts allow dismissal as to some claims while others remain. The Advisory Committee will consider these and other issues relating to Rule 41, including the practice of allowing dismissal of all claims against a particular defendant even though the rest of the action remains.

Rule 55 (Default; Default Judgment)

Rule 55(a) directs the circumstances under which a clerk "must" enter default, and subdivision (b) directs that the clerk "must" enter default judgment in narrowly defined circumstances. The Advisory Committee has learned that at least some courts restrict the clerk's role in entering defaults short of the scope of subdivision (a), and many courts restrict the clerk's role in entering default judgment under subdivision (b). The Advisory Committee has asked the FJC to survey all of the district courts to better ascertain actual practices under Rule 55. The information gathered will guide the determination whether to pursue an amendment to Rule 55.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee on Criminal Rules met in person (with some participants joining by videoconference) on November 4, 2021. A majority of the meeting was devoted to consideration of the final report of the Rule 6 Subcommittee. The Advisory Committee also decided to form a subcommittee to consider a suggestion to amend Rule 49.1.

Rule 6 (The Grand Jury)

Rule 6(e) (Recording and Disclosing the Proceedings). The Advisory Committee last considered whether to amend Rule 6(e) to allow disclosure of grand jury materials of exceptional historical importance in 2012, when it considered a suggestion from the DOJ to recommend such an amendment. At that time, the Advisory Committee concluded that an amendment would be "premature" because courts were reasonably resolving applications "by reference to their inherent authority" to allow disclosure of matters not specified in the exceptions to grand jury secrecy listed under Rule 6(e)(3). Since then, *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019), *cert. denied*, 140 S. Ct. 597 (2020), and *Pitch v. United States*, 953 F.3d 1226 (11th Cir. 2020) (en banc), *cert. denied*, 141 S. Ct. 624 (2020), overruled prior circuit precedents and held that the district courts have no authority to allow the disclosure of grand jury matters not included in the exceptions stated in Rule 6(e)(3), thereby deepening a split among the courts of appeals with regard to the district courts' inherent authority. Moreover, in a statement respecting the denial of certiorari in *McKeever*, Justice Breyer pointed out the circuit split and 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." *McKeever*, 140 S. Ct. at 598 (statement of

Breyer, J.).

In 2020 and 2021, the Advisory Committee received suggestions seeking an amendment to Rule 6(e) that would address the district courts' authority to disclose grand jury materials because of their exceptional historical or public interest, as well as a suggestion seeking a broader exception that would ground a new exception in the public interest or inherent judicial authority. The latter urged an amendment "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." In contrast, over the past three administrations (including the suggestion the Advisory Committee considered in 2012), the DOJ has sought an amendment that would abrogate or disavow inherent authority to order disclosures not specified in the rule. The DOJ's most recent submission advocates that "any amendment to Rule 6 should contain an explicit statement that the list of exceptions to grand jury secrecy contained in the Rule is exclusive."

After the Rule 6 Subcommittee was formed in May 2020 in reaction to *McKeever* and *Pitch*, two district judges suggested an amendment that would explicitly permit courts to issue judicial opinions when even with redaction there is potential for disclosure of matters occurring before the grand jury.

As reported to the Conference in September 2021, the subcommittee's consideration of the proposals included convening a day-long virtual miniconference in April 2021 at which the subcommittee obtained a wide range of perspectives based on first-hand experience. Participants included academics, journalists, private practitioners (including some who had previously served as federal prosecutors but also represented private parties affected by grand jury proceedings), representatives from the DOJ, and the general counsel of the National Archives and Records Administration. In addition, the subcommittee held four meetings over the summer of 2021.

Part of its work included preparing a discussion draft of an amendment that defined a limited exception to grand jury secrecy for historical records meant to balance the interest in disclosure against the vital interests protected by grand jury secrecy. The draft proposal would have (1) delayed disclosure for at least 40 years, (2) required the court to undertake a fact-intensive inquiry and to determine whether the interest in disclosure outweighed the public interest in retaining secrecy, and (3) provided for notice to the government and the opportunity for a hearing at which the government would be responsible for advising the court of any impact the disclosure might have on living persons. In the end, a majority of the subcommittee recommended that the Advisory Committee not amend Rule 6(e).

After careful consideration and a lengthy discussion, a majority of the Advisory Committee agreed with the recommendation of the subcommittee and concluded that even the most carefully drafted amendment would pose too great a danger to the integrity and effectiveness of the grand jury as an institution, and that the interests favoring more disclosure are outweighed by the risk of undermining an institution critical to the criminal justice system.

Further, a majority of members expressed concern about the increased risk to witnesses and their families that would result from even a narrowly tailored amendment such as the discussion draft prepared by the subcommittee. A majority of the members concluded that the dangers of expanded disclosure would remain, and that the addition of the exception would be a significant change that would both complicate the preparation and advising of witnesses and reduce the likelihood that witnesses would testify fully and frankly. Moreover, as drafted, the proposed exception was qualitatively different from the existing exceptions to grand jury secrecy, which are intended to facilitate the resolution of other criminal and civil cases or the investigation of terrorism.

Consideration of these suggestions by both the subcommittee and the full Advisory Committee revealed that this is a close issue. Although many members recognized that there are rare cases of exceptional historical interest where disclosure of grand jury materials may be warranted, the predominant feeling among the members was that no amendment could fully replicate current judicial practice in these cases. Moreover, members felt that, even with strict limits, an amendment expressly allowing disclosure of these materials would tend to increase both the number of requests and actual disclosures, thereby undermining the critical principle of grand jury secrecy.

Members also discussed a broader exception for disclosure in the public interest. The subcommittee had recommended against such a broad exception, and members generally agreed that a broader and less precise exception would be an even greater threat to the grand jury.

Finally, the Advisory Committee chose not to address the question whether federal courts have inherent authority to order disclosure of grand jury materials. In the Advisory Committee's view, this question concerns the scope of "[t]he judicial power" under Article III. That is a constitutional question, not a procedural one, and thus lies beyond the Advisory Committee's authority under the Rules Enabling Act.

The Advisory Committee further declined the suggestion that subdivision (e) be amended to authorize courts "to release judicial decisions issued in grand jury matters" when, "even in redacted form," those decisions reveal "matters occurring before the grand jury." The Advisory Committee agreed with the subcommittee's determination that the means currently available to judges—particularly redaction—were generally adequate to allow for sufficient disclosure while complying with Rule 6(e).

Rule 6(c) (Foreperson and Deputy Foreperson). Also before the Advisory Committee was a suggestion to amend Rule 6(c) to expressly authorize forepersons to grant individual grand

jurors temporary excuses to attend to personal matters. Forepersons have this authority in some, but not all, districts. The Advisory Committee agreed with the recommendation of the subcommittee that at present there is no reason to disrupt varying local practices with a uniform national rule.

Rule 49.1 (Privacy Protections for Filings Made with the Court)

Rule 49.1 was adopted in 2007, as part of a cross-committee effort to respond to the E-Government Act of 2002. The committee note incorporates the *Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files* (March 2004) issued by the CACM Committee that "sets out limitations on remote electronic access to certain sensitive materials in criminal cases," including "financial affidavits filed in seeking representation pursuant to the Criminal Justice Act." The guidance states in part that such documents "shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access."

Before the Advisory Committee is a suggestion to amend the rule to delete the reference to financial affidavits in the committee note because the guidance as to financial affidavits is "problematic, if not unconstitutional" and "inconsistent with the views taken by most, if not all, of the courts that have ruled on the issue to date." *See United States v. Avenatti*, No. 19-CR-374-1 (JMF), 2021 WL 3168145 (S.D.N.Y. July 27, 2021) (holding that the defendant's financial affidavits were "judicial documents" that must be disclosed (subject to appropriate redactions) under both the common law and the First Amendment).

The Advisory Committee formed a subcommittee to consider the suggestion. Its work will include consideration of the privacy interests of indigent defendants and their Sixth Amendment right to counsel, and the public rights of access to judicial documents under the First Amendment and the common law. The subcommittee plans to coordinate with the Bankruptcy

and Civil Rules Committees since their rules have similar language, and will also inform both the CACM Committee and the CAOAC that it is considering this issue.

FEDERAL RULES OF EVIDENCE

Information Items

The Advisory Committee on Evidence Rules met in person (with some non-member participants joining by videoconference) on November 5, 2021. In addition to an update on Rules 106, 615, and 702, currently out for public comment, the Advisory Committee discussed possible amendments to Rule 611 to regulate the use of illustrative aids and Rule 1006 to clarify the distinction between summaries that are illustrative aids and summaries that are admissible evidence. The Advisory Committee also discussed possible amendments to Rule 611 to provide safeguards when jurors are allowed to pose questions to witnesses, Rule 801(d)(2) to provide for a statement's admissibility against the declarant's successor in interest, Rule 613(b) to provide a witness an opportunity to explain or deny a prior inconsistent statement before extrinsic evidence of the statement is admitted, and Rule 804(b)(3) to require courts to consider corroborating evidence when determining admissibility of a declaration against penal interest in a criminal case.

Rule 611 (Mode and Order of Examining Witnesses and Presenting Evidence)

The Advisory Committee is considering two separate proposed amendments to Rule 611. First, the Advisory Committee is considering adding a new provision that would provide standards for allowing the use of illustrative aids, along with a committee note that would emphasize the distinction between illustrative aids and admissible evidence (including demonstrative evidence). Second, the Advisory Committee is considering adding a new provision to set forth safeguards that must be employed when the court has determined that jurors will be allowed to pose questions to witnesses.

Rule 1006 (Summaries to Prove Content)

The Advisory Committee determined that courts frequently misapply Rule 1006, and most of these errors arise from the failure to distinguish between summaries of evidence that are admissible under Rule 1006 and summaries of evidence that are inadmissible illustrative aids. It is considering amending Rule 1006 to address the mistaken applications in the courts.

Rule 801 (Definitions That Apply to This Article; Exclusions from Hearsay)

The Advisory Committee is considering a proposed amendment to Rule 801(d)(2) regarding the hearsay exception for statements of party-opponents. The issue arises in cases in which a declarant makes a statement that would have been admissible against him as a party-opponent, but he is not the party-opponent because his claim or defense has been transferred to another, and it is the transferee that is the party-opponent. The Advisory Committee is considering an amendment to provide that if a party stands in the shoes of a declarant, then the statement should be admissible against the party if it would be admissible against the declarant.

Rule 613 (Witness's Prior Statement)

The Advisory Committee is considering a proposed amendment to Rule 613(b), which currently permits extrinsic evidence of a prior inconsistency so long as the witness is given an opportunity to explain or deny it. However, courts are in dispute about the timing of that opportunity. The Advisory Committee determined that the better rule is to require a prior opportunity to explain or deny the statement (with the court having discretion to allow a later opportunity), because witnesses will usually admit to making the statement, thereby eliminating the need for extrinsic evidence.

Rule 804 (Hearsay Exceptions; Declarant Unavailable)

The Advisory Committee is considering a proposed amendment to Rule 804(b)(3). The rule provides a hearsay exception for declarations against interest. In a criminal case in which a

declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate [the] trustworthiness" of the statement, but there is a dispute about the meaning of the "corroborating circumstances" requirement. The Advisory Committee is considering a proposed amendment to Rule 804(b)(3) that would parallel the language in Rule 807 and require the court to consider the presence or absence of corroborating evidence in determining whether "corroborating circumstances" exist.

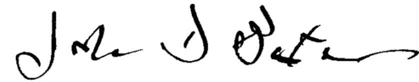
JUDICIARY STRATEGIC PLANNING

The Committee was asked to consider a request by the Judiciary Planning Coordinator, Chief Judge Jeffrey R. Howard (1st Cir.), regarding pandemic-related issues and lessons learned for which Committee members recommend further exploration through the judiciary's strategic planning process. The Committee's views were communicated to Chief Judge Howard by letter dated January 11, 2022.

FIVE-YEAR REVIEW OF COMMITTEE JURISDICTION AND STRUCTURE

In 1987, the Judicial Conference established a requirement that "[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished." JCUS-SEP 1987, p. 60. Because this review is scheduled to occur again in 2022, the Committee was asked to evaluate the continuing importance of its mission as well as its jurisdiction, membership, operating procedures, and relationships with other committees so that the Executive Committee can identify where improvements can be made. To assist in the evaluation process, the Committee was asked to complete the 2022 Judicial Conference Committee Self-Evaluation Questionnaire. The Committee provided the completed questionnaire to the Executive Committee.

Respectfully submitted,



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TAB 4

TAB 4A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: EMERGENCY RULE SUBCOMMITTEE

SUBJECT: COMMENTS ON PROPOSED EMERGENCY RULE (BANKRUPTCY RULE 9038)

DATE: MARCH 4, 2022

Last August the Standing Committee published for comment proposed emergency rules for the Civil, Criminal, Appellate, and Bankruptcy Rules. Proposed Bankruptcy Rule 9038 and its Committee Note, as published, are attached to this memo.

Only one comment was submitted concerning Rule 9038. The Federal Bar Association submitted a comment (BK-2021-0002-0019) addressing all of the proposed emergency rules. It stated that it "supports each of the revised and new rules developed by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees in response to the rulemaking directive in Section 15002(b)(6) of the CARES Act." It noted in particular that "the judiciary is best suited to declare an emergency concerning court rules of practice and procedure" and that it "agrees that the Judicial Conference exclusively, rather than specific circuits, districts, or judges, should be permitted to declare a rules emergency." The Association also commended the "success in achieving relative uniformity across all four emergency rules."

The Subcommittee recommends that the Advisory Committee give its final approval to Rule 9038, as published, and that it ask the Standing Committee to do the same.

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

1 **Rule 9038. Bankruptcy Rules Emergency**

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

9 (b) DECLARING AN EMERGENCY.

10 (1) *Content*. The declaration must:

11 (A) designate the bankruptcy
12 court or courts affected;

13 (B) state any restrictions on the
14 authority granted in (c); and

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

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

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

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[1] New material is underlined in red.

23 (c) TOLLING AND EXTENDING TIME
24 LIMITS.

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

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

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

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

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

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

53 emergency declaration terminates, whichever
54 is earlier; or

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

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

66 (5) *Exception.* A time period imposed by
67 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.

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), 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- or division-wide basis or to the presiding 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.

Subdivision (c)(5) excepts from the authority to extend time periods any time provision imposed by statute. The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, does not authorize the Bankruptcy Rules to supersede conflicting laws. Accordingly, a time limit in a rule that is a restatement of a deadline imposed by statute or an incorporation by reference of such a deadline may not be extended under this rule. However, if a statute merely incorporates by reference a time period imposed by a rule, that period may be extended.

TAB 5

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

SUBJECT: 21-BK-G – Rule 1007(b)(7)

DATE: FEB. 28, 2022

Section 727(a)(11), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, P.L. 109-8, 119 Stat. 23, § 106(b)(3), directs the court to deny a discharge in a chapter 7 case to an individual debtor if:

> "(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 [subject to certain exceptions]…."

The debtor must also complete an instructional personal financial management course (again, subject to certain exceptions) to obtain a discharge in chapter 13 under § 1328(g)(1), and (for an individual debtor if § 1141(d)(3) applies) in chapter 11 under § 1141(d)(3)(C).

Rule 1007(b)(7) was adopted to reflect those 2005 amendments, and, as restyled, provides as follows:

> "(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 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)."

Bankruptcy Judge Arthur I. Harris of the N.D. Ohio submitted Suggestion 21-BK-G, in which he proposed that the rule be amended to allow submission to the court of the Certificate of Debtor Education that is provided to the debtor by the provider of that course. The Subcommittee agreed with Judge Harris that the certificate of completion issued by the provider should be acceptable evidence of completion of the required course on personal financial management, but it recommended that the amendment go further and make that certificate the *only* acceptable evidence.

The Subcommittee also recommended that a debtor who is not required to complete such a course be explicitly excluded from the requirements of the rule. If the debtor has been excused from completing the course by court order, the court order will provide adequate evidence of that fact and submission of an Official Form seems unnecessary.

The Subcommittee submitted to the Advisory Committee an amendment to Rule 1007(b)(7) that would accomplish those objectives that would read as follows, suggesting publication:

"(7) ***Personal Financial-Management Course***[1]**.** Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete such a course as a condition to discharge, an individual debtor in a 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)~~ certificate of course completion issued by the approved provider."

Advisory Committee Note

Rule 1007(b)(7) is amended in two ways. First, language is added to make the rule inapplicable to debtors who are not required to complete an instructional course concerning personal financial management as a condition to discharge. See § 727(a)(11), § 1328(g)(2), § 1141(d)(3)(C). Second, the rule is amended to require an individual debtor who has completed an instructional course concerning personal financial management to file the certificate of course completion (often called a Certificate of Debtor Education) issued by the approved provider of that course in lieu of filing an Official Form, if the provider has not notified the court that the debtor has completed the course.

At the Advisory Committee, it was noted that various other bankruptcy rules, in particular Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2), make reference to the required filing under Rule 1007(b)(7) as a "statement" rather than a "certificate." The Advisory Committee remanded the rule suggestion to the Subcommittee to consider whether to revise its proposed amendments to Rule 1007(b)(7), or to propose conforming amendments to those other rules.

Because the Subcommittee has previously concluded that the rule should be amended to require submission of the certificate of course completion, and that certificate is not a "statement," the Subcommittee recommends to the Advisory Committee conforming changes to the other rules that refer to the Rule 1007(b)(7) submission. Those rules would be amended as follows:

[1] The changes indicated are to the restyled version of Rule 1007 included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedure (the Standing Committee) https://www.uscourts.gov/sites/default/files/2021-06_standing_agenda_book_final_6-23_0.pdf. The restyled bankruptcy rules are expected to go into effect December 1, 2024, if approved by the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress takes no action to the contrary.

(1) Rule 1007(c)(4) would be amended to read[2]:

(4) ***Financial-Management Course.*** Unless the court extends the time to file, an individual debtor must file the ~~statement~~ certificate 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).

Advisory Committee Note

[This would be the second paragraph to the Advisory Committee Note describing the amendment to Rule 1007(b)(7)]

The amendment to Rule 1007(c)(4) reflects the amendment to Rule 1007(b)(7) described above.

(2) Two amendments would be made in Rule 4004.[3] Rule 4004(c)(1)(H) would be amended to read:

(H) the debtor has not filed a ~~statement~~ certificate showing that a course on personal financial management has been completed—if such a ~~statement~~ certificate is required by Rule 1007(b)(7);

Rule 4004(c)(4) would be amended to read:

(4) **Individual Chapter 11 or Chapter 13 Case.** 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 a ~~statement~~ certificate required by Rule 1007(b)(7).

[2] The changes indicated are to the restyled version of Rule 1007 included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedure (the Standing Committee) https://www.uscourts.gov/sites/default/files/2021-06_standing_agenda_book_final_6-23_0.pdf. The restyled bankruptcy rules are expected to go into effect December 1, 2024, if approved by the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress takes no action to the contrary.
[3] The changes indicated are to the restyled version of Rule 4004 which has been published for public comment and appears in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedure (the Standing Committee) https://www.uscourts.gov/sites/default/files/2021-06_standing_agenda_book_final_6-23_0.pdf. The restyled bankruptcy rules are expected to go into effect December 1, 2024, if approved by the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress takes no action to the contrary.

Advisory Committee Note

The amendments to Rule 4004(c)(1)(H) and (c)(4) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

(3) Rule 5009(b) would be amended to read[4]:

(b) Chapter 7 or 13—Notice of a Failure to File a ~~Statement About Completing a~~ Certificate of Completion for a Course on Personal Financial Management. This Rule 5009(b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a ~~statement~~ certificate 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~~ certificate is filed within the time prescribed by Rule 1007(c).

Advisory Committee Note

The amendments to Rule 5009(b) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

(4) Two amendments would be made to Rule 9006.[5] Rule 9006(b)(3) would be amended to read

(3) ***Extensions Governed by Other Rules.*** The court may extend the time to:

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(B) file the ~~statement~~ certificate required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only to the extent and under the conditions stated in Rule 1007(c).

Rule 9006(c)(2) would be amended as follows:

[4] The changes indicated are to the restyled version of Rule 5009 which has been published for public comment and appears in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedure (the Standing Committee) https://www.uscourts.gov/sites/default/files/2021-06_standing_agenda_book_final_6-23_0.pdf. The restyled bankruptcy rules are expected to go into effect December 1, 2024, if approved by the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress takes no action to the contrary.

[5] The changes indicated are to the restyled version of Rule 9006 which will be submitted to the Advisory Committee for approval for publication at its March 31, 2022 meeting.

(c) **Reducing Time Limits**.

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(2) ***When Not Permitted***. The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not, under Rule 1007(c), reduce the time to file the ~~statement~~ certificate required by Rule 1007(b)(7)

Advisory Committee Note

The amendments to Rules 9006(b)(3) and (c)(2) reflect the amendment to Rule 1007(b)(7) that replaces the requirement for submission of a statement showing that the debtor has completed a course on personal financial management with the requirement that the debtor provide the certificate of course completion issued by the approved provider of that course.

The Subcommittee recommends that the Advisory Committee approve the amendments to Rules 1007(b)(7), 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2) for publication.

TAB 5B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: COMMENTS ON RULE 3002.1 AMENDMENTS

DATE: MARCH 4, 2022

Last August the Standing Committee published for comment proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). Among other purposes, the amendments were designed to encourage a greater degree of compliance with the rule and to provide a new midcase assessment of the mortgage claim's status in order to give a chapter 13 debtor an opportunity to cure any postpetition defaults that may have occurred. The rule as published follows this memorandum in the agenda book.

Twenty-seven comments were submitted on the proposed amendments. Summaries of those comments also follow in the agenda book. Some of the comments were lengthy and detailed; others briefly stated an opinion in support of or opposition to the amendments. All were well thought-out and worthy of careful consideration.

The Subcommittee met on February 7 and 22 and March 1 to discuss the comments and to consider what recommendation to make to the Advisory Committee in response to them. Because the Subcommittee was not able to complete its consideration of the comments, it does not recommend any action on Rule 3002.1 at this meeting. Instead, this memorandum provides an overview of the comments and the major points they raised, reports on the Subcommittee's discussions and tentative decisions about changes to the published amendments that should be

made, and seeks the Advisory Committee's feedback to guide the Subcommittee's further deliberations.

I. Overview of the Comments

The reactions to the published amendments were mixed. Broadly described, the comments fell into 3 categories:

1) Comments opposing the amendments, or at least the midcase review, submitted by some chapter 13 trustees.
2) Comments favoring the amendments, submitted by some consumer debtor attorneys.
3) Comments favoring the amendments but giving suggestions for improvement, submitted by trustees, debtors, judges, and an association of mortgage lenders.

There were differences of view, however, within each category of commenters.

The comments included a letter from a group of 68 chapter 13 trustees who questioned whether there is a need for the amendments. They were particularly concerned about the midcase review because they said that it would impose an unnecessary burden on them and that the needed information about the home mortgages is already available. They and other trustees also contended that the new requirements for the end-of-case motion would not work well in a non-conduit case because the trustee lacks records about postpetition mortgage payments paid by the debtor.

The comments from some debtors' attorneys, on the other hand, welcomed the requirement of a midcase review. They pointed out that mortgage servicers' records are often inconsistent with trustees' and debtors' records and that an earlier opportunity to reconcile them would be beneficial. Some also stated support for the adoption of a motion practice, rather than just a notice requirement, that would result in an enforceable order.

The National Conference of Bankruptcy Judges ("NCBJ"), while stating that it did not oppose the amendments, raised questions about the authority to promulgate several provisions. In particular, it questioned the requirement of annual notices of payment change for home equity lines of credit (HELOCs) and the end-of-case procedures for obtaining an order determining the status of the mortgage. NCBJ also questioned whether the benefits of a midcase assessment and the revised end-of-case procedures were sufficient to outweigh the added burden on courts and parties imposed by the provisions.

II. The Subcommittee's Discussions

Threshold questions. The Subcommittee began its discussion by identifying two threshold issues: are the amendments needed, and is there authority to promulgate them? The Subcommittee answered both questions affirmatively.

With respect to the question of necessity, the Subcommittee noted that the proposed amendments derived from suggestions for amendments to Rule 3002.1 submitted by the National Association of Chapter 13 Trustees (Suggestion 18-BK-G) and the ABI Commission on Consumer Bankruptcy (Suggestion 18-BK-H). It was reasonable to assume based on the suggestions that problems remained with the implementation of the rule and that significant changes were needed. These were broadly representative groups that had received input from others and had devoted much attention to drafting their suggested amendments.

A different point of view has now been expressed by some trustees, judges, and a few debtors' attorneys. They have said that Rule 3002.1 is working well, and that disputes over the status of mortgages rarely arise at the end of a case.

Comments in favor of amending Rule 3002.1, however, convinced the Subcommittee that there is a need for some improvements in the rule. Implementation of the rule varies among the

districts, which may account for the differences of opinion. Some courts have adopted local rules for midcase assessments or end-of-case orders, while others have not, and chapter 13 trustees vary in their practices. A number of debtors' attorneys and some trustees also commented that the frequent turnover of servicers often results in the claim holders' records not being consistent with the trustees' or debtors' records of payment. They also expressed a need for an earlier warning system that the debtor has fallen behind in making payments. The Subcommittee was convinced that some revision of Rule 3002.1 would be beneficial.

The Subcommittee also concluded that there is authority to promulgate the amendments. The Rules Enabling Act, 28 U.S.C. § 2075, authorizes the Supreme Court to "to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11." While the statute provides that "[s]uch rules shall not abridge, enlarge, or modify any substantive right," the Supreme Court has explained (in the context of the parallel Civil, Criminal, and Appellate Rules Enabling Act) that

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

Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 407 (2010). The Court has further instructed that "Rules which incidentally affect litigants' substantive rights do not violate this provision if reasonably necessary to maintain the integrity of that system of rules." *Burlington N. R. Co. v. Woods*, 480 U.S. 1, 5 (1987).

Rule 3002.1 is a procedural rule that implements a debtor's right under § 1322 to cure and maintain payments on a home mortgage or, in some cases, to pay it off over the duration of a chapter 13 plan. It is intended to enhance the likelihood of a debtor's success in making these

payments by ensuring that the debtor and trustee have an accurate account of the required payments and by providing a means of resolving any disputes that may arise with the claim holder.

The current amendments to Rule 3002.1 were proposed "to maintain the integrity" of the operation of that rule by adding consequences for noncompliance, providing procedures for reconciling records, and authorizing an enforceable order that documents the debtor's successful completion of the mortgage payments under the plan. NCBJ questions the authority of the court to enter an order determining the status of a mortgage if there is no dispute, but federal courts frequently enter default and consent judgments. Moreover, an order of the type questioned is currently authorized by Rule 3002.1(h). It provides a procedure for ensuring the debtor's fresh start on the mortgage at the end of the bankruptcy case. Finally, as discussed below, the Subcommittee has tentatively approved a change to the HELOC provision to ensure that it does not exceed rulemaking authority.

Midcase and end-of-case determinations. Many comments addressed—either favorably or negatively—the proposed provisions in subdivisions (f), (g), and (h) for a midcase assessment and end-of-case determination of the status of the mortgage claim. Among the most frequently raised concerns are the following:

- There is a lack of consistency between the two procedures. They should both be initiated by motions. They should both be initiated by notices.
- The procedures are too complex and should be streamlined. They will result in increased fees by the claim holder that will be passed on to the debtor.
- The claim holder should not be required to respond. If it does not do so, the court should be authorized to enter an order consistent with the trustee's notice or motion.

- The procedures are not appropriate for non-conduit cases because the trustee does not have records of the debtor's postpetition payments.
- The information sought can be obtained without cost through other means.
- An end-of-case order is not needed in every case.

The Subcommittee has begun sorting through the competing views. It is sympathetic with the desire for simplification and the reduction of costs. It also has reconsidered whether the proposed amendments are appropriate for non-conduit cases. Specifically, it wants to make sure that whatever filing initiates the process—as currently proposed, the trustee's notice or motion—is able to provide a sufficient factual basis for a court order if the claim holder does not respond.

III. The Subcommittee's Tentative Decisions and Request for Feedback

As the Subcommittee has started considering specific suggestions for revision of the published amendments, it has reached some tentative decisions. With respect to subdivision (a), it has decided that an explanation should be added to the committee note clarifying that Rule 3002.1 applies to all home mortgages for which the debtor or trustee will be making payments during a chapter 13 case. Because the word "installment" would be deleted, the amended rule would apply to all treatments of home mortgages in a chapter 13 plan requiring payments, including reverse mortgages and full payoffs.

The Subcommittee has tentatively agreed to several changes to the published version of subdivision (b). The provision in paragraph (3)(A) for annual notices of payment change for HELOCs would be made optional. The provision was proposed for the convenience of HELOC claim holders, so if they would prefer to continue to file notices whenever the payment amount changes, the Subcommittee saw no reason to prohibit them from doing so. Making the provision optional would also satisfy NCBJ's concern about altering substantive rights.

The Subcommittee also agreed with commenters that in subdivision (b)(4) and elsewhere in the rule, references to § 1322(b)(5) should be omitted. A previous amendment to subdivision (a) made that omission in order to clarify that the rule applies even if there is no prepetition arrearage. Now with the proposal to delete the requirement of installment payments, the rule would be even more expansive, and it should not include a reference that suggests it only applies to cure-and-maintain plans.

The Subcommittee's consideration of the comments has led it to sketch out a revised midcase assessment procedure. It would be optional and could be initiated at anytime in the case by whoever is making the postpetition mortgage payment—the trustee in a conduit case, the debtor in a non-conduit case—by filing a motion for determination of the status of the mortgage. The procedure would be default-based. The claim holder would not be required to respond, but if it did not do so, the court could enter an order favorable to the moving party based on the facts set forth in the motion. If the claim holder did respond and opposed the motion, it would be treated as a contested matter to be resolved by the court. No objection to the response or motion to compel would be required.

While the Subcommittee would like the end-of-case procedure to be as similar as possible as the midcase one, it has not yet resolved issues about how the procedure should be structured. Among the uncertain issues are whether the procedure should be mandatory in all cases, who should initiate it, whether it should be by notice or motion, whether the claim holder should be required to respond, what action should be taken if there is no response, and how it would apply in a non-conduit case.

The Subcommittee plans to continue its consideration of those issues and all of the comments so that it can have a recommendation of proposed changes to the Rule 3002.1

amendments to present at the fall meeting. The Subcommittee hopes that those changes will not be so substantial as to require republication.[1] If they are not and if the Advisory Committee gives final approval to the amendments by spring 2023, they would be on track to take effect in 2024.

At this meeting, the Subcommittee seeks the Committee members' thoughts on the comments submitted on the proposed Rule 3002.1 amendments and what changes, if any, should be made to the rule. In particular, it would like feedback on whether members agree with the Subcommittee's resolution of the threshold issues—need for amendments and authority to promulgate them—and on the tentative decisions discussed above. It also solicits ideas about how best to structure the end-of-case procedure for obtaining a determination of the status of the mortgage.

[1] According to § 440.20.50(b) of the Guide to Judiciary, "If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees."

Comments on Rule 3002.1 Amendments

Lauren Helbling (BK-2021-0002-0003) – I am a chapter 13 trustee, and we rarely find errors or issues when we file a notice of final cure at the end of the case. Rule 3002.1(f)'s requirement of a midcase notice of the status of a mortgage claim will impose additional costs on our office and the mortgage lender's office without providing an equivalent associated benefit. I do not think this rule is needed.

Keith Rodriguez (BK-2021-0002-0004) – (f)(2)(A): Change "shall" to "may" in requiring a claim holder to file a response. Bankruptcy proceedings are based on notice and an "opportunity for hearing." If a claim holder chooses not to respond, then the matter can still be completed without the necessity of a hearing. In that way you also eliminate (2)(B) compelling a response.

(g)(2)(A) and (2)(B): Change "shall" to "may" for the same reason.

(h)(1): Since this gives an opportunity to obtain an order without a response having been filed, remove the requirement to file a response in either (f) or (g).

(h)(4): If there is no objection to a response by a claim holder or if there was a hearing, then an order will be entered. Presumably the claim holder is preparing this order since the trustee cannot know the information called for in (4)(A)(i), (ii), (iii) or (iv).

Keith Lundin (BK-2021-0002-0005) – Overall: (1) The proposed amendments introduce a new "mid-case" mortgage claim status review -- which is a great idea -- but for no obvious good reason, the mid-case and end-of-case procedures are completely different. This will guarantee confusion, mistakes, opposition, and poor absorption of the mid-case review. The overall structure should be rewritten to create a unitary status review process that is available, with minor differences at "mid-case" and "end-of-case." Both reviews should be motion practice using the same Official Form, the same internal deadlines and very similar default consequences.

(2) The introduction of a new "motion for an order compelling a response" is a bad idea that should be abandoned; at the very least, it should be substantially modified to mimic Rule 37(a) of the FRCP, as detailed below. This new step in the procedure for determining the status of a mortgage is a tacit acknowledgment that the mortgage servicing community has failed to teach itself how to manage Rule 3002.1 after a decade of not really trying. Rather than forcing the industry to fix that failure, the proposed compulsion motion imposes a substantial new layer of cost and delay on the innocent victims of servicer misconduct and rewards mortgage servicers for their incompetence by delaying consequences and creating new defenses.

Subdivision (a): Limiting the rule to plans that "require[ ]…contractual payments" is step in right direction but remains unnecessarily ambiguous. Many chapter 13 plans don't require "contractual payments" of home mortgages. They "modify" the contractual payments, they provide nothing (wholly unsecured junior liens; stripped liens), or they surrender the property without payment of secured claims. The rule should apply in all such situations because the debtor remains liable for amounts with respect to which the rule requires notices, motions, and orders. The rule should apply to "*all claims secured by a security interest in the debtor's principal residence with respect to which the plan provides for the claim, addresses the claim, or deals with the claim in any manner.*" This approximates some Supreme Court language and clarifies the broad application of this rule to all home mortgages in chapter 13 cases.

Terminating application of Rule 3002.1 when an order "terminating or annulling the automatic stay" becomes effective is backwards and unnecessarily limited. Stay relief is about forum selection; it tells us nothing about whether a plan will control the debtor's relationship with the mortgage claim holder, and it tells us nothing about when something material will happen with respect to the property, the claim, and/or the debtor's liability. The rule should continue to apply unless the order for stay relief says that it won't (the opposite default position). This would simplify the processing of mortgage claims in chapter 13 cases without requiring debtors to always seek an order keeping Rule 3002.1 in place after stay relief. Also, what happened to orders "*modifying*" the automatic stay? Orders modifying the stay are very common in chapter 13 practice and arguably aren't addressed by this provision as drafted. Stay relief orders with respect to mortgages often "modify" the stay by stating specific conditions on continuation of the stay. Rule 3002.1 should continue to apply after a stay modification order unless the order says otherwise.

(b)(1): This is first use of "claim holder," and I suggest either a broader term or a specific definition that clarifies that claim holder includes (throughout this rule) "servicers" and other "agents" that act on behalf of mortgagees in chapter 13 cases. There has been endless, unproductive litigation about standing to file proofs of claim, supplements, and notices. Some of that litigation could be avoided by making it clear that mortgage servicers and other agents are subject to all the provisions of Rule 3002.1 without regard to whether they have proper assignments from the actual mortgagee and that mortgagees are subject to Rule 3002.1 without regard to whether they have correctly assigned, sold, or otherwise transferred servicing rights.

(b)(4): The motion in this paragraph should be "file[d] *and served*"—not just "file[d]"—to be consistent with the instructions and counting protocols elsewhere in the rule. Perhaps the service list for this motion should be specified, to be consistent with the treatment of service of notices and motions elsewhere in the rule. Some suggested expansion of the service list is mentioned below: adding the U.S. trustee and all other lien holders on the property.

The reference to "under § 1322(b)(5) of the Code" should be stricken. This is a vestige of a prior version of Rule 3002.1, and this is one of two references to cure and maintain plans under § 1322(b)(5) that should have been removed in an earlier revision but weren't (see (e) below). Payment change notices should not be limited to cure and maintain plans.

What does "immediately" mean here? A more specific date would be helpful. Perhaps "*the effective date determined by subdivision (b).*"

(c): This subdivision ambiguously requires both filing and service of the notice of postpetition fees, expenses, and charges, but then counts the 180-day limitation from service without mention of filing. This should be remedied to require the *filing and service* of the notice within the 180-day period after fees, expenses, or charges are incurred or imposed.

(d): Consider adding at end of this subdivision: "*The notice is subject to Rule 3006.*" There are big problems with servicers withdrawing their notices when they get caught by a debtor or trustee doing something they shouldn't. Trustees and debtors often need conditions on the withdrawal of a notice, and Rule 3002.1 should state clearly that "supplements" to a proof of claim are (subject to the same withdrawal rules as the underlying proof of claim.

(e): The phrase, "to cure a default or maintain payments under § 1322(b)(5) of the Code" should be deleted. This is the second vestigial reference to § 1322(b)(5), and it should be eliminated for the same reasons given above.

The one-year requirement in the last sentence is curiously worded and confusing. Counting the year from service of the notice instead of from filing of the notice is guaranteed to create unnecessary litigation. After correcting the wording of (c) discussed above, the one-year limitation should be counted from "filing" or from "filing and service" of the notice. The confusing part is the reference to "the party" in the last sentence. In context, the party seems to refer to the "party in interest" that has filed a motion to determine fees, expenses, or charges. Why would the moving party request a court order to shorten the time within which the motion can be filed? Perhaps "party" should be "*claim holder*" in the last sentence.

(f): It makes no sense to have a mid-case "notice" and an end-of-case "motion" as the proposed amended rule now reads. Most of the same review and exchange of information will be needed at both times during the case, and both reviews should end in an order that cements the key data points. Consider rewording the first sentence: "*Between 18 and 24 months after the bankruptcy petition was filed – or at such other time as the court fixes by order or local rule – the trustee shall file a motion to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured. The motion shall be prepared using the appropriate Official Form and be served on* . . . ." With a little work, (f) and (g) could be usefully combined into a single subdivision with the same procedure and form but slightly different content to the resulting orders.

The rest of the comments below apply in large part to both the mid- and end-of-case provisions, as if both are motion practice.

The mid- and end-of-case motions should be served on all other claim holders secured by the same property, and the U.S. trustee should be added to the service list. Junior lien holders are often impacted by the status of payments to a senior lien holder, and vice versa – even if not all lien holders are receiving payments under the plan. The UST has performed monitoring functions with respect to the behavior of mortgage servicers, and including the UST in the 3002.1 process seems wise.

(f)(2)(B): The motion to compel is troubling on several levels. The provision should be fully fleshed-out with sanctions provisions that mirror Rule 37(a), including costs, attorney fees, and the like. As written, this motion to compel is toothless and confusing. Is it intended to limit the right to other remedies under the rule? Is it prerequisite to other remedies? Is this compulsion process in addition to the remedies in (i)? Does the filing of a motion to compel do anything except potentially extend the 21-day deadline for filing a response? This confusion is compounded by the provision in Rule 3002.1(h)(1), discussed below, that authorizes court action with respect to an end-of-case motion when the claim holder fails to comply with an order of compulsion under Rule 3002.1(g)(2)(B). There is no analogue when a claim holder fails to comply with a mid-case compulsion order under Rule 3002.1(f)(2)(B).

(f)(2)(C): The provision for objecting to a mid-case response illustrates why (f) and (g) should be rewritten as a single rule. There is no limitation period for an objection to a mid-case response, but there is a 14-day deadline for an objection to the response to an end-of-case motion

in Rule 3002.1(g)(2)(C). This kind of incongruence creates nightmares for the bankruptcy community for no good reason.

(f)(2)(D): There is also incongruence here. In (g) there is an elaborate provision for what happens if there is no timely response to the end-of-case motion. In (f) there is no guidance with respect to what happens when the claim holder fails to respond to a mid-case notice (other than the inadequate motion to compel discussed above). Subdivision (f)(2)(D) authorizes the court to determine the status of the mortgage only if a response is filed to the mid-case motion, and then only if an objection to that response is filed. The rule should authorize the court to determine the status of the mortgage claim at mid-case in the same manner that (g) authorizes the court to make specific findings when a claim holder fails to timely respond to an end-of-case motion. Again, a single rule would solve this problem.

(g): The 45-days within which the trustee must file the end-of-case motion—"after the debtor completes all payments under a chapter 13 plan"—should be changed. Assessing the status of the mortgage after it is too late to modify the plan under § 1329 severely limits the effectiveness of the rule. Reset the end-of-case motion to "*no later than 90 days before the date on which the trustee projects that the debtor will complete all payments under a chapter 13 plan—or such earlier date as the court may direct by order or local rule.*"

Rule 3002.1(g) has the same problems discussed above with respect to the service list and the motion to compel.

(h): The phrase "to comply with an order under (g)(2)(B)" should be stricken. As mentioned above, the motion to compel process added to this amended rule creates ambiguity about the availability of remedies when a claim holder fails to respond to a mid-case notice or end-of-case motion and shifts burdens to trustees and debtors to file multiple unnecessary motions to force servicers to do what they are required to do. As written, Rule 3002.1(h)(1) limits court authority to make the listed determinations to circumstances in which (1) no timely response was filed by the claim holder to an end-of-case motion, (2) a motion to compel a response was filed, (3) an order compelling a response was entered, and (4) the claim holder failed to comply with the order compelling a response. This multi-step procedure is an unjustifiable regression from the current rule and serves only to reward mortgage servicers for failing to comply with notices and motions from the trustee. The failure to respond to a trustee's end-of-case motion is itself the transgression that should trigger the consequences in Rule 3002.1(h)(1)(A) and (B).

The reference to "payments that the plan requires to be paid to the claim holder" in Rule 3002.1(h)(1)(A) could be a problem in the 11th Circuit and other jurisdictions in which "direct payments" by the debtor to a mortgage holder are not considered to be "payments under the plan." Perhaps the phrase should be reworded, "*payments required to be paid to the claim holder*" without limitation.

The word, "legal" should be stricken from Rule 3002.1(h)(1)(B). The fees that mortgage claim holders add to their ledgers are not limited to legal fees. All postpetition fees, expenses and charges should be declared "satisfied" without regard to source.

Rule 3002.1(h)(4)(A)(v) should be rewritten to say, "properly noticed under (c) *and not disallowed* that remain unpaid."

(i): The ambiguity created by the addition of the motion to compel process should be eliminated by eliminating the proposed motion to compel; but if that is not going to happen, the first sentence of (i) should be rewritten to clarify that the remedies in (i) apply without regard to the motion to compel: "If the claim holder fails to provide any information required by this rule – *including failing to timely give a notice or failing to timely respond to a notice or motion or being compelled to respond by motion or court order* – the court may, ..."

A fix is needed for *In re Gravel*, 6 F.4th 503 (2nd Circuit 2021). Part of the (mistaken) rationale of the majority in *Gravel* was the absence of specific mention in Bankruptcy Rule 3002.1(i) of punitive damages as an available remedy for violation of the rule. Please reword Rule 3002.1(i)(2) by adding after "failure," "*and, in appropriate circumstances, punitive damages;*".

68 Chapter 13 Trustees (BK-2021-0002-0006) – If the Committee proceeds with the proposed amendments, the rule should be revised to permit the party making the postpetition mortgage payments—either the trustee or the debtor—to file the notice or motion that triggers the obligation of the claim holder to respond. The rule's one-size-fits-all approach (for both conduit and nonconduit plans) does not work well. While the procedure is appropriate for a conduit trustee who has records of all payments to cure prepetition arrearages and to maintain the mortgage postpetition, a nonconduit trustee does not have all of the needed information. It is the debtor that has records of postpetition payments. The proposed end-of-case motion form for a nonconduit case requires the trustee to request that the debtor be deemed current, but the trustee has no basis for seeking that determination, and the debtor is not required to document that he or she is current. The debtor in a nonconduit situation therefore should be the one to initiate the process leading to the midcase and end-of-case determinations.

It might also be questioned whether a change in the current procedure under Rule 3002.1 is needed. Currently nothing prevents a trustee or debtor from filing a motion to determine that the mortgage is current. Such a motion is required only when there's a dispute. Under the proposed amendments, a motion will be required in every case, thereby creating more work for the court and the parties. Moreover, debtors have access to mortgage payment information from a number of sources. Chapter 13 trustees send debtors and their attorneys annual reports of receipts and disbursements; parties in interest can review plan payments and disbursements online; mortgage servicers are now required to send monthly mortgage statements to chapter 13 debtors; and notices of payment changes and postpetition fees, expenses, and charges are docketed. The new requirements may therefore be unnecessary.

Laila Gonzalez (BK-2021-0002-0008) – A midcase audit is not needed. The notices of payment change and the motion to determine final care payment are sufficient. The midcase audit will do nothing but increase the attorney's fees for the debtor.

O. Max Gardner III (BK-2021-0002-0010) – As a consumer bankruptcy attorney for 47 years, the biggest problem I've had to deal with is the difference between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. In recent years, this problem has been exacerbated by the constant selling of mortgage servicing rights during a chapter 13 case and the substantial increase in non-bank sub-servicers. We are also dealing with two sets of records of the mortgage servicer or sub-servicer: the system of record, which runs as if no bankruptcy has been filed, and the non-system of record that purports to track mortgage payments under the confirmed chapter 13 plan. As a result, the

primary system will never be in sync with the chapter 13 plan. This new rule will add a new obligation on servicers and sub-servicers at least to reconcile their records once before the completion of the case. Such a process should reduce the deemed current violations and enhance the enforcement of Rule 3002.1.

Mary Beth Ausbrooks (BK-2021-0002-0012) – I have been a consumer bankruptcy attorney representing debtors in chapter 13 bankruptcies since 1996. In my district, the trustee has always filed a mid-case audit and a final cure at the end of the case. Motions are better than notices, as an order is generated. The trustee is in the best position to file the motion as he/she is the keeper of the records in conduit jurisdictions. This process has worked seamlessly in my district. The Order Declaring the Mortgage Current is as important as the Discharge Order. The mid-case review gives an opportunity for the servicer "to shore up" their records. The end of the case motion makes it clear that this mortgage obligation is contractually current at the time of the discharge of the case.

Keith Slocum (BK-2021-0002-0013) – Mortgage servicers keep two sets of records to deal with loans that are involved in chapter 13. The normal system fails to accurately account for the chapter 13 payments and plan, which often leads to the discrepancies between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. Rule 3002.1 is a critical tool to make sure that the debtor, the chapter 13 trustee, and the mortgage servicer reconcile numbers before the debtor gets a discharge. The entire chapter 13 system will work better and run more smoothly the more often servicers and sub-servicers reconcile the numbers with the trustee and the debtor. The mortgage industry takes advantage of borrowers in chapter 13, which is why Rule 3002.1 is so important.

Jennifer Johnson (BK-2021-0002-0014) – The proposed rule changes are similar to what we require in the Middle District of TN. These rules protect creditor and debtor interests alike, ensuring all the proper documentation/information is provided to back up the accuracy of the status of the mortgage. I fully support these rules nationwide.

Daniel Castagna (BK-2021-0002-0015) – (Consumer bankruptcy attorney.) The most effective rule that has been implemented in the last two decades has been Rule 3002.1, but the rule is not perfect. I support adoption of the amended rule be adopted because it would allow debtors and their attorneys to continue to monitor their payments with respect to their mortgage in a clearer and more forthcoming way. These mid-case audits will work for the benefit of all involved – debtor, trustee, and mortgage creditors. If there are problems with payments, they can be dealt with while there is still time in the plan to remedy them. In addition, the end of case requirements help to ensure that the discharge is backed up by proper accounting and that all parties are in agreement before the debtor leaves the protection of the bankruptcy system.

National Bankruptcy Conference (BK-2021-0002-0016) – As written, HELOCs are literally subject to both (b)(1) and (b)(3). The obvious intent is that HELOCs only need to comply with (b)(3). This ambiguity could be fixed by adding a clause to (b)(1) that states "except as provided in paragraph (3),".

Although part of the substantive changes, there is a stylistic issue with the new last sentence in (e). It allows the court to shorten the time period for challenging a payment change notice, but it uses the definite article "the" to refer to "the party." That would seem to be a reference back to earlier in the subsection about the party bringing the motion. It makes no sense

that a party bringing a motion would want to shorten the time period for so doing – such a party could just bring the motion earlier. We suggest that the last sentence should substitute "a party in interest" for "the party," which is consistent also with the comment that it is intended to allow a party in interest to move to shorten the time.

In (f)(2)(A), "debtor's counsel" should be changed to "debtor's attorney" to be consistent with the usage in the rest of the rule.

Subdivisions (f), (g), and (h) refer to a "mortgage claim." That is not a defined term and is also overbroad to the extent a mortgage can be on something other than the debtor's principal residence. Although the intent seems to be to apply these subsections only to "mortgages" covered by the rule, it would be better to use the word "claim" here or make clear these subsections apply to mortgages to which the rule applies, perhaps by a reference back to subsection (a). If the intent was to cover mortgages on real property other than the debtor's residence, then the rule should make that clear, using language that mimics the Bankruptcy Code and that accounts for different usages across state law (e.g., deeds of trust) – "a claim secured by real property".

Kyle Craddock (BK-2021-0002-0017) – Rule 3002.1 is the most helpful rule that has been added since the enactment of BAPCPA, short of the provisions in the CARES act that allowed for modification of a chapter 13 past 60 months. In our district, the conduit system works well. I note that the "extra work" trustees don't want to do is mostly done by computer software. So, in general, I am very much in favor of the proposed new changes to Rule 3002.1.

Specific suggestions: Subdivision (g)(1) sounds like a good idea, and it would work as long as there are no problems. If, however, a response to the trustee's motion is filed saying that the mortgage is not current at the end of the plan and that turns out to be accurate, there's no mechanism to address the problem. The plan is over and, assuming the plan is at or past 60 months by that point, 11 USC § 1329 will prevent modification. The mid-case audit would help prevent this, but the final audit should be moved to some time prior to the completion of the case.

Also has some suggestions on the forms.

Henry Hildebrand (BK-2021-0002-0018) – (Chapter 13 trustee; member of ABI Consumer Bankruptcy Commission.) Rule 3002.1 and Rule 3001(c) have been the most beneficial rules for helping debtors emerge from chapter 13 current in mortgage payments. There are, however, some remaining problems with the rules. By waiting until after the last payment under the plan, the existing rule precludes any modification of the plan that might cure the default. By creating a "mid case notice," the proposed rule will work to diminish the current "gotcha" element when the discrepancy is discovered at the end of the case.

Although I feel that a motion as suggested by the NACTT and ABI Commission would bring more people to the table, and the establishment of similar processes in the mid-case true-up and the end of the case reconciliation makes sense, I acknowledge that the notice as proposed will have a reduced cost to the servicers and, in non-conduit jurisdictions, to the debtor.

A mid-case true-up should apply in both conduit and non-conduit jurisdictions. A common procedure is desirable. Also, I recognize a benefit to the process for a "conduit" jurisdiction, but I also see the absolute necessity for the process in a "non-conduit" jurisdiction.

Subdivision (f)(1): The mid-case notice should be filed 18 to 24 months after confirmation, rather than after filing. That timing would be a better gauge of the status of the mortgage, particularly when some cases take an extremely long time to achieve confirmation.

The end-of-case determination will allow debtors to emerge from their bankruptcy secure in the knowledge that their mortgage payments are current, with a federal court order that so finds. It is altogether appropriate that the end-of-case motion be filed both in conduit and in non-conduit jurisdictions. As a conduit trustee, I am using the end-of-case motion to align a servicer's records with my records to assist the debtors as they emerge. In a non-conduit jurisdiction, the reconciliation would obviously assist both the debtor and the servicer to ensure that the debtor and servicer agree about the status of the mortgage as the debtor emerges from bankruptcy.

Subdivision (h): I encourage the Committee to avoid the use of the word "current" as employed in proposed subsection (h). The question is whether the debtor has made all payments required by the plan (which include those paid directly to the servicer by the debtor). After all, the debtor and the creditor may have mutually agreed to make some fees, expenses, or charges after the discharge. In such a case, the debtor may not be current, but he or she has completed payments under the plan.

Many servicers have advised that in non-conduit jurisdictions, there are a significant number of cases where no notice, let alone a motion, is filed by the trustee at the end of the case. Some of my colleagues in those jurisdictions are reluctant to initiate the "true-up" if they lack the records to back them up. I believe that the proposed rule as drafted would work in both situations – "conduit" and "non-conduit" – by changing the Official Forms language in section 6 (the prayer section) as follows:

> 6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage. I also ask the court to determine the status of the long-term mortgage obligation treated in the Plan and whether the payments required by the plan have been made.

Subdivision (i): The Second Circuit has held that the current rules does not authorize the award of punitive damages. I suggest that in this process the Rules Committee bolster the remedies in the rule in a manner similar to F.R. Civ. P. 37.

National Conference of Bankruptcy Judges (BK-2021-0002-0020) – NCBJ does not oppose the proposed subdivision (b)(3). However, NCBJ is concerned that the rule may be vulnerable to challenge because the annual review and reconciliation procedure effects a change in the parties'

contractual rights by deferring the claimant's right to collect a portion of a monthly payment when it is due. If a chapter 13 plan does not modify the HELOC claim, or if modification is prohibited by the Code (*see* §1123(b)(5) and §1322(b)(2)), the proposed rule is arguably inconsistent with the Code. To avoid this problem, NCBJ suggests that the Rules Committee redraft the rule to make the proposed changes voluntary, i.e., to permit a HELOC claimant to elect between the monthly notice of payment change procedures in 3002.1(b)(1) or the annual notice of payment changes in 3002.1(b)(3). Perhaps the language in 3002.1(b)(3)(A) -- "within one year after the bankruptcy petition was filed and then at least annually" – was intended to accomplish this result. If so, clarifying language would be helpful.

With respect to the midcase and end-of-case determinations, NCBJ takes no position on whether an amendment to the existing rule to impose new obligations on the parties is necessary. The parties most affected by proposed additional burdens imposed by the proposed rule are debtors, chapter 13 trustees, and residential mortgage lenders. NCBJ suggests that the Rules Committee carefully consider the views of those constituencies in evaluating whether the benefits of proposed Rule 3002.1(f) and (g) outweigh the costs of their new requirements in the aggregate and, if so, how best to allocate the procedural obligations among those constituencies.

<u>Subdivision (h)</u>: Although NCBJ takes no position on the general advisability of adopting the proposed amendments, it perceives an inherent flaw in the proposed end-of case procedure to the extent it authorizes the entry of a court order determining the status of a mortgage without a proper factual foundation in "non-conduit/direct pay" cases. The trustee's representation in the end-of-case motion is limited to the terms of the confirmed plan and evinces the trustee's lack of knowledge regarding the debtor's payment of the ongoing postpetition mortgage payments required by the plan. In this respect, Paragraph 5 of the Form is incongruous with Paragraph 6, in which the trustee requests "the court for an order under Rule 3002.1(h) 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." If the claim holder fails to comply with an order compelling a response, under proposed Rule 3002.1(h)(1), the court may enter an order determining that, as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder. In effect, the proposed rule contemplates the entry of an order either as a default or as a sanction. In the absence of a representation by a party with knowledge that all payments required by the plan have been paid, it is inappropriate for the court to issue an order making that finding and determination.

The proposed procedure cannot be analogized to the entry of a default judgment because, in the conventional default judgment scenario, the plaintiff has filed a pleading, subject to Rule 11, in which factual representations have been made which, if proven, purportedly would sustain the grant of the relief requested. Nor does an analogy to a sanction order under Fed. R. Civ. P. 37(b)(2)(A) provide a justification for the proposed procedure because under Rule 37(b)(2)(A), a prior pleading filed subject to Rule 11, supports the requested relief.

NCBJ suggests that the proposed rule be revised to require, at a minimum, that a party with knowledge (presumably, the debtor) make a representation to the court regarding the status

of the payments required by the plan to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder before the court enters an order under proposed Rule 3002.1(h)(1). If the Rules Committee continues to prefer that the trustee—rather than the debtor— initiate the end-of-case determination process, the rule should require that the debtor in a non-conduit/direct pay case file a response to the motion stating whether the direct postpetition payments have been made or stating the amount of any arrearage, as well as addressing the status of the other items (e.g., escrows) that any proposed order would address. If the debtor's statement or a response from the claim holder states an arrearage on the mortgage loan or escrows, the rule should authorize the court to enter an order that establishes the amount and composition of the arrearage, rather than finding (counterfactually) that the debtor is current.

Subdivision (h)(4): NCBJ questions the propriety of the mandated provisions of the end-of-case order. Although a court's determination that fees, expenses, or charges properly noticed under Rule 3002.1(c) were not paid relates directly to the rules of court and the administration of the chapter 13 plan (and in some courts, may affect the debtor's entitlement to a chapter 13 discharge), the other mandated findings may not be in dispute. In the absence of a dispute, there may be no case or controversy to justify a federal court determination. Further, even if certain matters are disputed, the required findings may relate more directly to the post-bankruptcy servicing of the mortgage loan than to the bankruptcy case and the confirmed plan and therefore, may not bear a sufficient nexus to the bankruptcy case to warrant the exercise of bankruptcy jurisdiction. NCBJ suggests the Rules Committee delete the mandatory findings as listed in subdivision (h)(4)(A), so that the bankruptcy court may exercise its discretion in fashioning an appropriately supported end-of-case order.

Christopher Kerney (BK-2021-0002-0021) – I wholeheartedly believe the best practice is for the chapter 13 trustee to be the disbursing agent. Having practiced with implementation of a system in which the trustee files the mid-case audit and Order Declaring Mortgage Current, I know this is best for my clients, and I can't imagine retreating to a system that would be detrimental to the debtor and the system as a whole.

National Consumer Law Center, Inc. (BK-2021-0002-0022) – We support the amendment that would delete "installment" in subdivision (a) and the committee note that explains that the reason for the change is to clarify that the rule applies to reverse mortgages.

Subdivision (b)(2): Because (b)(2)(A) does not refer to a reconciliation amount as is provided in the change for HELOCs in proposed Rule 3002.1(b)(3), we have assumed that the rule operates effectively as a procedural sanction for the claim holder's noncompliance with Rule 3002.1(b)(1), barring the claim holder from seeking payment from the debtor for the difference between the old and new payment amounts for the period of noncompliance. If that is the effect of an untimely payment change notice, we urge the Committee to include discussion of this in the Committee Note.

Proposed Rule 3002.1(b)(2)(B) should be changed as follows: "when the notice concerns a payment decrease, on the first payment due date that is after the date of the notice." While the Committee likely contemplated that the date stated in the untimely notice would be the first

payment due date after the date of the notice, the language in proposed Rule 3002.1(b)(2)(B) does not compel this or provide sufficient direction.

The mortgage holder should not benefit from its noncompliance with Rule 3002.1(b)(1). The committee note regarding (b)(2)(B) should state that the claim holder must take steps to address any overpayment by the debtor in accordance with the terms of the mortgage documents, such as by issuing a credit on payments that come due after the payment change or a refund to the debtor or trustee (if the trustee is disbursing ongoing mortgage payments).

If the Committee does not adopt our suggestion to include language in the committee note on the effect of an untimely payment change notice as to underpayments and overpayments, we urge the Committee to add a new subsection (b)(2)(C) as follows: "Nothing in (A) or (B) limits the power of the court to take any of the actions under (i) for any failure to timely file and serve the payment change notice."

Subdivision (b)(3): Rule 3002.1(b)(3)(A) instructs the holder of a HELOC claim to file and serve the payment change notice "within one year after the bankruptcy petition was filed and then at least annually." The rule should be more precise as to when the annual notice must be sent, such as "… and then at least annually, not more than 21 days after the conclusion of each 1-year period."

Rule 3002.1(b)(3)(C) refers to the "next payment" as the "first payment due after the effective date of the annual notice," and the amount of this next payment is to be disclosed in the annual notice as an amount that "shall be increased or decreased by the reconciliation amount." Rule 3002.1(b)(3)(D) refers to the "new payment amount" as the "first payment due date that is at least 21 days after the annual notice," and it is to be disclosed in the annual notice as an amount that disregards the reconciliation amount. If there is a reconciliation amount, the "next payment" under Rule 3002.1(b)(3)(C) and the "new payment amount" under Rule 3002.1(b)(3)(D) would be two different amounts, and yet they appear to be due at the same time. These provisions should be changed to have "next payment" with the reconciliation amount under Rule 3002.1(b)(3)(C) be the first payment due date that is at least 21 days after the annual notice, and the "new payment amount" without the reconciliation amount under Rule 3002.1(b)(3)(D) be the first payment due date after the next payment under Rule 3002.1(b)(3)(C).

Subdivision (c): The proposed changes are not all stylistic. The words "or imposed" are added in the first sentence, so that the phrase "incurred or imposed" is used. The combination of adding "or imposed" and deleting the "and" completely changes the substance of the provision, so that a claim holder would be required to send a notice of a fee that has been incurred but is not recoverable against the debtor or the debtor's principal residence. Moreover, the phrase "or imposed" is not needed because the imposition of fees is already covered by the language "that the claim holder asserts are recoverable against the debtor or the debtor's principal residence." We urge the Committee to delete "or imposed" from the first sentence and return it to its current formulation.

The addition of "or imposed" in the second sentence in subdivision (c) is also a substantive change because it significantly affects the timing of when the fee notice must be sent. The current rule very intentionally requires that the notice be sent within 180 days after a fee is incurred, which is generally the date when any service related to the fee or expense is performed. By adding "or imposed" to this sentence, a claim holder could incur a fee in the first year of the debtor's chapter 13 plan but then not send the notice until the fifth year of the plan or even after the bankruptcy case closed, contending that it only then decided to impose it. The current rule requires the claim holder to make an affirmative decision within 180 days after a fee is incurred as to whether it will impose it.

Subdivision (f): The midcase review process set out in proposed Rule 3002.1(f) will help identify debtors, particularly in non-conduit districts, who have fallen behind on postpetition mortgage payments and give them an opportunity to cure any postpetition default before the end of the case. We support this general concept but have concerns that the proposed rule will increase costs for all debtors in chapter 13 cases, even those who would not benefit from the rule.

When Rule 3002.1 was initially adopted, it was intended that most, if not all, of the rule's requirements would be performed by non-attorney personnel who work for mortgage servicers. Sadly, however, servicers have recently begun charging excessive fees for compliance with Rules 3001 and 3002.1, claiming that these fees can be passed on to debtors as attorney fees under the fee shifting provision of the mortgage documents. Mortgage servicers will likely contend that the midcase review under proposed Rule 3002.1(f) will require attorney involvement. To avoid all debtors in chapter 13 cure plans being charged excessive and unnecessary fees, we urge the Committee to revise proposed Rule 3002.1(f) in the manner set out below that still preserves its basic purpose.

Rather than have the midcase review initiated by the filing of a notice by the trustee, we propose that the process begin with the submission by the claim holder of an existing periodic mortgage statement that is prepared in the normal course of servicing the mortgage loan. Rule 3002.1(f)(1) should provide that the claim holder must send to the trustee, the debtor, and the debtor's attorney, between 18 and 24 months after the petition was filed, a periodic statement that the claim holder has prepared in accordance with the Truth in Lending Act and Regulation Z, 12 C.F.R. § 1026.41(f). The periodic statement should be current for the month in which it is sent. These statements must disclose the amount due, an explanation of the amount due, a past payment breakdown, recent transaction activity, partial payment information, the total of all prepetition payments received since the last statement, the total of all prepetition payments received since the beginning of the consumer's bankruptcy case, and the current balance of the consumer's prepetition arrearage.

The information contained on the periodic mortgage statement will permit the trustee to assess, based on the servicer's records, whether the servicer believes the debtor is current with prepetition and postpetition payments. If the claim holder fails to timely send a mortgage statement, or if the trustee is unable to determine the status of the mortgage claim after reviewing the statement because the information is insufficient or the trustee believes it is inaccurate, the trustee may file a notice as contemplated by proposed Rule 3002.1(f)(1), using proposed Official Form 410C13-1N. Thus, the claim holder will be required to file a response under proposed

Rule 3002.1(f)(2) only in cases in which the case status cannot be adequately determined from the periodic statement. This change, if adopted, will significantly reduce the number of cases in which the midcase review procedure will be invoked, thereby minimizing costs to debtors, trustees, and claim holders.

We urge the Committee to amend proposed Rule 3002.1(f)(2) to state that the claim holder's response is not subject to Rule 3001(f). It is important that the claim holder's response not be given a presumption of validity, particularly if an objection to the claim holder's response is filed under proposed subdivision (f)(2)(C) and the claim holder fails to participate at a hearing on the objection conducted under subdivision (f)(2)(D).

Subdivision (g): The option for the debtor to file a motion to begin the end-of-case procedure under the circumstances set out in the current rule should be restored in Rule 3002.1(g) in case the trustee does not file the motion.

Although the response under proposed Rule 3002.1(g)(2) operates in the same manner as the response to the notice of final cure under current Rule 3002.1(g), proposed Rule 3002.1(g)(2) does not state that the response shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f). The rule should do so.

Subdivision (h): Proposed Rule 3002.1(h) establishes a procedure for the debtor to obtain an order that contains the information specified in subdivision (h)(4). This information is necessary to establish that the debtor is fully current on the mortgage and to avoid disputes between the claim holder and the debtor after the chapter 13 case is concluded. We support these amendments.

While the entry of an order by the court pursuant to proposed Rule 3002.1(h)(1) is appropriate as a sanction for the claim holder's failure to respond after being ordered to do so, we believe that that an order pursuant to proposed Rule 3002.1(h) should be entered only upon the request of a party in interest. We are concerned that the debtor or trustee may not have information sufficient to determine that the response was inaccurate, or that other grounds to object to the response exist, until after the 14-day objection period has expired. Debtors who fail to object to the claim holder's response due to informational imbalances or a lack of awareness of potential consequences should not be barred from later disputing the status of their mortgage. Thus, we urge the Committee to delete subdivision (h)(2).

Proposed Rule 3002.1(h)(3) authorizes the court to enter an order determining the status of the mortgage claim only if an objection is filed to the claim holder's response. Consistent with our suggestion to delete subdivision (h)(2), we believe subdivision (h)(3) should permit the debtor or trustee to request an order containing the information specified under subdivision (h)(4) without objecting to the claim holder's response. This would be consistent with current Rule 3002.1(h), which permits an order to be entered on motion of the debtor or trustee, after notice and hearing.

Norma Hammes and James Gold (BK-2021-0002-0023) – We believe that changing, expanding, and making more complicated the processes required under FRBP 3002.1, create the

dangers of producing unintended consequences, and moving the rule further away from its original intent – assisting Chapter 13 debtors. Both the midcase and end-of-case reviews may be helpful to some debtors. But, more likely, they also will increasingly be used to justify aggressive attempts by trustees to improperly dismiss their cases. Consequently, we strongly suggest that the proposed amendment to FRBP 3002.1 permit a debtor to opt out of the application of FRBP 3002.1, in whole or in part, to their case at any time during the pendency of the case. Those debtors will continue to be able to rely upon non-bankruptcy law for (among other protections) obtaining account histories and bankruptcy law for assuring correct application of plan payments.

We do, however, agree that the proposed rule needs improvement. Therefore, to the extent the comments of the National Association of Consumer Bankruptcy Attorneys and the National Consumer Law Center suggest specific improvements to the amendments under

Corrine Bielejeski (BK-2021-0002-0024) – Adding a midterm audit is a great idea. This allows all parties to compare notes and correct any accounting problems while there is still time to modify the plan. A simple notice procedure, like the one currently used at the end of the case, is enough to make everyone aware it is time to review the payment history. This should have enough teeth in it so that if a creditor fails to respond, it is bound by the determination that the debtor is current.

The end-of-plan notice does not need all of the changes that have been suggested. The change from a notice to a motion creates more work, much of which is not necessary. I would suggest the timing of the end of case notice be moved earlier – six months before the end of a confirmed plan – but otherwise keep the current procedures the same.

Subdivisions (f) and (g) – The motion to compel procedures should be removed from the proposed rule change, returning the default procedures to the ones currently in place. Alternatively, the Rules Committee should clarify within the rule whether a timely response is with regard to the original notice or to the order compelling response. If it is to the order, the Committee should include a short deadline for responding to the court's order.

If a creditor fails to respond to the midterm audit, (f)(2)(B) authorizes filing of a motion to compel, but there is no provision telling the court what to do after that. If the Rules Committee chooses to require motions to compel, (f)(2)(B) needs to be added to subsection (h). For example, "if the claim holder fails to comply with an order under (f)(2)(B) or (g)(2)(B), the court may enter an order deeming the debtor current."

Subdivision (g): Chapter 13 trustees and creditors are given more time to respond, but debtors are given less time, than under the current rule. Debtors should continue to have at least 21 days to file objections to responses, since these objections have to include declarations and other evidence necessary to refute a creditor's payment history.

I agree that notices under the rule should continue to be sent out by trustees. The burden should not be shifted to debtors.

Pam Bassel (BK-2021-0002-0025) – Subdivision (a): It is unclear what the rule applies to. For example, does it apply to *ad valorem* taxes, reverse mortgages, and full payment of a mortgage under the plan? My suggested revision is to state that the rule applies to "all claims (1) secured by a security interest in the debtor's principal residence and (2) on which the trustee or the debtor will disburse payments during the pendency of the case or which the plan addresses in any way, other than payments to governmental taxing authorities."

Subdivision (b): The term "claim holder" should be defined. I suggest "claim holder is defined as any entity secured by a lien on the debtor's principal place of residence, except governmental taxing authorities, or any servicer or agent of such entity."

In the situation of a payment increase, there should be a consequence for failing to file the notice timely, in addition to delaying the date on which increased payments will begin. The rule should include a forgiveness of the amount of the increase on any payment for which the 21-day notice is not timely given. Otherwise, the debtor may have to pay the difference eventually to bring the loan current.

In (b)(4), the language should be changed from "filed" to "filed and served" on lines 77 and 80.

In (b)(5), the reference to § 1322(b)(5) should be stricken. Otherwise, this provision could be interpreted to mean that the only time a party in interest can object is in a "cure and maintain" plan. You could strike the first sentence (starting on line 75 and ending on line 79) and substitute, "A party in interest may object to the payment change by filing a motion to determine the validity of the payment change." I also suggest rewording the second sentence in this subpart to clarify the deadline for filing the motion to determine. As currently drafted, it is hard to tell whether a motion to determine can or cannot be filed after the change takes effect. I suggest a deadline of either three days before the payment change is to take effect or 14 days after the notice is filed.

Subdivision (c): The provision does not contain negative consequences for failing to file the Notice of Fees, Expenses, and Charges on time. My suggestion is that if the notice is not timely filed, the claim holder be barred from attempting to collect the fees, expenses, and charges from the debtor at any time and by any method. Arguably, subdivision (i) as currently written does not cover this situation. Also, on line 95 change "served" to "filed and served."

Subdivision (e): One year to file a motion to determine is a long time. Please consider reducing this time period to 60 or 90 days. The notices are straightforward, and it should be quickly apparent whether there is a fee, expense, or charge that should be objected to. Also the reference to § 1322(b)(5) should be stricken.

Subdivision (f): The midcase procedure should be conducted by motion rather than a notice. The claim holder's response should be permissive, rather than mandatory. The objection to the response should be permissive and in no way a prerequisite to the court entering an order on the status of the claim. The motion should contain an "as of" date and provide information about every component of the claim. An order should issue on every midcase notice/motion,

specifically determining the status of the claim as of the date the midcase notice/motion was filed. The order should be binding on all parties and preclude the claim holder from asserting different cure amounts on the claim in any contested matter or adversary proceeding in the bankruptcy case, or in any other manner, matter, or forum after a discharge is entered in the bankruptcy case.

The reason to conduct a midcase review is to compel the claim holder to true up its records during the case. Even though the trustees send the claim holders detailed vouchers with each disbursement, telling them how much of the disbursement should be applied to what component of the claim, and even though many trustees make their payment records available online and the claim holder could review the trustee's payment records and perform its own audit at any point in the case (which they do not do), they still have incorrect payment records. The problem is exacerbated by servicing transfers. If we do not want debtors to exit their bankruptcy only to have the claim holder assert that it is owned more money, often in an amount that is easier and cheaper for the debtor to pay than to dispute, a reconciliation of the amounts owed on the claim is necessary.

A midcase procedure is a good idea, but I hope the Committee will consider procedures to reduce costs as much as possible and to require the claim holder to justify any charge against the debtor.

As currently drafted, the proposed rule is ambiguous about when an order will be entered. It is arguable that an order would be entered only when (1) the claim holder files a response and (2) a party-in-interest has filed an objection to the claim holder's response [See proposed Rule 3002.1(f)(2)(D)]. It could also be argued that the court can enter orders under other factual scenarios because the language does not preclude that. As currently drafted, the rule is also unclear about what happens if the claim holder does not respond. It would be helpful if the rule was made clear on these points and the process was streamlined.

The claim holder's response should be permissive to reduce potential costs to the debtor. If a claim holder agrees with the midcase notice/motion, there is no need for it to hire an attorney to file a response, incurring legal fees it may attempt to recover from the debtor. If the claim holder fails to respond, a default order should enter, or the rule should provide that the status of the claim is deemed to be as stated in the midcase notice/motion. I am not sure there is a need for a motion to compel at this stage of the case. Under the procedure I am proposing, either the claim holder responds in opposition and the matter is treated as a contested matter, or the claim holder does not answer and a default order is entered. However, if the Committee decides the claim holder's response is mandatory rather than permissive, the rule should clearly state that the claim holder may be responsible for fees and costs incurred by a party who files a motion to compel.

There should be a deadline in (f)(2)(C) for filing the objection. I suggest 21 days from the filing of the response. This will keep the matter moving. In the current draft of the rule, filing an objection is permissive, which is good. Allowing a permissive objection is a way for the debtor to file a relevant pleading if needed and, if necessary, for the trustee to respond to an allegation in the claim holder's response.

Filing an objection to the response should not be a prerequisite to obtaining an order regarding the status of the loan. My suggestion is to provide in (f)(2)(D) that if the claim holder fails to respond, the court shall enter an order deeming the statements in the trustee's notice/motion correct. If the claim holder responds, it should be treated as a contested matter and, after notice and the opportunity to be heard, the court should enter an appropriate order determining the status of the loan as of the date of the filing of the notice/motion.

While I hope the Committee will adopt the suggestion to conduct the midcase review by motion, another way to do this would be to state that the trustee, or other appropriate party, files a notice and any party who wishes to object must file a motion for determination, rather than a response. This is like the procedure for notices regarding payment changes and notices regarding fees, expenses, and charges. There should be a specific deadline by which a motion for determination must be filed. And in all cases, the status of the mortgage loan should be determined, either by deeming the recitation in the notice to be correct or by the entry of an order.

Subdivisions (g) and (h): I support the idea that this be handled as a motion practice, but I think the procedure can be streamlined a bit. My suggestion is that the motion should have a clear response deadline and an "as of" date. Since we must rely on a response from the claim holder to acquire the information required for the order, if the claim holder does not respond, a motion to compel should be filed. If the claim holder then responds, any disagreement with the trustee's motion can be treated as a contested matter without the necessity of a party filing an objection to the claim holder's response. If the claim holder does not respond to the order compelling it to, the court can enter an order finding that the loan is completely current. Any order should be binding on the claim holder once the discharge is entered.

I suggest that the language in (g)(1) be amended to state that the trustee must file this motion within 45 days after the debtor completes the plan payments and the final payment has been made by the trustee to the claim holder. Until the trustee makes that final payment to the claim holder, its records will not show that it has been paid in full, leading to unnecessary responses because the claim holder's records will not match the trustee's motion until that last payment is received and posted.

In (g)(2)(C) 14 days is probably too short a time deadline to file an objection. Please consider setting the deadline at 21 days.

The word "legal" should be struck in (h)(1)(B) so that line 223 reads, "all postpetition fees," etc. Post-petition fees can include fees other than legal fees.

The claim holder's response should not be deemed to be correct if no party objects to the claim holder's response, and filing an objection should not be a prerequisite for obtaining a hearing. The language in (h)(2) is permissive ("the court may enter an order") but is likely to lead to orders being entered even when there are unresolved issues. This is a motion practice. The trustee files the motion, and if the claim holder responds in opposition, it should be treated just like any other contested matter. The matter should be set for hearing after the deadline for

filing an objection. But it should not be a possibility that an order issues in favor of the claim holder if a party in interest does not object to its response. Please consider streamlining the process by deleting 3002.1(h)(2) and (3) and simply stating that if the claim holder files a response, the court will enter an order after an opportunity for the parties to be heard, and the order will contain the information currently set out in 3002.1(h)(4)(A).

The provision in (h)(4)(A) should be applicable to all orders issued after a response is filed, and reference to (h)(2) and (h)(3) in lines 237 and 238 should be deleted.

I do not understand the purpose of (h)(4)(B). It refers to an order issued under (h)(1), which requires non-compliance with an order compelling a response. Why would this be singled out as a circumstance under which the court "may address the treatment of any payment that becomes delinquent before the court grants the debtor a discharge"?

Subdivision (i): The title of this section is somewhat misleading. The title includes the claimholder's failure to give a required notice or to respond, but the subpart itself refers only to the failure to provide information required by the Rule. Something like "CLAIM HOLDER'S FAILURE TO PROVIDE REQUIRED INFORMATION" would be more descriptive.

It would be preferable if this section did not address the claim holder's failure to file a required response or give a required notice. It would add clarity if these issues were addressed separately in the provisions regarding the midcase notice/motion and the end-of-case motion or the specific notice provisions. This would put what the claim holder needs to do to comply alongside the consequences for non-compliance.

Beverly Burden (BK-2021-0002-0026) – Rule 3002.1(f) should mirror proposed Rule 3002.1(g) and be a motion process. The rule should also clarify that no hearing is required on the trustee's midcase or end-of-case motion. The trustee can easily file a motion to determine the status of the mortgage to get the process started. By filing such a motion in accordance with the rule, the trustee does not need to make any statement of fact; the trustee does not need to ask that the debtor be deemed current in their mortgage. To the extent the proposed forms require non-conduit trustees to make these allegations, the forms are flawed.

If a party objects to the creditor's response and a contested matter is triggered, the prevailing party should be responsible for preparing the order determining the status of the mortgage. The more burdensome aspect of the process for non-conduit trustees is if the trustee must prepare an order setting forth the "data points" that are reflected in the creditor's response. This is one part of the process where it might be preferable to have the debtor/debtor's attorney prepare an order setting forth the detailed information contained in the creditor's response.

Rule 3002.1(g)(1) requires the trustee to file a motion to determine the status of the mortgage "within 45 days *after the debtor completes all payments under a chapter 13 plan*." Many courts have held that a debtor who has not made all postpetition mortgage payments has not completed all payments under the plan. The rule should be changed to read "within 45 days after the trustee receives all payments due the trustee under the plan."

Omar Hooper (BK-2021-0002-0028) – I believe the notices of payment change and the motion to determine final cure payment are sufficient. The audit will not help or change anything other than increase the attorneys' fees of all parties involved.

Ronda Winnecour (BK-2021-0002-0029) – The proposed changes to the rule are meritorious and will enhance my ability (and the ability of all of the relevant parties) to administer mortgages with accuracy and detailed record keeping. I have always been completely conduit, paying all of the mortgage payments on behalf of the chapter 13 debtors in my district. Since 3002.1 was originally proposed, I have filed a "Notice of Interim Cure" addressing the payment of the pre-petition arrears record and a Notice of Final Cure telling all of the parties exactly when the post-petition payments have concluded. Converting that notice to a motion will result in a court order affirming the facts that I have asserted and will most likely reduce additional confusion. And my records in this regard are far more accurate than those kept by either the debtors or the mortgage services as they change frequently thought the case. All of this will ensure continued accuracy and transparency and I support the proposed changes.

Neil Jonas (BK-2021-0002-0030) – The proposed amendments to Rule 3002.1(a) alter the scope of applicability of the rule from loans for which the plan requires payment of "contractual installment payments" to just "contractual payments." The Committee Notes indicate that that the purpose of this change is to "clarify the rule's applicability to reverse mortgages, which are not paid in installments." If the reference to "contractual payments" is interpreted to cover any obligation which requires the borrower to maintain taxes and insurance on the subject property, this will make the rule applicable to virtually all secured obligations, regardless of how it is treated in the plan. That is overbroad and a radical change from the current rule.

The revised rule would seem to require chapter 13 trustees to file Motions to Determine Status of Claims for reverse mortgages. If the plan does not provide for payment on a reverse mortgage (which is common), it's hard to see what the point of filing such a motion would be. Simply to say that nothing was paid? Trustees should be excused from filing Motions for Status for reverse mortgage claims that are not paid through the plan.

James Davis (BK-2021-0002-0031) – Subdivision (b)(4): Because the escrow account is a system for accumulating funds to pay externally determined amounts, and because the payment adjusts each year based on the funds in the account, the proposed language for subdivision (b) delaying the effective date of an increase appears to just shift amounts to the next escrow analysis, rather than relieving the debtor of the obligation to pay. Especially for a large increase, deferring the payment adjustment for a year or more may make the eventual increase harder for the debtor to absorb. Because of these issues, I think it is important to be clear that subdivision (b) does not provide the exclusive remedy for an untimely notice of payment change.

Subdivision (f): In (f)(1) it would be better to specify that the new notice requirement applies to "any mortgage claim of the type specified in subdivision (a)."

The rule should authorize the trustee to serve the notice at the "notice" address last specified by the claimholder—similar to Rule 3007(a)(2)(A).

I would suggest revising proposed Rule 3002.1(f)(2)(D) to make clear that a party in interest may obtain a court determination regardless of whether the claim holder files the response required by the proposed rule. For example: "If a party in interest objects to the response <u>or requests a determination in the absence of a response</u>, the court shall . . . ."

Perhaps the rule should specify that the claim holder's response is a supplement to the claim to help ensure that non-attorneys would be able to file the responses.

<u>Subdivisions (g) and (h)</u>: For consistency, it might make sense to use a multiple of seven for the filing deadline under proposed Rule 3002.1(g)(1)—making it either 42 days or 49 days.

There are some potential downsides to Judge Lundin's suggestion that the final determination be made before the last plan payment. Debtors occasionally stop making plan payments or start making mortgage payments directly based on a misinterpretation of the motion or order seeking a mortgage status determination. Obtaining the status order before the completion of the plan may also reduce the likelihood of identifying errors in the transition from bankruptcy to post-bankruptcy accounting. Finally, in conduit cases a determination during the plan means that the trustee will distribute at least one final mortgage payment after the status determination. That makes it likely that a debtor in a post-bankruptcy dispute with the claim holder about the status would need not just the court order but also the trustee's records of the final disbursement(s).

As with the mid-case notice, I would propose that the rule authorize service of the motion under Rule 3002.1(g) at the notice address last specified by the claimholder.

The proposed process for resolving a disagreement about the loan status seems inefficient. If a trustee has filed a motion under subdivision (g)(1) requesting a determination that the loan is current and a claimholder has filed a response in opposition to that request, the rule should allow the matter to move directly to a court determination. It should not require the trustee (or another party in interest) to file what amounts to a second request that the court determine the status.

Proposed subdivision (h)(1) should be revised to remove the requirement that a party seeking a determination in the absence of a claimholder response must first request an order compelling a response. If the trustee has filed and properly served a motion, the court should have the authority to enter an order in the absence of any opposition.

Strike "legal" from (h)(1)(B).

In proposed subdivision (h)(4), consider making the determinations of account balances discretionary. The principal balance, the escrow account balance, and the suspense/unapplied funds balances are all important, but because many trustees may not have independent records for these balances, a mandatory determination risks blindly validating creditor records without any actual check of their accuracy. It also fits poorly with a "negative notice" process if the order must include figures that the trustee lacks the data to propose.

In proposed subdivision (h)(4)(A)(v), strike "properly noticed under (c)." The order should establish the amount of *any* remaining fee, expense, or charge—not just properly noticed ones. The evidence-exclusion sanction under subdivision (i) may have the effect of excluding amounts not properly noticed, but, for that process to work, the order must establish the amounts due, not just the amounts properly noticed.

As with the mid-case process, perhaps the rule should specify that claim holders may file responses in agreement as supplements to their claims (to facilitate handling my non-attorneys). Attorney involvement may be unavoidable when the creditor is contesting the trustee's requested relief. But when the creditor's records agree with the trustee's records, a ministerial filing by a creditor representative seems preferable to a process that would add new attorney's fees.

Subdivision (i) – I would change the title of the proposed subdivision (i) to: "CLAIM HOLDER'S FAILURE TO COMPLY ~~GIVE NOTICE OR RESPOND~~." And, in the text, I would suggest retaining the word "as" to make clear that courts have authority to grant relief for *any* non-compliance with the rule (including, for example, an untimely provision of information), not just for a failure to provide information: "If the claim holder fails to provide any information as required by this rule, ..."

I would suggest a clearer statement that the authority under subdivision (i) is available even when the rule specifies a self-effectuating remedy. Instead of adding (i)(3), I would propose adding a separate statemen to that effect, such as: "The availability or existence of any other remedy or relief under this rule shall not limit a court's authority under this subdivision (i)."

National Assoc. of Consumer Bankruptcy Attorneys (BK-2021-0002-0032) – Subdivision (a): The committee note should make explicit that the rule does not apply to a plan that does not provide for a secured claim.

The deletion of "installment" clarifies that the rule applies to reverse mortgages and requires notice of postpetition fees under (c).

Subdivision (b): The rule should include a definition of "home-equity line of credit": "an 'open-end credit plan,' pursuant to 15 U.S.C. § 1602(j), that is secured by the debtor's principal residence."

Subdivision (b)(3)(E) should require a notice of payment change "if the monthly payment has increased or decreased by more than $10 a month since the filing of the proof of claim or the last allowed notice of payment change." It should also specify what happens if the increase or decrease is less than $10: "If the monthly payment increases or decreases by less than $10 a month since the filing of the proof of claim or the last allowed notice of payment change, the claim holder shall file and serve (in addition to the annual notice) a notice under (c)." The committee note should state that a HELOC claim holder may file a notice of payment change for changes less than $10 and that the failure to do so may result in the disallowance of late fees with respect to such changes.

Subdivision (f): We oppose the midcase notice as proposed. It will result in attorneys' fees claims by the mortgage holder, and the debtor can obtain this information without cost.

If the provision is retained, the following changes should be made:

- In (f)(1) change the time period to run from confirmation rather than filing.
- Add "unless the court orders otherwise" to (f)(1). This would allow the court to excuse compliance with the provision in conduit districts in which the trustee has reliable records.
- Instead of a trustee requirement, (f)(1) should require the claim holder to send the trustee, debtor, and debtor's attorney a periodic statement prepared in accordance with the Truth in Lending Act and Regulation Z between 18 to 24 months after confirmation. The servicer could do this without incurring attorneys' fees.
- If there's a dispute, the trustee and debtor can obtain a status update and full payment history from a claim holder by sending a request under RESPA. No fees may be charged for responding, a fact that the committee note should point out.

Subdivision (g): The rule should continue to allow the debtor to initiate the end-of-case process if the trustee fails to do so.

Subdivision (h): The court order provided for in this subdivision is the most important part of the proposed revision of the rule. Currently an order is entered only if the claim holder files a response to the trustee's notice and a determination is sought. The order will provide greater clarity to the debtor, non-bankruptcy attorneys, title insurers, and future lenders.

The requirement that the order specify the principal balance owed is a vital improvement. It should, however, be called "total amount owed," so that a mortgage servicer does not later contend that the amount did not include fees, charges, and interest that were not otherwise allowed.

Subdivision (i): Subdivision (i)(3) should explicitly put the claim holder on notice that "the court may take any other action authorized by this Rule, the Bankruptcy Code, or other state or federal law" for noncompliance.

Style usage in Rule 3002.1: There are some inconsistencies in hyphenation. Home-equity and end-of-case are hyphenated, but midcase is not.

Rick Yarnall (BK-2021-0002-0033) – I join in and agree with the comments made by the 68 Chapter 13 Standing Trustees posted on December 7, 2021, and by Hon. Keith Lundin (Ret.) posted on November 4, 2021. I write to highlight my concerns over the undue administrative burden this rule would impose on trustees who are in non-conduit jurisdictions and in cases where debtors pay the mortgage directly. Further, the change in the procedure at the end of a debtor's case may result in a delay in a discharge being entered in cases where there is no dispute with respect to whether the mortgage payment is current. I urge the committee to strongly consider the arguments raised in the various comments and respectfully recommend the rule be revised and republished for further comment.

Nancy Whaley (BK-2021-0002-0034) – I believe that the proposed rule amendments are not the appropriate remedy to ensure that a debtor's mortgage payments are reconciled when they exit a chapter 13 case. While the current rules may need corrective amendments, the use of notices work and are cost effective, and the current rules provide the appropriate remedies if used by all parties. The proposed process is costly and time consuming for debtors, creditors, trustees, and the court without necessarily bringing about a different result of the current rules. [She includes statistics showing that there are very few cases in her district in which there is a motion filed disputing the status of the mortgage at the end of the case.]

Subdivision (f): Creating a midcase review that is initiated by a non-conduit trustee stating the payment on prepetition arrearages does not resolve any known problem and seems to be a solution in search of a problem. While I do not dispute that having a reconciliation of post-petition mortgage payments during the pendency of a case would be beneficial to the debtor and creditor, a rule is not necessary. A debtor, a holder of a claim, or a conduit trustee can do this at any point in a case, and as some conduit trustees have stated, they already do this without the requirement of a rule. If it is determined that a rule would be beneficial, then the rule should be optional, and the rule should be created to resolve the concern of payments on post-petition payments. The most effective way to do this is by requiring the party making the post-petition payment or the holder of the claim to file the midcase notice.

Subdivision (g): The changes in 3002.1(g) are problematic for a non-conduit trustee by requiring a trustee to file a motion, not a notice, at the end of the case. I fully support and incorporate the National Association of Bankruptcy Judges position on the flaws of having a non-conduit trustee file a motion at the end of the case. I, as non-conduit trustee, do not have the factual foundation to file this motion, and I support the notice practice at the end of the case. If a motion is required, having the party that is making the post-petition payments or the holder of the claim file the motion will be more successful in bringing to the table the parties that can resolve the matter.

Current subdivision (f): Some mortgage servicers' representatives and fellow trustees believe that the current rule as written requires trustees to file a Notice of Final Cure Payment (NFCP) under the current Rule 3002.1(f) regardless of whether there is a default to be cured. This is based upon the amendment to the rule in 2016 and the committee note that states that the rule applies "even if there is not prepetition arrearage to be cured." I, along with many trustees, file a NFCP when we have paid a prepetition or post-petition default on the debtor's principal residence, and we believe that we are fully compliant with the rule, but others disagree. I would suggest to this Committee that many trustees interpret the committee note to mean that the Notice of Payment Change and other requirements of 3002.1 apply regardless of a prepetition arrearage, but it does not make logical sense that that subdivision (f) applies, since that section specifically addresses a *notice of final cure payment.* If the intent of the rule is that a trustee is to file something in every case in which a debtor has a principal residence, I believe the current rule needs to be clarified and indicate what the trustee is to file.

Mortgage Bankers Association (BK-2021-0002-0035) – Add an exception to subdivision (b)(2)(A) for situations beyond the claim holder's control, such as lack of notice of the

bankruptcy case or a loan modification with a retroactive effective date. Add "unless otherwise ordered by the court" at the end of (A).

In (b)(3)(A). make optional the annual filing of notices of payment change for HELOCs. Change to "at least annually" so that claim holders could still file the notices monthly or at other intervals as currently required by the rule.

Throughout the rule, remove references to § 1322(b)(5) to clarify that the rule is not limited to plans in which a prepetition arrearage is being paid.

TAB 6

TAB 6A

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: FEB. 28, 2022

The Standing Committee approved publication of an amendments to Form 101 recommended by the Subcommittee and the Advisory Committee to (1) 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 (2) 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." The amendments also add 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" and revise the lines for including the information to add lines for "business name (if applicable)". The amendments 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 as published accompanies this memo.

The published 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.

We received one comment on the proposed changes from Sam Calvert, USC-RULES-BK-2021-0002-0027. He suggested that Part 1, Question 2, be divided into question 2a (which would be the Question as published) and 2b which would provide a space for information about an entity for whom the debtor was serving as guarantor or surety.

The Subcommittee decided to make no change in response to this comment. The proposed changes to Official Form 101 make it consistent with Official Forms 105, 201 and 205, none of which includes the information Mr. Calvert is requesting. Moreover, that information is available on Schedule E/F.

The Subcommittee recommends the amended Form 101 to the Advisory Committee for final approval in the form in which it was published.

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 it 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	❑ 1,000-5,000	❑ 25,001-50,000
❑ 50-99	❑ 5,001-10,000	❑ 50,001-100,000
❑ 100-199	❑ 10,001-25,000	❑ More than 100,000
❑ 200-999		

19. How much do you estimate your assets to be worth?

❑ $0-$50,000	❑ $1,000,001-$10 million	❑ $500,000,001-$1 billion
❑ $50,001-$100,000	❑ $10,000,001-$50 million	❑ $1,000,000,001-$10 billion
❑ $100,001-$500,000	❑ $50,000,001-$100 million	❑ $10,000,000,001-$50 billion
❑ $500,001-$1 million	❑ $100,000,001-$500 million	❑ More than $50 billion

20. How much do you estimate your liabilities to be?

❑ $0-$50,000	❑ $1,000,001-$10 million	❑ $500,000,001-$1 billion
❑ $50,001-$100,000	❑ $10,000,001-$50 million	❑ $1,000,000,001-$10 billion
❑ $100,001-$500,000	❑ $50,000,001-$100 million	❑ $10,000,000,001-$50 billion
❑ $500,001-$1 million	❑ $100,000,001-$500 million	❑ 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.

✘ ______________________________ Signature of Attorney for Debtor

Date ______________ 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 ______________________

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 your 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.

TAB 6B

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: FEB. 28, 2022

The Advisory Committee approved publication of proposed amendments to Official Forms 309E1 (line 7) and 309E2) (line 8)) to clarify the language about deadlines for objecting to the debtor's discharge and for objecting to the dischargeability of a specific debt. The published version of the amended forms is attached.

The published 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.

We received no comments on the amendments. At the Subcommittee meeting it was agreed to insert a comma in line 7 of Form 309E1 and line 8 of Form 309E2 in two places, one after the words "§ 1141(d)(3) in the first bullet and one after "or (6)" in the second bullet. With those changes, the **Subcommittee recommends the amended Official Forms 309E1 and 309E2 to the Advisory Committee for final approval.**

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 [Date case filed in chapter _____ ______ MM / DD / YYYY Date case converted to chapter 11 ______] MM / DD / YYYY
Case number:	______	

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 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 or its designee 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
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 [Date case filed in chapter _____ ______ MM / DD / YYYY Date case converted to chapter 11 ______] MM / DD / YYYY
Case number:	______	

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 ____________ Date Time The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location:
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 or its designee 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.

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.

TAB 6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUTPCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 21-BK-G – FORM 423

DATE: FEB. 28, 2022

Section 727(a)(11), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, P.L. 109-8, 119 Stat. 23, § 106(b)(3), directs the court to deny a discharge in a chapter 7 case to an individual debtor if:

> "(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 [subject to certain exceptions]…."

The debtor must also complete an instructional personal financial management course (again, subject to certain exceptions) to obtain a discharge in chapter 13 under § 1328(g)(1), and (for an individual debtor if § 1141(d)(3) applies) in chapter 11 under § 1141(d)(3)(C).

Rule 1007(b)(7) was adopted to reflect those 2005 amendments, and, as restyled, provides as follows:

> "(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 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)."

Bankruptcy Judge Arthur I. Harris of the N.D. Ohio submitted Suggestion 21-BK-G, in which he proposed that the rule be amended to allow submission to the court of the Certificate of Debtor Education that is provided to the debtor by the provider of that course. The Subcommittee agreed with Judge Harris that the certificate of completion issued by the provider should be acceptable evidence of completion of the required course on personal financial management, but recommended that the amendment go further and make that certificate the *only* acceptable evidence.

The Consumer Subcommittee also recommended that a debtor who is not required to complete such a course be explicitly excluded from the requirements of the rule. If the debtor has been excused from completing the course by court order, the court order will provide adequate evidence of that fact and submission of an Official Form seems unnecessary.

The Consumer Subcommittee submitted to the Advisory Committee an amendment to Rule 1007(b)(7) that would accomplish those objectives that would read as follows, suggesting publication:

"(7) ***Personal Financial-Management Course***[1]. Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition or the debtor is not required to complete such a course as a condition to discharge, an individual debtor in a 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)~~ certificate of course completion issued by the approved provider."

Advisory Committee Note

Rule 1007(b)(7) is amended in two ways. First, language is added to make the rule inapplicable to debtors who are not required to complete an instructional course concerning personal financial management as a condition to discharge. See § 727(a)(11), § 1328(g)(2), § 1141(d)(3)(C). Second, the rule is amended to require an individual debtor who has completed an instructional course concerning personal financial management to file the certificate of course completion (often called a Certificate of Debtor Education) issued by the approved provider of that course in lieu of filing an Official Form, if the provider has not notified the court that the debtor has completed the course.

The Advisory Committee remanded the suggestion to the Consumer Subcommittee to consider whether to modify the recommendation in view of references in other bankruptcy rules to the "statement" regarding completion of the personal financial management course. The Consumer Subcommittee is recommending to the Advisory Committee that conforming changes to the other rules be made rather than changing the terminology in the proposed amendment to Rule 1007(b)(7). The Advisory Committee also suggested that the Forms Subcommittee consider whether, if the proposed amendments to Rule 1007(b)(7) are adopted, Official Form 423 should be retained or eliminated.

Official Form 423 has two different certifications. In the first, the debtor certifies that the debtor completed an approved course in personal financial management, and provides the date the course was taken, the name of the approved provider, and the certificate number. Alternatively the debtor may certify that the debtor is not required to complete a course in personal financial management because the court has granted a motion waiving the requirement, and asks the debtor to identify the ground for such a waiver (incapacity, disability, active duty, or residence in a district in which the approved instructional course cannot adequately meet the debtor's needs).

[1] The changes indicated are to the restyled version of Rule 1007 included in the June 2021 Agenda Book of the Committee on Rules of Practice and Procedure (the Standing Committee) https://www.uscourts.gov/sites/default/files/2021-06_standing_agenda_book_final_6-23_0.pdf. The restyled bankruptcy rules are expected to go into effect December 1, 2024, if approved by the Standing Committee, the Judicial Conference, and the Supreme Court, and if Congress takes no action to the contrary.

As to the first certification, because the proposed amendment to Rule 10007(b)(7) makes submission of the certificate of course completion the exclusive means of satisfying the condition to discharge for an individual debtor in a chapter 7 or chapter 13 case, or in a chapter 11 case in which § 1141(d)(3)((C) applies, there is no need for the Official Form 423 submission because the certificate of course completion contains all the required information.

As to the second certification, if the court has already approved a motion excusing the debtor from the personal financial management course requirement, the court order so stating provides adequate evidence of that waiver and, again, there is no need for the Official Form 423 submission saying the same thing.

The Subcommittee recommends to the Advisory Committee that, if the proposed amendments to Rule 1007(b)(7) become effective, Official Form 423 be withdrawn.

TAB 6D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

SUBJECT: 22-BK-A –FORM 410A

DATE: FEB. 28, 2022

We received a suggestion, 22-BK-A, from Bankruptcy Judge Robert J. Faris of Hawaii who suggests that Form 410A Proof of Claim Attachment A, be modified in Part 3 (Arrearage as of Date of the Petition) to replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest."

The current version of Part 3 reads as follows:

Part 3: Arrearage as of Date of the Petition

Principal & Interest due:	________________
Prepetition fees due:	________________
Escrow deficiency for funds advanced:	________________
Projected escrow shortage:	________________
Less funds on hand: -	________________
Total prepetition arrearage:	________________

He noted that, in interpreting the amount of interest a debtor must pay on mortgage arrearages to cure and maintain under 11 U.S.C. § 1325(a), the court must determine whether the chapter 13 plan satisfies the requirements of § 1322(e), which requires that "the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." Judge Faris had recently decided in *In re* Silla, No. 21-01032, 2022 WL 243209 (Bankr. D. Hawaii Jan. 26, 2022), that the debtor must pay interest, at the contract rate, on any principal amounts that are included in the arrearage. Without regard to the merits of that case, because Form 410A does not break out principal and interest, it is left to the chapter 13 trustee to compute how much of the amount listed in Part 3 constitutes principal and how much is interest.

Making the change would place the burden on the creditor of giving the debtor and the chapter 13 trustee the information necessary to determine whether the plan is treating the creditor's claim correctly. An amended Part 3 would read as follows:

Part 3: Arrearage as of Date of the Petition

Principal due:	________________
Interest due:	________________
Prepetition fees due:	________________
Escrow deficiency for funds advanced:	________________
Projected escrow shortage:	________________
Less funds on hand: -	________________
Total prepetition arrearage:	________________

Advisory Committee Note

Part 3 of Form 410A is amended to provide for separate itemization of principal due and interest due. Because under § 1322(e) the amount necessary to cure a default is "determined in accordance with the underlying agreement and applicable nonbankruptcy law," it may be necessary for a debtor who is curing arrearages under § 1325(a)(5) to know which portion of the total arrearages is principal and which is interest.

The Instructions to Official Form 410A, in the section labelled "Information required in the Part 3: Arrearage as of the Date of the Petition," first sentence would be modified to replace the word "amount" with "amounts" and the word "portion" with "portions."

The Subcommittee recommends the amended Official Form 410A with the accompanying Advisory Committee Note and change in the Instructions to the Advisory Committee for publication.

Mortgage Proof of Claim Attachment 22-BK-A Mockup

(12/23)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information		Part 2: Total Debt Calculation		Part 3: Arrearage as of Date of the Petition		Part 4: Monthly Mortgage Payment	
Case number:	______	Principal balance:	______	Principal due:	______	Principal & interest:	______
Debtor 1:	______	Interest due:	______	Interest due:	______	Monthly escrow:	______
Debtor 2:	______	Fees, costs due:	______	Prepetition fees due:	______	Private mortgage insurance:	______
Last 4 digits to identify:	___ ___ ___ ___	Escrow deficiency for funds advanced:	______	Escrow deficiency for funds advanced:	______	Total monthly payment:	______
Creditor:	______	Less total funds on hand:	– ______	Projected escrow shortage:	______		
Servicer:	______	Total debt:	______	Less funds on hand:	– ______		
Fixed accrual/daily simple interest/other:	______			Total prepetition arrearage:	______		

Part 5 : Loan Payment History from First Date of Default

		Account Activity				How Funds Were Applied/Amount Incurred						Balance After Amount Received or Incurred				
A. Date	**B.** Contractual payment amount	**C.** Funds received	**D.** Amount incurred	**E.** Description	**F.** Contractual due date	**G.** Prin, int & esc past due balance	**H.** Amount to principal	**I.** Amount to interest	**J.** Amount to escrow	**K.** Amount to fees or charges	**L.** Unapplied funds	**M.** Principal balance	**N.** Accrued interest balance	**O.** Escrow balance	**P.** Fees / Charges balance	**Q.** Unapplied funds balance

Case number: ______________________

Debtor 1: ______________________

Part 5 : Loan Payment History from First Date of Default

		Account Activity					How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A. Date	**B.** Contractual payment amount	**C.** Funds received	**D.** Amount incurred	**E.** Description	**F.** Contractual due date	**G.** Prin, int & esc past due balance	**H.** Amount to principal	**I.** Amount to interest	**J.** Amount to escrow	**K.** Amount to fees or charges	**L.** Unapplied funds	**M.** Principal balance	**N.** Accrued interest balance	**O.** Escrow balance	**P.** Fees / Charges balance	**Q.** Unapplied funds balance

Official Form 410A

Instructions for Mortgage Proof of Claim Attachment

United States Bankruptcy Court 12/23

Introduction

This form is used only in individual debtor cases. When required to be filed, it must be attached to *Proof of Claim* (Official Form B410) with other documentation required under the Federal Rules of Bankruptcy Procedure.

Applicable Law and Rules

Rule 3001(c)(2)(A) of the Federal Rules of Bankruptcy Procedure requires for the bankruptcy case of an individual that any proof of claim be accompanied by a statement itemizing any interest, fees, expenses, and charges that are included in the claim.

Rule 3001(c)(2)(B) requires that a statement of the amount necessary to cure any default be filed with the claim if a security interest is claimed in the debtor's property.

If a security interest is claimed in property that is the debtor's principal residence, Rule 3001(c)(2)(C) requires this form to be filed with the proof of claim. The form implements the requirements of Rule 3001(c)(2)(A) and (B).

If an escrow account has been established in connection with the claim, Rule 3001(c)(2)(C) also requires an escrow statement to be filed with the proof of claim. The statement must be prepared as of the date of the petition and in a form consistent with applicable nonbankruptcy law.

Directions

Definition

This form must list all transactions on the claim from the *first date of default* to the petition date. The *first date of default* is the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage, unless the note was subsequently brought current with no principal, interest, fees, escrow payments, or other charges immediately payable.

Information required in Part 1: Mortgage and Case Information

Insert on the appropriate lines:

- the case number;
- the names of Debtor 1 and Debtor 2;
- the last 4 digits of the loan account number or any other number used to identify the account;
- the creditor's name;
- the servicer's name, if applicable; and
- the method used to calculate interest on the debt (i.e., fixed accrual, daily simple interest, or other method).

Information required in Part 2: Total Debt Calculation

Insert:

- the principal balance on the debt;
- the interest due and owing;
- any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing; and
- any *Escrow deficiency for funds advanced*—that is, the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed.

If the secured debt has merged into a prepetition judgment, the principal balance on the debt is the remaining 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.

Also disclose the *Total amount of funds on hand*. This amount is the total of the following, if applicable:

- a positive escrow balance,
- unapplied funds, and
- amounts held in suspense accounts.

Total the amounts owed—subtracting total funds on hand—to determine the total debt due.

Insert this amount under *Total debt*. The amount should be the same as the claim amount that you report on line 7 of Official Form 410.

Information required in the Part 3: Arrearage as of the Date of Petition

Insert the amounts of the principal and interest portions of all prepetition monthly installments that remain outstanding as of the petition date. The escrow portion of prepetition monthly installment payments should not be included in this figure.

Insert the amount of fees and costs outstanding as of the petition date. This amount should equal the *Fees/Charges balance* as shown in the last entry in Part 5, Column P.

Insert any *escrow deficiency for funds advanced*. This amount should be the same as the amount of *escrow deficiency* stated in Part 2.

Insert the *Projected escrow shortage* as of the date the bankruptcy petition was filed. The *projected escrow shortage* is the amount the claimant asserts should exist in the escrow account as of the petition date, less the amount actually held. The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O.

This calculation should result in the amount necessary to cure any prepetition default on the note or mortgage that arises from the failure of the borrower to satisfy the amounts required under the Real Estate Settlement Practices Act (RESPA). The amount necessary to cure should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines. The amount of the projected escrow shortage should be consistent with the escrow account statement attached to the *Proof of Claim*, as required by Rule 3001(c)(2)(C).

Insert the amount of funds on hand that are unapplied or held in a suspense account as of the petition date.

Total the amounts due listed in Part 3, subtracting the funds on hand, and insert the calculated amount in *Total prepetition arrearage*. This should be the same amount as "Amount necessary to cure any default as of the date of the petition" that your report on line 9 of Official Form 410.

Information required in Part 4: Monthly Mortgage Payment

Insert the principal and interest amount of the first postpetition payment.

Insert the monthly escrow portion of the monthly payment. This amount should take into account the receipt of any amounts claimed in Part 3 as escrow deficiency and projected escrow shortage. Therefore, a claimant should assume that the escrow deficiency and shortage will be paid through a plan of reorganization and provide for a credit of a like amount when calculating postpetition escrow installment payments.

Claimants should also add any monthly private mortgage insurance amount.

Insert the sum of these amounts in *Total monthly payment*.

Information required in Part 5: Loan Payment History from the First Date of Default

Beginning with the First Date of Default, enter:

- the date of the default in Column A;
- amount incurred in Column D;
- description of the charge in Column E;
- principal balance, escrow balance, and unapplied or suspense funds balance as of that date in Columns M, O, and Q, respectively.

For (1) all subsequently accruing installment payments; (2) any subsequent payment received; (3) any fee, charge, or amount incurred; and (4) any escrow charge satisfied since the date of first default, enter the information in date order, showing:

- the amount paid, accrued, or incurred;
- a description of the transaction;
- the contractual due date, if applicable;
- how the amount was applied or assessed; and
- the resulting principal balance, accrued interest balance, escrow balance, outstanding fees or charges balance, and the total unapplied funds held or in suspense.

If more space is needed, fill out and attach as many copies of *Mortgage Proof of Claim Attachment: Additional Page* as necessary.

Committee Note

Part 3 of Form 410A is amended to provide for separate itemization of principal due and interest due. Because under § 1322(e) the amount necessary to cure a default is “determined in accordance with the underlying agreement and applicable nonbankruptcy law,” it may be necessary for a debtor who is curing arrearages under § 1325(a)(5) to know which portion of the total arrearages is principal and which is interest.

TAB 6E

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: CONFORMING AMENDMENTS TO OFFICIAL FORM 417A (NOTICE OF APPEAL)

DATE: MARCH 4, 2022

Last August the Standing Committee published for comment amendments to Official Form 417A that were proposed to conform to amendments proposed for Rule 8003. The proposed amendments and Committee Note follow this memorandum in the agenda book.

No comments were submitted on the proposed amendments to the form or to the rule.

The Subcommittee recommends that the Advisory Committee give its final approval to the proposed amendments to Official Form 417A, as published, and that it ask the Standing Committee to do the same.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
   ____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- ❑ Plaintiff
- ❑ Defendant
- ❑ Other (describe) ________________________

For appeals in a bankruptcy case and not in an adversary proceeding.

- ❑ Debtor
- ❑ Creditor
- ❑ Trustee
- ❑ Other (describe) ________________________

Part 2: Identify the subject of this appeal

1. Describe the judgment—or the appealable order or decree—from which the appeal is taken:
   ____

2. State the date on which the judgment—or the appealable order or decree—was entered:
   ____

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: ____________________ Attorney: ______________________________
   ____
   ____
   ____

2. Party: ____________________ Attorney: ______________________________
   ____
   ____
   ____

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ❑ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

____ Date: ______________________

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney
(or appellant(s) if not represented by an attorney):
____
____
____
____

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[**Note to inmate filers:** If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

Committee Note

Parts 2 and 3 of the form are amended to conform to wording in the simultaneously amended Rule 8003. The new wording is intended to remind appellants that appeals as of right from orders and decrees are limited to those that are "appealable"—that is, either deemed final or issued under § 1121(d). *See* 28 U.S.C. § 158(a)(2). It also seeks to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires identification of only "the judgment—or the appealable order or decree—from which the appeal is taken."

TAB 6F

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: COMMENTS ON PROPOSED FORMS TO IMPLEMENT PROPOSED AMENDMENTS TO RULE 3002.1

DATE: MARCH 4, 2022

Last August the Standing Committee published for comment proposed Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R. They were proposed to implement proposed amendments to Rule 3002.1 that would create new procedures for a mid-case and end-of-case determination of the status of a home mortgage claim in a chapter 13 case.

Nine comments were submitted on the proposed forms. Summaries of those comments are attached to this memo.

The comments received on the underlying rule amendments, like those on the proposed forms, expressed a range of views and in some cases were quite detailed. As reported elsewhere in the agenda book, the Consumer Subcommittee is still in the process of considering the comments and deciding what revisions to the published rule amendments to recommend.

Because the amendments to Rule 3002.1 that the forms in question implement remain in flux, this Subcommittee decided to defer its consideration of the comments on the forms until decisions about the rule amendments have been made. It hopes to be able to make its recommendations about any needed revisions to the forms at the fall Advisory Committee meeting.

Comments on Published Rule 3002.1 Related Forms

Kyle Craddock (BK-2021-0017) – Forms 410C13-1R and 410C13-10R would be improved by requiring the mortgage lender to provide the current principal balance. This is by far the most common question I receive from clients at the end of a successful chapter 13. Since the mortgage servicer is filing a response after looking at its records, this would be an excellent time to have it provide this information. Otherwise, we have to send them RESPA requests, or just wait for billing statements to resume.

Form 410C13-10NC doesn't make sense to me. What is the trustee certifying? They are going to want to get records from the debtors that (while I agree should be available) I can imagine often being less than helpful/complete/correct.

Henry Hildebrand (BK-2021-0018) – Some of my trustee colleagues in non-conduit jurisdictions are reluctant to initiate the "true-up" if they lack the records to back them up. I believe that the proposed rule as drafted would work in both situations – "conduit" and "non-conduit" – by changing the Official Form 410C13-10NC language in section 6 (the prayer section) as follows:

> 6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage. I also ask the court to determine the status of the long-term mortgage obligation treated in the Plan and whether the payments required by the plan have been made.

National Consumer Law Center Inc. (BK-2021-2022) – The current Notice of Payment Change, Official Form 410S1, provides for disclosure of only one payment amount, the "New total payment." We recommend that Official Form 410S1 be modified to include a disclosure of the one-time "next payment" that includes the reconciliation amount under Rule 3002.1(b)(3)(C), and a separate disclosure of the new payment amount without reconciliation under Rule 3002.1(b)(3)(D). Alternatively, a committee note should be added that instructs claim holders to make appropriate modifications to Official Form 410S1 in order to comply with the HELOC requirements.

Proposed Official Form 410C13-1R is the form the claim holder files in response to the trustee's notice for midcase review. In part 4 of the form, if the claim holder disagrees with the trustee's notice, it must provide an itemized payment history, and the form lists the items to be provided. We suggest that the form require that the payment history information be provided in the same format as used on Official Form 410A, prepared with payment information from the filing of the petition through the date of the response. This would ease compliance, as mortgage servicers are accustomed to preparing payment histories in this format.

Corrine Bielejeski (BK-2021-0002-0024) – The new forms overcomplicate the matter. The current forms do a good job of explaining whether debtors are current and what a creditor believes is the payment history. The proposed form for the end-of-case motion, particularly as it relates to nonconduit cases, asks trustees to make factual statements that they may not have the

information to report. I suggest keeping the current notice procedure or limiting any end of case motions to the information they have – namely what payments have been made to them. In non-conduit cases, this may mean they are asking the court to determine the status of the loan, not asking the court to determine that debtors are current.

Beverly Burden (BK-2021-0002-0026) – The trustee can easily file a motion to determine the status of the mortgage to get the process started. By filing such a motion in accordance with the rule, the trustee does not need to make any statement of fact; the trustee does not need to ask that the debtor be deemed current in their mortgage. To the extent the proposed forms require non-conduit trustees to make these allegations, the forms are flawed.

Neil Jonas (BK-2021-0002-0030) – The proposed Form 410C13-10NC refers to either the trustee or the debtor making the "ongoing post-petition mortgage payments." But as the comment to the rule points out, reverse mortgages do not necessarily have ongoing mortgage payments. So, regardless of the supposed expanded scope of the rule, the forms do not accommodate reverse mortgages.

James Davis (BK-2021-0002-0031) – Mid-case forms. In Part 1, add a line to specify the servicer, if different than the claim holder, at least on the claimholder response form.

In Part 2, add lines to both forms for arrearages that arise postpetition but preconfirmation ("gap" arrearages). In some districts (including the Middle District of Tennessee), the standard practice is to include preconfirmation payments in the arrearage. Confusion about the accounting for these amounts is probably the most common source of discrepancies between the records of the trustee and claim holders. Also include lines on both forms for postpetition fees, expenses, and charges.

In Part 3 of both forms, the term "current" might be confusing. Does it refer to the payment for the month of the notice, even if a payment change is taking effect with the next disbursement? If the payments are in default, is it the payment the trustee would be making if the claim were current?

In Part 4 of the form for the trustee's notice, the Official Form is identified as 410C13-R. The form number at the top of the proposed form is 410C13-1R.

End-of-case forms. As with the mid-case forms, add a line to specify the servicer if different than the claimholder, at least on the claimholder response form.

Paragraph 6 of the conduit trustees' motion asks the court to determine the status as of the date of the motion. Under the rule's timeline, however, the trustee might be making this request after a post-bankruptcy payment has come due. I would suggest either revising the form to request a determination of the status as of the last disbursement by the trustee or to incorporate the language from the non-conduit form acknowledging that the request relies on information the trustee might not have.

The nonconduit form seems to assume that nonconduit trustees would pay any allowed postpetition fees, expenses, or charges. Is that correct, or should the form reflect the possibility that a nonconduit trustee might not disburse those amounts?

Pam Bassel (BK-2021-0002-0025) – Midcase forms: Official Form 410C13-1N (the trustee's form) should include an "as of" date. For example, "As of the date of the filing of this Midcase Notice, the status of the Mortgage Claim is as follows." If a specific date is not given, my office's experience with our midcase notice procedure is that the claim holder will file responses that could be avoided. For example, when a payment comes due after the midcase notice is filed, but before a response is filed, the claim holder, not wanting to create a waiver argument, files a response stating that this additional payment has come due since the filing of the trustee's notice. Setting out a specific date avoids this problem and provides the parties with a true snapshot of the mortgage status as of a date certain.

As drafted, the form for the Trustee's Midcase Notice breaks the possible payments by the trustee to a claim holder into only two potential components of the claim, prepetition arrears and postpetition ongoing payments. However, the mortgage industry specifically requested that on the payment vouchers the trustees send to them, we break our disbursements into various components of the claim, and the trustees accommodated the industry. The components into which a claim can be divided, whether the case is conduit or non-conduit, are the ongoing postpetition payments; prepetition arrears; gap period payments (conduit cases only); postpetition arrears; and fees, expenses, or charges asserted per Rule 3002.1. When the total debt is paid through the plan by the trustee, the claim components are the principal and interest paid on the claim; the remaining principal balance; and fees, expenses, or charges. All the possible components of the claim may not be relevant in each case. However, only by including all the possible claim components in the trustee's midcase notice will you get a true snapshot of the status of the claim.

Because a variety of possibilities exist about who the disbursing agent is on various components of the claim, it really is a bit of a misnomer to divide mortgage loan repayment into "conduit" and "non-conduit." For example, you might have a case in which the debtor is paying the ongoing postpetition payments, but the trustee is disbursing on prepetition arrears and postpetition arrears. You could have a case in which the trustee is disbursing the ongoing postpetition payments, but the debtor is paying the fees, expenses, and charges directly to the claim holder. It is more accurate to divide the components of a claim into the categories of "disbursed by the trustee" or "disbursed by the debtor."

Regarding the ongoing postpetition mortgage payments, on the midcase notice form as proposed, the trustee selects whether these payments are made by the debtor or the trustee and, if made by the trustee, we are required to provide the current monthly payment amount and the next due date for the ongoing payments. Regarding the date, after the phrase "Next mortgage payment due," it would be helpful if the day of the month were deleted. Trustees generally disburse once a month. So, even if the debtor's ongoing payment is contractually due on the tenth of the month, my office will disburse that payment as if it is due on the first. It would cause the trustees' offices less administrative headache to just recite the month/year since many of us to do

not rely on the specific day of the month a payment is due per the mortgage note or even have the actual contractual due date of the mortgage payment in our database.

If the debtor is making ongoing payments to the claim holder, there is nothing in the midcase notice form about the status of those direct payments. None of the trustees will have the information needed to state the status of payments made by the debtor. The way we handle that in my district is that our notice states "The ONGOING POST-PETITION MORTGAGE PAYMENTS are to be paid directly by the Debtor. The Trustee has no knowledge of the status of those Ongoing Payments, or any Post-petition Arrearage thereon. IF A RESPONSE IS NOT FILED THE DEBTOR'S ONGOING MORTGAGE PAYMENT WILL BE DEEMED CURRENT." This language avoids the trustee making assertions about which he/she has no knowledge but makes it clear to the claim holder that if no response is filed, the ongoing payments will be deemed current as of the date the notice/motion was filed.

It is next to impossible to create a form pleading that covers every possible situation. In the trustee's notice and the claim holder's response forms, it would be helpful if there was a non-standard language section in which the trustee could include any other pertinent information which he/she believes should be part of the pleading.

End-of-case forms: Official Form 410C13-10C. The form should include an "as of" date or a statement that this is the status of the mortgage as of the date the Motion is filed as discussed previously. Also, it would be helpful if the motion included a clear response deadline.

Paragraph 1 **-** There is no need for the trustee to attach a copy of the disbursement ledger if it is available online. The trustee could instead provide the web address to access the ledger.

Paragraph 3 **-** Since the mortgage industry specifically requested the trustees to include a separate component for gap period payments and the trustees did that, to get a complete picture of what has been paid, that component should be included in this paragraph. Also, why are the trustees being asked to total the amount of arrears paid [see 3(e)]? If we set out the correct claim components and how much was paid on each, this is unnecessary.

Paragraph 5 – Same comment as above about deleting the precise day of the month that the next payment is due.

Paragraph 6 **-** On the last line, the word "allowed" should be inserted before the words "postpetition fees, etc." Some fees, expenses, and charges could have been disallowed during the pendency of the case.

Include a non-standard language section in the motion for the reasons stated previously regarding the midcase notice/motion.

Official Form 410C13-10NC. Even those of us who are in conduit jurisdictions will still be handling non-conduit cases because not every debtor is required to be a conduit debtor. It depends on the status of the loan when the case is filed.

Include an "as of" date or a statement that this is the status of the mortgage as of the date the motion. The motion should also include a response deadline.

Paragraphs 1 and 3 – Same comments as on the conduit motion form.

Paragraphs 5 and 6 **-** The prayer requires the trustee to ask for a finding about which the trustee has no personal knowledge: whether all post-petition ongoing payments have been made and, in some cases, whether all fees, expenses, and charges or all postpetition arrears have been paid. Many trustees have expressed the concern that including matters in the prayer about which the trustee has no personal knowledge is a violation of Rule 9011. I do not agree with that analysis, but the problem could be solved by revising paragraph 5 to read:

> The trustee has no knowledge of the status of any payments made by the debtor directly to the claim holder. IF A RESPONSE TO THIS MOTION IS NOT FILED BY THE CLAIM HOLDER, ALL PAYMENTS THE DEBTOR WAS REQUIRED TO MAKE DIRECTLY TO THE CLAIM HOLDER SHALL BE DEEMED CURRENT AS OF THE DATE OF THE FILING OF THIS MOTION.

Paragraph 6 could be amended to read:

> Therefore, the trustee asks the court for an order under Rule 3002.1(h) determining that, as of the date of the filing of this motion, (1) the prepetition arrears and (2) any postpetition arrears and/or allowed postpetition fees, expenses and charges have been paid in full by the trustee, if the trustee was the disbursing agent for those payments. The trustee asks for a further order of this court that, unless disputed by the claim holder, all payments the debtor was required to make directly to the claim holder (about which the trustee has no personal knowledge) have been paid in full and that the debtor is current on all payments to the claim holder as of the date of the filing of this motion.

Include a non-standard language section.

Official Form 410C13-10R. For consistency, the response form should contain all the information that the rule requires to be included in the order [see 3002.1(h)(4)(A)(iii)]. The rule requires a breakdown of the next payment due, separately identifying the amount due for principal, interest, mortgage insurance, taxes, and other escrow amounts, as applicable. This breakdown should be included in the claim holder's response. A good place for this would be paragraph 3, underneath the line that reads "Amount of the next postpetition payment that is due:". Delete the reference to 1322(b)(5) both places it appears. There is no need for that reference, and it adds confusion.

It would be helpful if the claim holder reported, as separate line items, unpaid fees, expenses, or charges; negative escrow amounts; and costs due and owing, instead of adding all of those figures together and reporting only the total.

Include a non-standard language section.

Mortgage Bankers Association (BK-2021-0002-0035) – Add more space on the response forms for the claim holder's explanation of why it disagrees.

TAB 7

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER INSOLVENCY

SUBJECT: SUGGESTIONS REGARDING THE USE OF ELECTRONIC SIGNATURES AND ELECTRIC FILING BY PRO SE LITIGANTS

DATE: MARCH 4, 2022

The Subcommittee met virtually on January 31 to continue its consideration of the suggestion (20-BK-E) by the Committee on Court Administration and Case Management ("CACM") regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account, along with suggestions by Sai (21-BK-H and 21-BK-I) regarding electronic filing and the use of electronic signatures by self-represented individuals. This memorandum reviews the Advisory Committee's discussion of the suggestions at the fall 2021 meeting, reports on developments since that meeting, and then discusses the Subcommittee's decision to recommend that no action be taken now on the CACM suggestion.

I. Discussion at the Fall Meeting

The Subcommittee presented the following preliminary draft of an amendment to Rule 5005(a)(2)(C) for discussion:

(C) *Signing.*

> (i) A filing made through a person's electronic-filing account and authorized by ~~that~~ the person whose signature appears on the document, together with that person's name on a signature block, constitutes the person's signature.
>
> (ii) A filing under (i) is authorized by a person other than the account holder if—prior to filing—the account holder receives the document with the person's actual signature affixed or the person's signature affixed through a commercially available electronic signing technology that maintains an

> audit trail and other security features to ascertain the authentic identity of the signer. The account holder must retain the signed document for *x* years from the case's closing.

Discussion of the proposal brought up several questions and concerns. Among the issues raised were how the proposed rule would apply to documents, such as stipulations, that are filed by one attorney but bear the signature of other attorneys; how it would apply to proofs of claim; how it would apply if a CM/ECF account includes several subaccounts; and whether there is really a perception among attorneys that the retention of wet signatures presents a problem that needs solving. Some also noted that retention requirements may be imposed by rules of professional responsibility and thus might not be appropriate for a national rule.

The Advisory Committee agreed with the Subcommittee that the question of electronic signatures of pro se debtors presents different issues and should be considered separately. If a local rule allows pro se debtors to file electronically through CM/ECF, they are covered by Rule 5005(a)(2)(C), and their electronic signature would be treated the same as an attorney with a CM/ECF account. Some Advisory Committee members thought that expansion of pro se litigants' rights to have CM/ECF accounts—either on a full or limited basis—might be appropriate.

II. Developments Since the Fall Meeting

1. After the round of fall advisory committee meetings, Judge Bates asked the Standing Committee's reporter, Professor Cathie Struve, to convene a working group composed of the reporters for the various advisory committees and AO staff to coordinate the advisory committees' consideration of pending suggestions regarding electronic filing by pro se litigants. In a memo to the group, Professor Struve explained as follows:

> Under the national electronic-filing rules that took effect in 2018, pro se litigants presumptively must file non-electronically, but they can file

> electronically if authorized to do so by court order or local rule. The question is whether developments since 2018 provide a reason to depart from this policy. One question is whether the time has come to adopt national rules that presumptively permit pro se litigants to file electronically. Another question is whether to adopt something short of presumptive permission, such as a provision setting a standard for the courts to apply in ruling on pro se litigants' requests for permission to file electronically.
>
> The advisory committees have before them various proposals along these lines. At recent meetings, advisory committees have expressed interest in seeing how their sister committees handle the issue before acting themselves. Accordingly, Judge Bates has asked me to convene a cross-committee group composed of the reporters to the relevant advisory committees, plus AO staff, to coordinate the committees' next steps.

The group met on December 16, together with researchers from the Federal Judicial Center ("FJC"), and discussed what information might be useful to the advisory committees as they assess current proposals for expanding pro se litigants' access to electronic filing and how that information might be gathered. It was agreed that the FJC would begin gathering information about existing practices regarding pro se electronic filing by conducting interviews of bankruptcy and district court clerks from a variety of districts. The working group will meet again before the spring advisory committee meetings, and the FJC will provide an interim report in mid-March before the working group meeting.

2. Following up on questions raised at the fall meeting about what problem the Committee is being asked to solve, the reporter spoke with Judge Vincent Zurzolo (Bankr. C.D. Cal.) on January 18. It was his inquiry to CACM that led to CACM's suggestion to the Advisory Committee, and therefore there was interest in learning what problems he thought a rule amendment needed to address.

Judge Zurzolo is on a local court committee with members of the bar, and he raised with that group the issue about electronic signatures because he thought the courts were out of step with modern commerce by still requiring the retention of wet signatures, rather than using some

kind of electronic signature product, like DocuSign. He said that there was mild concern among the lawyers about having to retain wet signatures, but a stronger interest in facilitating the electronic filing of documents such as stipulations, where the filing attorney files a document with other attorneys' signatures.

Judge Zurzolo discovered that the California state courts have a rule about electronic signatures that allows them in place of the retention of wet signatures under certain circumstances (rule available here). It defines "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means," and when used in place of retention of a wet signature, "the electronic signature must be unique to the declarant [or person using it], capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated." Judge Zurzolo is in the process of drafting a possible local rule for his court along these same lines.

3. Further research revealed that the retention of wet signatures is not generally covered by state ethics rules.

III. The Subcommittee's Discussion and Recommendation

Pro se litigants. The Subcommittee previously recommended that Sai's suggestion to revisit the electronic filing rights of pro se litigants not be pursued. That decision was based largely on the fact that the various sets of federal rules had recently been amended to address this issue, leaving the decision regarding such rights up to individual districts. Now that it appears, however, that the other advisory committees will be considering suggestions to possibly expand the use of electronic filing by pro se litigants on a national basis and a working group has been

established to coordinate these efforts, the matter is back on the Subcommittee's agenda. Such consideration is also appropriate in light of comments of some Advisory Committee members last fall in support of allowing pro se litigants to file electronically.

For now, however, the issues of electronic filing and the use of electronic signatures by pro se litigants has been temporarily put to one side. The Subcommittee's consideration of these issues will await the results of the research being undertaken by the FJC and indications of the approaches that the other advisory committees are going to pursue.

Use of electronic signatures as an alternative to retaining wet signatures. This is the central issue concerning the use of electronic signatures by persons without CM/ECF accounts: When will the electronic signature itself—without the existence of a wet signature—constitute a valid signature under the rules that will also be sufficient for any subsequent prosecution for perjury or making a false oath?

The approach that the Subcommittee presented to the Advisory Committee in the fall would have authorized such signatures filed through someone else's CM/ECF account if the account holder received the document prior to filing and retained it, with "the person's signature affixed through a commercially available electronic signing technology that maintains an audit trail and other security features to ascertain the authentic identity of the signer." This approach is not unlike that taken by the California state courts. Under Rule 2.257(b)(1), "if the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated." Both approaches therefore accept a signature as valid on a document filed electronically by someone other than the signer if there is a sufficient basis to assure its authenticity.

Before focusing on the details of any such rule, however, the Subcommittee discussed what it considered to be a fundamental question that has yet to be resolved by the Advisory Committee: Does a problem exist under current practices that needs a national rule solution? Attorneys can file documents in the bankruptcy courts electronically, and the use of their CM/ECF account provides the basis for accepting their electronic signatures as valid. If they electronically file documents that their client or another individual has signed, they generally must retain the original document with the wet signature. To date, the Advisory Committee has not received a suggestion from any bankruptcy attorney that the current procedures are causing problems.

Judge Zurzolo's inquiry to CACM about the use of electronic signatures seems to have been based more on the desire to bring bankruptcy courts into the modern age of e-signing rather than on concerns he heard from attorneys about having to retain wet signatures. The suggestion from CACM does note that in 2013 it had suggested that "courts' local rules varied in their requirements to retain original paper documents bearing 'wet' signatures, and that these varying practices posed problems for attorneys that file in multiple districts." Comments in response to the Advisory Committee's earlier electronic-signature proposal, however, did not produce comments bearing out that concern. CACM's current suggestion is based on concern that the absence of a provision in Rule 5005 regarding the electronic signatures of individuals without CM/ECF accounts may make courts "hesitant to make such a change without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes."

The Subcommittee concluded that current Rule 5005 does not address the issue of the use of electronic signatures by individuals who are not registered users of CM/ECF and that it therefore does not preclude local rulemaking on the subject. The Bankruptcy Court for the District of Nebraska already has such a rule (L.B.R. 9011-1), and other courts, such as Bankruptcy Court for the Central District of California, may adopt such rules in the future. The Subcommittee concluded that a period of experience under local rules allowing the use of e-signature products would help inform any later decision to promulgate a national rule. Electronic signature technology will also likely develop and improve in the interim.

For those reasons, the Subcommittee recommends that no further action be taken on the CACM suggestion.

TAB 8

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: TIMING OF POSTJUDGMENT MOTIONS IN BANKRUPTCY PROCEEDINGS HEARD INITIALLY BY THE DISTRICT COURT

DATE: MARCH 4, 2022

In response to a recent First Circuit decision, Professor Cathie Struve—reporter for the Standing Committee—raised with the reporters an issue that involves the overlap of the bankruptcy, civil, and appellate rules. The issue is whether, in a bankruptcy proceeding heard and decided by a district court, the time for filing postjudgment motions of the type that toll the period for filing a notice of appeal should be 14 days, as in the bankruptcy court, or should be 28 days because of the longer time for taking an appeal from the district court. Because the resolution of this issue likely requires either amending Bankruptcy Rules 7052 (Amended or Additional Findings), 9015(c) (Renewed Motion for Judgment as a Matter of Law), and 9023 (New Trials) or recommending that the Federal Rules of Appellate Procedure be amended, it was referred to this Subcommittee for consideration.

Below the memo briefly discusses the First Circuit decision and explains in more detail the issue raised. It then discusses the options that the Subcommittee considered and concludes with its recommendation to the Advisory Committee.

I. *In re* Lac-Mégantic Train Derailment Litigation

The litigation arose out of a train collision that occurred in Canada, after which one of the railroads involved filed for bankruptcy in the District of Maine. Acting pursuant to 28 U.S.C. § 157(b)(5), the district court ordered the transfer of all of the personal injury actions against the debtor and others to that district and exercised jurisdiction over the bankruptcy case and

proceedings. After a settlement was reached and a plan confirmed, the one remaining defendant (a non-debtor) moved to dismiss the proceeding against it for lack of personal jurisdiction. The district court granted the defendant's motion and denied the plaintiffs' motion to file an amended complaint.

Twenty-eight days after the entry of final judgment, plaintiffs moved for reconsideration of the order denying leave to file an amended complaint. The court denied the motion, and plaintiffs filed a notice of appeal. Although the First Circuit opinion does not say so, the notice was apparently filed within 30 days after the denial of reconsideration.

The First Circuit ended up dismissing the appeal for lack of appellate jurisdiction. 999 F.3d 72, 84 (2021). The Court held that the Bankruptcy Rules, not the Civil Rules, apply in a noncore proceeding heard by a district court and that under Bankruptcy Rule 9023, a motion for reconsideration must be filed within 14 days after the entry of judgment. Because plaintiffs' motion for reconsideration was untimely, it did not toll the time for appealing under FRAP 4(a). The notice of appeal was therefore untimely, since it was filed more than 30 days after the original entry of judgment, and the court lacked appellate jurisdiction.

II. The Issue Considered by the Subcommittee

In calling the *Lac-Mégantic* case to the reporters' attention, Professor Struve pointed out a potential problem caused by the different time periods for filing postjudgment motions under Civil Rules 50, 52, and 59 (28 days) and their bankruptcy counterparts, Rules 7052, 9015(c), and 9023 (14 days). Under FRAP 4(a)(4)(A), the listed postjudgment motions toll the time for filing a notice of appeal if "a party files in the district court any of [those] motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules." According to FRAP 6(a), that rule applies when an appeal is taken from a district court's exercise of

jurisdiction under 28 U.S.C. § 1334.[1] But Prof. Struve questioned which time period applies in such cases. If applied literally—using the time allowed by the Civil Rules—Rule 4(a)(4)(A) would allow motions that are untimely under Rules 7052, 9015(c), and 9023 to toll the time for filing a notice of appeal from a bankruptcy proceeding in the district court. On the other hand, if the bankruptcy time periods must be complied with, an inconsistency appears to be created with Rule 4(a)(4)(A)'s provision for tolling when motions are timely under the Civil Rules.

Until 2009 the time for filing postjudgment motions under the Civil and Bankruptcy Rules was the same—within 10 days after entry of judgment. Then in 2009, the time limit for such motions was changed to 14 days in Bankruptcy Rules 7052, 9015(c), and 9023 as a result of the time computation project that changed rules deadlines of less than 30 days to multiples of 7. The deadlines in Civil Rules 50, 52, and 59, however, were changed to 28 days at that time because, as explained by the committee notes, "Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays." The reason for not similarly extending the parallel Bankruptcy Rules was explained as follows: The new Civil Rule "deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment." 2009 Committee Note to Rules 7052, 9015, and 9023.

[1] Although the *Lac-Mégantic* case was a noncore proceeding, FRAP 6(a) applies to all exercises of jurisdiction by a district court under 28 U.S.C. § 1334, including over core proceedings in which the reference to the bankruptcy court is withdrawn and noncore proceedings in which the bankruptcy court makes proposed findings of fact and conclusions of law.

In choosing not to propose the 28-day deadline for postjudgment motions under the Bankruptcy Rules, the Advisory Committee focused on the deadline for filing notices of appeal under Rule 8002(a). That deadline applies to appeals from the bankruptcy court to the district court or bankruptcy appellate panel, but not to appeals from a district court's exercise of jurisdiction under 28 U.S.C. § 1334. Appellate Rule 6(a) provides that the 30-day deadline of FRAP 4(a) applies in that situation, just as it does in appeals of civil cases from the district court to the court of appeals.

III. Possible Ways to Address the Issue

One possibility the Subcommittee considered to make clear that the current bankruptcy deadlines for postjudgment motions apply under FRAP 4(a)(4)(A) in bankruptcy proceedings heard by a district court was to suggest that the Appellate Rules Advisory Committee consider an amendment to Rule 4(a)(4)(A) along the following lines:

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

* * * * *

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure or Federal Rules of Bankruptcy Procedure—and does so within the time allowed by ~~those~~ the applicable rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

* * * * *

While subparagraph (A)(vi) includes a 28-day deadline, an amendment to the rule published last August would change the wording of that provision to "for relief under Rule 60 if the motion is filed within the time allowed for filing a motion under Rule 59." The amendment was proposed to address situations in which extensions of deadlines for postjudgment motions are granted under the civil emergency rule, but the elimination of a specific deadline would accommodate inclusion of a shorter bankruptcy deadline.

An alternative approach considered was to suggest an amendment to FRAP 6(a) as follows:

Rule 6. Appeal in a Bankruptcy Case

> **(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case.** An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules. <u>The reference in Rule 4(a)(4)(A) to the time allowed by the Federal Rules of Civil Procedure must be read as a reference to the time allowed by the Federal Rules of Civil Procedure as shortened, for some types of motions, by the Federal Rules of Bankruptcy Procedure.</u>

* * * * *

Either of these proposals would have the advantage of clarifying that the Bankruptcy Rules' deadlines for postjudgment motions apply to bankruptcy proceedings heard by the district court and perhaps, more broadly, of alerting practitioners that the Bankruptcy Rules apply throughout such a proceeding. Either approach would also involve the amendment of only one rule.

Whether FRAP 4 or 6 is proposed for amendment, the issue arises whether a 14-day deadline *should* apply in the district court when the time for filing an appeal is 30 days, not 14.

The Advisory Committee's rationale for not accepting a 28-day deadline under Rules 7052, 9015(c), and 9023 does not apply in this situation, so the Subcommittee considered whether, instead of suggesting a FRAP amendment, those Bankruptcy Rules should be amended to draw a distinction between proceedings heard by the district court and those heard by the bankruptcy court.[2] The three rules might be proposed for amendment as follows[3]:

Rule 7052. Findings and Conclusions by the Court; Judgment on Partial Findings.

Fed. R. Civ. P. 52 applies in an adversary proceeding—except that when a proceeding is heard and decided by a bankruptcy court, a motion under Fed. R. Civ. P. 52(b) to amend or add findings must be filed within 14 days after the judgment is entered. The reference in Fed. R. Civ. P. 52(a) to entering a judgment under Fed. R. Civ. P. 58 must be read as referring to entering a judgment or order under Rule 5003(a).

Rule 9015. Jury Trial.

* * * * *

(c) Judgment as a Matter of Law; Motion for a New Trial. Fed. R. Civ. P. 50 applies in a bankruptcy case or proceeding—except that when a proceeding is heard and decided by a bankruptcy court, a renewed motion for judgment, or a request for a new trial, must be filed within 14 days after the judgment is entered.

Rule 9023. New Trial; Amending a Judgment.

(a) By Motion. Except as this rule and Rule 3008 provide otherwise, Fed. R. Civ. P. 59 applies in a bankruptcy case; however, when a proceeding is heard and decided by a bankruptcy court, ~~. A~~ a motion for a new trial or to alter or amend a judgment must be filed within 14 days after the judgment is entered. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.

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[2] FRAP 4(a)(4)(A) also refers to the time for filing a motion "for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58." That provision does not present a conflict with the Bankruptcy Rules because Rules 7054(b)(2) and 7058 make the relevant Civil Rules applicable in adversary proceedings without alteration.

[3] The rules are shown as currently proposed for restyling.

(b) **By the Court.** When a proceeding is heard and decided by a bankruptcy court, ~~Within 14 days after judgment is entered,~~ the court may, on its own, order a new trial within 14 days after judgment is entered. When it is heard and decided by a district court, the court may do so within the time stated in Fed. R. Civ. P. 59(d).

This approach has some disadvantages. Even though the style consultants may be able to improve on the wording, the amendments, especially to Rule 9023, are somewhat cumbersome. Also, this would be the first time that the Bankruptcy Rules make a distinction between procedures in the bankruptcy court and in the district court (when not required by statute or the Constitution). Finally, there is usually a desire for expedition in bankruptcy cases, including in knowing whether there will be any appeals from final judgments. A 28-day, rather than 14-day, deadline for postjudgment motions could increase the time for obtaining a ruling and therefore the time for appealing.

The Subcommittee also considered whether to recommend that no action be taken on this matter. It is not a problem that either judges or practitioners have identified, so perhaps the issue raised is not a pressing matter. There is also a convoluted argument that no problem exists with the current wording of FRAP 4(a)(4)(A): The rule requires compliance with the deadlines provided in the Federal Rules of Civil Procedure. Fed. R Civ. P. 81(a)(2) provides that "[t]hese rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure." So, it might be argued, by this indirect method the time limits in Bankruptcy Rules 7052, 9015(c), and 9023 have been incorporated into the Federal Rules of Civil Procedure for bankruptcy proceedings in the district court.

The Subcommittee, however, rejected the view that no action is needed. Because—as the *Lac-Mégantic* case illustrates—confusion about the deadlines for postjudgment motions can

result in the loss of the right to appeal, clarification in either the Bankruptcy or Appellate Rules seems warranted.

IV. Recommendation

The Subcommittee recommends that the Advisory Committee ask the Advisory Committee on Appellate Rules to consider amending FRAP 6(a) along the lines suggested on p. 5. This option seems to be the clearest and simplest approach and, by having the provision in a bankruptcy-specific appellate rule, rather than in FRAP 4, it is likely to come to the attention of lawyers handling a bankruptcy appeal from the district court. Also, by referring specifically to the Bankruptcy Rules' shortening of the time for filing postjudgment motions, it would alert courts and practitioners to this important difference in the two sets of rules. The actual wording of any such amendment, of course, would be up to the Appellate Rules Committee.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: PROPOSED CONFORMING AMENDMENTS TO RULE 8003

DATE: MARCH 4, 2022

Last August the Standing Committee published for comment amendments to Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) that were proposed to conform to amendments recently made to FRAP 3. The proposed amendments and Committee Note, as published, are attached.

No comments were submitted on the proposed amendments.

The Subcommittee recommends that the Advisory Committee give its final approval to the proposed amendments to Rule 8003, as published, and that it ask the Standing Committee to do the same.

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

1 **Rule 8003. Appeal as of Right—How Taken;**
2 **Docketing the Appeal**

3 (a) FILING THE NOTICE OF APPEAL.

4 * * * * *

5 (3) *Contents.* The notice of appeal
6 must:

7 (A) conform substantially
8 to the appropriate Official Form;

9 (B) be accompanied by
10 the judgment, —or the appealable
11 order, or decree, —from which the
12 appeal is taken or the part of it, being
13 appealed; and

14 (C) be accompanied by
15 the prescribed fee.

16 (4) *Merger.* The notice of appeal
17 encompasses all orders that, for purposes of
18 appeal, merge into the identified judgment or
19 appealable order or decree. It is not
20 necessary to identify those orders in the
21 notice of appeal.

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

22 (5) *Final Judgment.* The notice
23 of appeal encompasses the final judgment,
24 whether or not that judgment is set out in a
25 separate document under Rule 7058, if the
26 notice identifies:
27 (A) an order that
28 adjudicates all remaining claims and
29 the rights and liabilities of all
30 remaining parties; or
31 (B) an order described in
32 Rule 8002(b)(1).
33 (6) *Limited Appeal.* An appellant
34 may identify only part of a judgment or
35 appealable order or decree by expressly
36 stating that the notice of appeal is so limited.
37 Without such an express statement, specific
38 identifications do not limit the scope of the
39 notice of appeal.

40 (7) *Impermissible Ground for*

41 *Dismissal.* An appeal must not be dismissed

42 for failure to properly identify the judgment

43 or appealable order or decree if the notice of

44 appeal was filed after entry of the judgment

45 or appealable order or decree and identifies

46 an order that merged into that judgment or

47 appealable order or decree.

48 ~~(4)~~ (8) *Additional Copies.* * * * * *

Committee Note

Subdivision (a) is amended to conform to recent amendments to Fed. R. App. P. 3(c), which clarified that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment or appealable order or decree. These amendments reflect that a notice of appeal is supposed to be a simple document that provides notice that a party is appealing and invokes the jurisdiction of the appellate court. It therefore must state who is appealing, what is being appealed, and to what court the appeal is being taken. It is the role of the briefs, not the notice of appeal, to focus the issues on appeal.

Subdivision (a)(3)(B) is amended in an effort to avoid the misconception that it is necessary or appropriate to identify each and every order of the bankruptcy court that the appellant may wish to challenge on appeal. It requires the attachment of "the judgment—or the appealable order or decree—from which the appeal is taken"—and the phrase "or part thereof" is deleted. In most cases, because of the merger principle, it is appropriate to identify and attach only the judgment or the appealable order or decree from which the appeal as of right is taken.

Subdivision (a)(4) now calls attention to the merger principle. The general merger rule can be stated simply: an appeal from a final judgment or appealable order or decree permits review of all rulings that led up to the judgment, order, or decree. Because this general rule is subject to some exceptions and complications, the amendment does not attempt to codify the merger principle but instead leaves its details to case law. The amendment does not change the principle established in *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202-03 (1988), that "a decision on the merits

is a ‘final decision’ . . . whether or not there remains for adjudication a request for attorney’s fees attributable to the case.”

Sometimes a party who is aggrieved by a final judgment will make a motion in the bankruptcy court instead of immediately filing a notice of appeal. Rule 8002(b)(1) permits a party who makes certain motions to await disposition of those motions before appealing. But some courts treat a notice of appeal that identifies only the order disposing of such a motion as limited to that order, rather than bringing the final judgment before the appellate court for review. To reduce the unintended loss of appellate rights in this situation, subdivision (a)(5) is added. This amendment does not alter the requirement of Rule 8002(b)(3) (requiring a notice of appeal or an amended notice of appeal if a party intends to challenge an order disposing of certain motions).

Subdivision (a)(6) is added to enable deliberate limitations of the notice of appeal. It allows an appellant to identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, however, specific identifications do not limit the scope of the notice of appeal.

On occasion, a party may file a notice of appeal after a judgment or appealable order or decree but identify only a previously nonappealable order that merged into that judgment or appealable order or decree. To deal with this situation, subdivision (a)(7) is added to provide that an appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into the

judgment, order, or decree from which the appeal is taken. In this situation, a court should act as if the notice had properly identified the judgment or appealable order or decree. In determining whether a notice of appeal was filed after the entry of judgment, Rule 8002(a)(2) and (b)(2) apply.

TAB 8C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 20-BK-G – PROPOSAL TO AMEND RULE 3011 REGARDING UNCLAIMED FUNDS

DATE: FEB. 28, 2022

The Standing Committee approved publication of amendments to Rule 3011 with respect to unclaimed funds in response to a proposal from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), 20-BK-G. The published version is as follows:

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

(a) 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 of the Code.

(b) The clerk must provide searchable access on the court's website to the funds deposited under § 347(a). The court may, for cause, limit access to information in the data base for a specific case.

Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to unclaimed funds deposited pursuant to § 347(a). The court may limit information in the data base with respect to a specific case for cause shown, including, for example, if such access risks disclosing the identity of claimants whose privacy should be protected, or if the information about the unclaimed funds is so old as to be unreliable.

We received one comment from Daniel J. Isaacs-Smith, Chief of the Judicial Policy Division of the Administrative Office of the United States Courts:

Daniel J. Isaacs-Smith (BK-BK-2021-0002-0011 -- Suggested as a "technical change" that the language in (b) that reads "information in the data base for" be replaced with "data about such funds in" and that the accompanying Committee Note be changed accordingly. He notes that

the original language "may cause confusion because there is no reference elsewhere in Bankruptcy Rule 3011 (or any other Bankruptcy Rule) to a 'data base,' so it is unclear what database is meant." Even if it were intended to refer to the online database included in the Unclaimed Funds Locator, not all bankruptcy courts participate in the Unclaimed Funds Locator.

The Subcommittee agreed that the reference to data base should be removed and decided to use the word "information" in lieu of "data." To reflect those changes, and the restyling of the section, the Subcommittee approved the following version of the amended rule and comment:

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

(a) 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 of the Code.

(b) On the court's website, the~~The~~ clerk must provide searchable access to information about ~~on the court's website to the~~ funds deposited under § 347(a). The court may, for cause, limit access to information about funds in ~~information in the data base for~~ a specific case.

Committee Note

Rule 3011 is amended to require the clerk to provide searchable access (as by providing a link to the U.S. Bankruptcy Unclaimed Funds Locator) on the court's website to information about unclaimed funds deposited pursuant to § 347(a). The court may limit access to information about such funds in ~~information in the data base with respect to~~ a specific case for cause ~~shown~~, including, for example, if such access risks disclosing the identity of claimants whose privacy should be protected, or if the ~~data~~ information about the unclaimed funds is so old as to be unreliable.

Changes from Publication

The reference to the "data base" in paragraph (b) has been replaced with language referring to "information about funds." Other changes are stylistic. Conforming changes have been made to the Committee Note.

The Subcommittee recommends the amended Rule 3011 to the Advisory Committee for final approval.

TAB 8D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 21-BK-M – RULE 8006(g)

DATE: FEB. 28, 2022

A judgment, order or decree of a bankruptcy court may be appealed directly to the court of appeals if the bankruptcy court, district court or bankruptcy appellate panel, acting on its own or on the request of a party to the judgment, order or decree, or all the appellants and appellees (if any) acting jointly, certify that the judgment, order or decree meets the requirements of 28 U.S.C. § 158(d)(2)(A) and the court of appeals agrees to accept the direct appeal.

Fed. R. Bankr. P. 8006 sets out the procedure for certification, and in Rule 8006(g) states as follows[1]:

> **"(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** Within 30 days after the certification has become effective under (a), a request for leave to take a direct appeal to a court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c).)."

Bankruptcy Judge A. Benjamin Goldgar has suggested a change in Rule 8006(g) to specify who must file the request for permission to take a direct appeal. The current rule is written in the passive voice and leaves the question open. He described one of his cases in which he certified his judgment for direct appeal but the appellants declined to file the request for permission to take the direct appeal. It was not clear that the appellees could file the request, and they did not do so. Without a request for permission to appeal, the court of appeals cannot entertain the appeal. *See* In re Wade, 926 F.3d 337 (7th Cir. 2019).

Judge Goldgar suggests that Rule 8006(g) be amended to add a sentence stating that "any appellant or appellee" or "any party to the appeal" may file the request for permission to take a direct appeal to the court of appeals.

Rule 8006(g) is badly written in two respects. The first is the one identified by Judge Goldgar – it does not identify who is to file a request for permission to take a direct appeal. The second is that it seems to impose an obligation on someone to file a request for permission when in fact it is intending to condition the direct appeal on such a filing. If no filing is made, the direct appeal will not occur.

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[1] This is the restyled version of Rule 8006(g) which is being presented to the Advisory Committee for approval for publication at its March 2022 meeting.

Therefore, to solve both of these concerns the Subcommittee recommends that Rule 8006(g) be rewritten as follows:

> **"(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** ~~Within 30 days after the certification has become effective under (a), a~~A request for leave to take a direct appeal to a court of appeals ~~must~~ may be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c) not later than 30 days after the date the certification becomes effective under (a). A request may be filed by any party to the prospective appeal."

Advisory Committee Note

Rule 8006(g) is revised to clarify that any party to the prospective appeal may file a request for leave to take a direct appeal not later than 30 days after the date the certification becomes effective. There is no obligation to file a request for leave to take a direct appeal if no party to the prospective appeal wishes to pursue it.

The Subcommittee recommends that the amended Rule 8006(g) be approved for publication.

TAB 8E

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 21-BK-O – SUBSTITUTION OF PARTIES

DATE: FEB. 28, 2022

We have received a suggestion, 21-BK-O, from Bankruptcy Judge A. Benjamin Goldgar of the N.D. Illinois, that we adopt a new rule providing for substitution of parties in bankruptcy appeals to the district court or bankruptcy appellate panel.

Fed. R. Civ. P. 25 provides as follows:

Rule 25. Substitution of Parties
(a) DEATH.
(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.
(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.
(3) *Service.* A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.
(b) INCOMPETENCY. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).
(c) TRANFER OF INTEREST. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).
(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

The Federal Rules of Appellate Procedure have a similar rule, Rule 43, which reads as follows:

Rule 43. Substitution of Parties
(a) **Death of a Party**.
(1) *After Notice of Appeal Is Filed*. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.
(2) *Before Notice of Appeal Is Filed—Potential Appellant*. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).
(3) *Before Notice of Appeal Is Filed—Potential Appellee*. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).
(b) **Substitution for a Reason Other Than Death**. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.
(c) **Public Officer: Identification; Substitution**.
(1) *Identification of Party*. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.
(2) *Automatic Substitution of Officeholder*. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

The Federal Rules of Appellate Procedure govern procedure only "in the United States courts of appeals." FRAP 1(a)(1). Therefore, Rule 43 cannot be applicable to bankruptcy appeals to the district court or BAP.

The Federal Rules of Civil Procedure “apply to bankruptcy proceedings to the extent provided by the Federal Rules of bankruptcy Procedure.” FRCP 81(a)(2). The only Federal Rule of Bankruptcy Procedure that makes Fed. R. Civ. P. 25 applicable to bankruptcy proceedings is Fed. R. Bank. P. 7025 which states that “Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.” (Rule 2012 deals with substitution of a trustee.)

Part IX of the Federal Rules of Bankruptcy Procedure make certain Civil Rules applicable in cases under the Bankruptcy Code, including Rule 61 dealing with harmless error (Fed. R. Bankr. P. 9005); Rule 5.1 dealing with constitutional challenges to a statute (Fed. R. Bankr. P. 9005.1); Rule 5(b) on service (Fed. R. Bankr. P. 9014(b)(3)); Rules 38-39, 47-49, 51, and 81(c) with respect to jury trials (Fed. R. Bankr. P. 9015(a); Rule 50(c) (with certain modifications) with respect to jury trials (Fed. R. Bankr. P. 9015(c)); rule 45 on subpoenas (Fed. R. Bankr. P. 9016); Rules 43, 44 and 44.1 on evidence (Fed. R. Bankr. P. 9017); Rule 5(b) for notice of a judgment issued by a bankruptcy judge (Fed. R. Bankr. P. 9022(a)(1)(B)); Rule 77(d) for notice of a judgment issued by a district court (Fed. R. Bankr. P. 9022(b)); Rule 59 with respect to motions for new trials (Fed. R. Bank. P. 9023); Rule 60 dealing with relief form a judgment (Fed. R. Bankr. P. 9024); Rule 46 on objecting to a ruling or order (Fed. R. Bankr. P. 9026); Rule 63 on a judge’s disability (Fed. R. Bankr. P. 9028); Rule 83 on adoption of local rules (Fed. R. Bankr. P. 9029(a)). Many rules applicable to adversary proceedings are expressly made applicable to contested matters under Fed. R. Bankr. P. 9014(c). There is no reference in Part IX to Fed. R. Civ. P. 25.

The rules applicable to bankruptcy appeals to the district court or bankruptcy appellate panel are included in Part VIII of the Fed. R. Bankr. P. The only Civil Rules mentioned in Part VIII are Rule 83 on adoption of local rules (Fed. R. Bankr. P. 8026(a)) and Rule 58 on entering judgment (Fed. R. Bankr. P. 8002(a)(5)(A)(ii) and (B)) when computing the time for appeal. Many other rules in Part VIII are modeled on the Federal Rules of Appellate Procedure, but nothing comparable to FRAP 43 is included.

Judge Goldgar is particularly concerned about addressing procedure when a party to a bankruptcy appeal dies. As he noted, “People die every day.” He could find only one case involving a deceased party in a bankruptcy appeal, JH, Inc. v. Morabito (In re Morabito), 596 B.R. 718 (D. Nev. 2019), in which the court granted a motion to substitute for one of the appellees citing both FRAP 43 and Civil Rule 25, neither of which was applicable to the situation. In fact, there have been many cases in which a suggestion of death has been filed on the docket of a bankruptcy appeal. Especially when the appellant has died, the appeal has been dismissed, because no one sought to substitute for the deceased party and pursue the appeal. *See, e.g*, Thomas v. Clear Channel Outdoor, Inc., No. 20-2676 (W.D. Tenn. Sept. 8, 2020); Thomas v. Tenn. Dept. of Transp., No. 20-2673 (W.D. Tenn. Sept. 4, 2020); Thomas v. Randolph, No. 20-2272 (W.D. Tenn. Apr. 10, 2020); Thomas v. Collins, No. 20-2257 (W.D. Tenn. Apr. 3, 2020); Warren v. Sushner, No. 18-679 (D. Md. Mar. 7, 2018); In re Stephen Thomas Yelverton, No. 16-1838 (D.D.C. Sept. 14, 2016); In re Kamara, No. 13-38 (D. Del. Jan. 3, 2013); Taylor v. Taylor, No. 12-233 (M.D. Fla. Apr. 26, 2012); Cox v. Warren Producers, Inc., No. 09-41 (W.D. Ky. Mar. 27, 2009); In re Tomasevic, No. 02-912 (M.D. Fla. May 23, 2002); Hales v. Williams, No. 95-3182 (N.D. Ala. Dec. 8, 1995).

But in many cases the court has allowed a representative of the decedent, such as the estate, to substitute as party to the appeal, generally applying Fed. R. Civ. P. 25. *See, e.g.*, United States Pipe and Foundry Co., LLC v. Holland, No. 19-891 (M.D. Fla. Apr. 15, 2019); Reding v. Russell, No. 16-522 (M.D. Ala. June 28, 2016); Ullrich v. Osborne, No. 16-61168 (S.D. Fla. June 2, 2016); In re SS Body Armor I, Inc., No. 15-1090 (D. Del. Nov. 25, 2015); In re Otis W. Terry, Jr., No. 14-6195 (E.D. Pa. Oct. 30, 2014); Mantiply v. Horne, No. 13-258 (S.D. Ala. May 8, 2013); In re Point Blank Solutions Inc., No. 11-64 (BAnkr. D. Del. Jan. 29, 2011); In re RNI Wind Down Corp., No. 06-585 (D. Del. Sept. 21, 2006); Bricker v. Committee of Administrative Claimants, No. 06-1082 (N.D. Ohio May 2, 2006); Jacobs v. Fazzano, No. 96-2685 (S.D. Fla. Sept. 19, 1996). I have found no case refusing to permit substitution when an appropriate representative sought to replace a deceased party to the appeal. *Cf.* In re Osinupebi, 629 B.R. 554 (E.D. Pa. 2021) (finding decedent's daughter had not shown that she had been officially appointed as personal representative of the estate of the deceased and could not bring the appeal).

But Judge Goldgar is correct, that although the courts allow such substitutions, there is no rule that actually permits it. A recent order of District Judge Sheryl H. Lipman in Thomas v. Collins (*In re* Thomas), No. 20-2257 (W.D. Tenn. Apr. 3, 2020) (Doc. 12, filed Mar. 20, 2021), dismissed an appeal filed by a now-deceased appellant, noting that "no representative has come forward to act as the debtor's successor in interest in this appeal." Although she recognized that there was no applicable rule governing deceased debtors in bankruptcy appeals, she viewed Fed. R. Bank. P. 8026(b)(1) as allowing her to "regulate practice in any manner consistent with . . . applicable federal rules." She found Fed. R. App. P. 43 to be the most applicable federal rule and applied that rule.

But of course Fed. R. App. P. is not "applicable" to bankruptcy appeals, any more than Fed. R. Civ. P. 25 is. Courts have been allowing substitutions without clear authority to do so. Judge Goldgar's suggestion is a good one, and the Subcommittee recommends to the Advisory Committee the publication of a new rule on substitution of parties much like FRAP 43 to read as follows:

Rule 8023.1[1]. Substitution of Parties

(a) **Death of a Party**.

(1) *After Notice of Appeal Is Filed*. If a party dies after a notice of appeal has been filed or while a proceeding is pending on appeal in the district court or BAP, the decedent's personal representative may be substituted as a party on motion filed with that court's clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 8011. If the decedent has no representative, any party may suggest the death on the record, and the appellate court may then direct appropriate proceedings.

(2) *Before Notice of Appeal Is Filed—Potential Appellant*. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney

[1] Fed. R. App. P. 43 immediately follows the rule on voluntary dismissal, which in Part VIII of the bankruptcy rules appears as Fed. R. Bankr. P. 8023.

of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 8023.1(a)(1).

(3) *Before Notice of Appeal Is Filed—Potential Appellee*. If a party against whom an appeal may be taken dies after entry of a judgment or order in the bankruptcy court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 8023.1(a)(1).

(b) **Substitution for a Reason Other Than Death**. If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 8023.1(a) applies.

(c) **Public Officer: Identification; Substitution**.

(1) *Identification of Party*. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the appellate court may require the public officer's name to be added.

(2) *Automatic Substitution of Officeholder*. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. Subject to the provisions of Rule 2012, the public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

Advisory Committee Note

Rule 8023.1 is derived from Fed. R. App. P. 43 and governs substitution of parties upon death or for any other reason in appeals to the district court or bankruptcy appellate panel from a judgment, order or decree of a bankruptcy court.

The Subcommittee recommends publication of new proposed Rule 8023.1 and the accompanying Advisory Committee Note.

TAB 9

TAB 9A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON RESTYLING

SUBJECT: RESTYLING OF FEDERAL RULES OF BANKRUPTCY PROCEDURE – PARTS III – VI

DATE: Mar. 1, 2022

Parts III-VI of the Restyled Federal Rules of Bankruptcy Procedure (the "Restyled Rules") were published for comments as USC-RULES-BK-2021-002 in August 2021. We received four sets of comments.

The first set of comments came from the National Bankruptcy Conference (NBC), reflecting a review of the restyled rules by its Court System and Bankruptcy Administration Committee (BK-2021-0002-0001). The second came from the National Conference of Bankruptcy Judges (BK-2021-0002-0020). The third came from a San Jose, California law firm, Gold and Hammes (BK-202100002-0023). The last set came from the National Association of Consumer Bankruptcy Attorneys (NACBA) (BK-2021-0002-0032).

In addition, one comment from James Davis (BK-2021-002-0031) that was included in the comments on the proposed substantive revision of Rule 3002.1 was deemed by the reporters to be stylistic in nature and related to the published current version of the rule.

All these comments were carefully considered by the Associate Reporter and the style consultants, and recommendations on changes to the published rules were presented to the Restyling Subcommittee. The reactions of the Subcommittee were then reviewed again with the style consultants, and the drafts being presented to the Advisory Committee reflect these discussions.

Each rule describes the changes made since publication and all comments received on that rule. The amended restyled rules are attached.

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.

[The Committee Note to Rule 1001 is included here for reference for purposes of publication. It will not be included in the final rule.

Committee Note to 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.]

Summary of Public Comments on Restyled Rules Generally

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

- **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

- **Gold and Hammes, Attorneys (BK-2021-0002-0023) (G&H)**

Comments on the restyled rules generally and the responses to those comments follow:

1. *No Substantive Change*. The NBC suggested 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. G&H agreed with NBC's suggestion to "make clear that no substantive changes in the rules are intended."

> ***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 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:
>
> > "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 Advisory Committee 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."

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 Advisory Committee has chosen to 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 objected 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, no change was made to the capitalization choices of the style consultants.

3. ***Bullet Points***. The NBC objected 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." G&H endorsed this comment.

> ***Response***: Bullet points have been used in other restylings. See, e.g. Civil Rule 8(c)(1). The Advisory Committee 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. No change was made in response to this comment.

4. ***Court's Designee***. The NBC noted that 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". They objected to the phrase "the court's designee" as less clear than "some other person as the court may direct." They also expressed the concern that the court (as a collection of judges) may not be able to specify the "designee" by local rule.

> ***Response***: The Advisory Committee does not believe the phrase is substantively different from "some other person as the court may direct." The NBC fails to recognize that the term "court" is defined in Rule 9001(4) to mean the judicial officer before whom the case or proceeding is pending, not the collection of judges in a particular district. There was no change in response to this comment.

5. ***Reference to Forms by Number***. The NBC notes that certain rules refer to a specific form by its number. They express concern that a forms change will make those references "invalid." They highlight this issue as a "concern." G&H endorsed this concern and also believe that specifying forms by number "may also create confusion" and "obscures the fact that the tables of permitted changes in FRBP 9009 – for some Official Forms – require only that the document used 'substantially conforms' with that Official Form." They noted that this qualification is missing in Rule 3007(a)(2). The NCBJ also expressed concern about the use of Official Form numbers, and suggested "that the Rules Committee consider this concern as it proceeds further." The NCBJ also notes that restyled Rule 4004(e) retains the reference to the "appropriate Official Form."

Response: The Subcommittee made a very intentional decision to include form numbers when the rules require use of an official form to make the rules easier to use. The Subcommittee is aware that any change to form number will require conforming changes to any rule that refers to that form number. G&H are correct that several of the existing rules require only substantial compliance with Official Forms, and that qualification was missing in 3007(a)(2). That Rule has been amended to reinsert the qualification. As to Rule 4004(e), the Rule requires a final discharge order to conform to the appropriate Official Form because there is a different Official Form for each Chapter (and two for Chapter 13). The current formulation seemed more appropriate than listing a series of form numbers as alternatives.

6. ***Service on the United States Trustee.*** The NCBJ notes that the restyled rules are inconsistent in the ways they provide for papers to be sent to the United States trustee. In some rules there is a hanging paragraph requiring that a copy be sent to the United States trustee. In others there is a separate subsection requiring a copy be sent to the United States trustee. In others the requirement that a copy be sent to the United States trustee is included in the introductory language of a subsection before other recipients are listed in the bullet points. The NCBJ advocates for a uniform approach to these provisions and in particular, suggests that the hanging paragraphs be eliminated in favor of one of the other approaches.

Response: When the restyled rules include a separate subsection providing for a copy to be sent to the U.S. trustee, the original rule had a separate sentence or separate subsection so providing. *See* Rule 3017(a)(3) (last sentence of former Rule 3017(a)); 3020(b)(2) (penultimate sentence of former 3020(b)(1)); Rule 3020(c)(3) (former Rule 3020(c)(3)). Therefore the Advisory Committee believes a separate subsection is appropriate in these restyled rules.

Use of hanging paragraphs after bullets is part of the style consultant guidelines and they have chosen to do that in Rules 3015(h)(2), 3017.1(c)(2) and 3019(b)(2)(B). Because they are the final word on matters of style, no change was made.

There is really no way to treat these references completely consistently. They were not consistent in the existing rules.

7. **Split Verbs**. The NCBJ objects to restyled rules that state that the "court must, after notice and a hearing," take action. They would prefer "the court, after notice and a hearing, must" or "the court must …., after notice and a hearing" or the like.

Response: This is a pure matter of style, and on style matters we defer to the style consultants.

8. **Internal references to Subpart of a Rule**. The NCBJ objects to the eliminate of the word "paragraph" or "subpart" or "subdivision" or the like in referred to subparts of a Rule.

> ***Response***: This is also a pure style choice. The style consultants have agreed to add the word "subdivision" in Rule 5009(b) and (d).

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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

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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.	(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.
(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:	**(3)** ***Sanctions in an Individual-Debtor Case.*** If the debtor is an individual and 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 bothof these 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	(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
(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.	(B) 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.	**(4)** ***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:	(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
(i) the name of the entity from whom the creditor	

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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 writing described in (c)(1) to that party in interest within 30 daysafter 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.

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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 transferee must be substituted 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

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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 setting 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,

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	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) 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.

Committee Note

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.

Changes Made After Publication and Comment

- In 3001(c)(3) the language has been changed from "In a case with an individual debtor" to "If the debtor is an individual."

- In 3001(c)(4)(B) the word "document" has been changed to "writing."

- In 3001(e)(2)(C) the words "the court must substitute the transferee for the transferor" were replaced with "the transferee must be substituted for the transferor."

- In 3001(e)(4)(A), the words "that sets forth" were replaced with "setting forth."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggested that the stylistic change to 3001(b) "arguably has changed the purpose of the rule" from one specifying who could file a proof of claim to one about who can sign a proof of claim. They are also concerned that it could validate an unsigned proof of claim because of the use of the word "may." They also suggest that the title be changed to "Who Must Sign a Proof of Claim."

> ***Response***: The rule has always been about who may sign a proof of claim, not who may file one. The name of the existing rule is "Who May Execute," not "Who May File." There is nothing inconsistent with the official form, which requires that a proof of claim be signed, and a rule specifying that only a creditor or creditor's agent may affix that signature. No change was made in response to this suggestion.

The NBC's next suggestion on Rule 3001 advocates changing "a case with an individual debtor" to "a case regarding an individual debtor" in (c)(3). They believe "a case with an individual debtor" could be read to include a case in which an individual debtor is involved in some way other than as the debtor.

> ***Response***: The language of (c)(3) has been changed to begin "If the debtor is an individual . . . ."

The NBC next suggests changing "immediately" to "promptly" in 3001(e)(2)(B), although the existing rule uses "immediately."

> ***Response***: This would be a substantive change.

In the last phrase of 3001(e)(2)(C), the NBC suggests using the passive voice ("the transferee will be substituted for the transferor") rather than stating that "the court must substitute the transferee for the transferor." The NBC believes that the passive voice "allow[s] local practice to control here" and avoids the implication that the court must enter an order.

> ***Response:*** The last sentence of Rule 3001(e)(2)(C) is describing what happens when an alleged transferor has been notified of an alleged transfer and does not file a timely objection. We agree that we should not impose a new duty on the court or the clerk that was not in the original; comment accepted.

In 3001(e)(4)(A), the NBC suggests replacing "that sets forth" with "setting forth".

> ***Response***: Suggestion accepted.

In 3001(e)(4)(B), the NBC again suggests changing "immediately" to "promptly" although the existing rule uses "immediately."

> ***Response***: This would be a substantive change.

Also in 3001(e)(4)(B), the NBC suggests that the last sentence ("the court may extend the time to file it") is unclear as to what "it" is. They suggest replacing "it" with "an objection."

> ***Response***: The only thing being filed in (e)(4)(B) is "an objection." (The filing of the evidence of the transfer is covered by (e)(4)(A).) The words "an objection" are also the last words in the sentence preceding the last sentence. There is no ambiguity about what "it" is.

• **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

The NCBJ suggested changing the language at the beginning of 3001(c)(3) to "if the debtor is an individual" to conform to (c)(2).

> ***Response***: We have accepted the NCBJ suggestion.

In 3001(c)(4)(B) the NCBJ suggested changing the word "document" to "writing" which is the term used in (c)(1) to which (c)(4) refers.

> ***Response***: Comment accepted

• **Gold and Hammes, Attorneys (BK-2021-0002-0023) (G&H)**

G&H asserted that changing the language of 3001(b)(1) from "execute" to "sign" is a substantive change, and that "execution" requires many additional steps other than simply affixing one's signature. G&H stated that the amendment would allow a creditor to "'sign' a letter to the court simply asserting that the debtor owes them money."

Response: A proof of claim is defined in Rule 3001(a) and must substantially conform to Form 410. There is nothing in Rule 3001(b) that modifies the requirements for a proof of claim. A creditor could not simply sign a piece of paper and submit it. Nor is there any basis for the assertion that "execute" means something different from "sign." The Federal Rules of Civil Procedure consistently use the term "sign" (*see, e.g*., Fed. R. Civ. P. 11 (Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions)). No change was made based on this comment.

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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

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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

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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.

Committee Note

The language of Rule 3002 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC first objected to the insertion of the phrase "in the district where the case is pending and" in 3002(b). They believe it is "redundant" because Rule 5005 already says that.

> ***Response:*** The style consultants attempted to avoid naked cross-references to other rules without some indication of the subject of the rule to which the cross-reference is made. It is helpful to the reader, albeit not necessary as a substantive matter. No change was made in response to this comment.

The NBC objects to the transposition of (c)(6) and (c)(7) from the original rule. They believe it makes researching difficult.

> ***Response***: The Advisory Committee was cautious about renumbering paragraphs, but (c)(7) was added only in 2017, and the provisions of (c)(6) allowing extensions of the time to file are applicable to the situation described in (c)(6) as well as other proofs of claim. Therefore logically (c)(7) should follow (c)(6). No change was made in response to this comment.

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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 provides for 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

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	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) mustbe filed as a supplement to the proof of claim using Form 410S-1 or 410S-2, respectively. Thenotice 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

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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

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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 as 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.

Committee Note

The language of Rule 3002.1 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.

Changes Made After Publication and Comment

- In 3002.1(a), the word "requires" was changed to "provides for."

- In 3002.1(i) the word "as" was reinserted before the word "required."

Summary of Public Comment

- **National Assoc. of Consumer Bankruptcy Attorneys (BK-2021-0002-0032) (NACBA)**

The NACBA suggested that the change in proposed Rule 3002.1(a) from "the plan *provides that either* the trustee or the debtor *will* make contractual installment payments" to "the plan *requires* the trustee or the debtor to make contractual payments" clarifies that the non-treatment of a claim is permissible, but that in such a plan Rule 3002.1 does not then apply. They suggested that the comments should make explicit that Rule 3002.1 does not apply to a plan that does not provide for a secured claim.

Response:

The words "requires that" in 3002.1(a) have been changed to "provides for" to be consistent with the statutory language of § 1322(a)(2) and § 1325a)(5).

James Davis (BK-2021-0002-0031)

Mr. Davis suggested retaining the word "as" before "required" in 3002.1(i) to make clear that courts have authority to grant relief for *any* non-compliance with the rule (including, for example, an untimely provision of information), not just for a failure to provide information.

***Response*: Suggestion accepted.**

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 scheduled 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 scheduled as disputed, contingent, or unliquidated—-must filea proof of claim or interest. A creditor who fails to do so will not be treated asa creditor for that claim for voting and distribution.

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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.

Committee Note

The language of Rule 3003 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.

Changes Made After Publication and Comment

- In 3001(b)(1) and (c)(2) the word "shown" was changed to "scheduled."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC questioned in (b)(1) and (c)(2) whether the change of the word “scheduled” to “shown” alters familiar terminology in a way that would be “unduly disruptive.”

> ***Response***: Suggestion accepted.

The NBC also questioned the transposition of (c)(4) and (c)(5) from the original rule, and suggested not reordering to avoid researching issues.

> ***Response***: The reason for the transposition is that filings by the indenture trustee, covered in existing (c)(5), are also subject to the provisions of existing (c)(4). Logically, therefore, existing (c)(4) should follow existing (c)(5). The Advisory Committee doubts this will pose difficulties in researching.

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.

Committee Note

The language of Rule 3004 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 3005 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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: (1) an objection to it has been filed; (2) a complaint has been filed againstthe creditor in an adversary proceeding; or (3) 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 may contain any terms and conditions the court considers 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.

Committee Note

The language of Rule 3006 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.

Changes Made After Publication and Comment

- In the hanging paragraph at the end of 3006(b), the word "must" was changed to "may" and the word "deems" was changed to "considers."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggested changing "must" to "may" in the hanging paragraph at the end of 3006(b).

Response: Suggestion accepted.

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—substantially conforming to Form 420B—and objection must be served by mail on the person the claim holder most recently designated toreceive notices on the claim holder's original or latest amendedproof 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.

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(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 That Requires an Adversary Proceeding 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

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(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 the claim had been subject to an individual objection.

Committee Note

The language of Rule 3007 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.

Changes Made After Publication and Comment

• In 3007(a)(2)(A), the phrase "using Form 420B" was changed to "substantially conforming to Form 420B."

• The heading of 3007(b) was changed from Demanding Relief Under Rule 7001 Not Permitted" to "Demanding Relief That Requires an Adversary Proceeding Not Permitted."

•In 3007(f) the word "it" has been replaced with "the claim."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In 3007(a)(2)(A) the NBC suggested that the reference to first-class mail be restored to avoid the implication that other forms of mail are required.

> ***Response***: Rule 9001(8) defines "mail" as "first class, postage prepaid." No change is needed.

The NBC also suggested modifying the new heading in 3007(b) to "Demanding Relief Requiring an Adversary Proceeding."

> ***Response***: The heading has been modified.

The NBC objected to the word "it" in (f) and suggests replacing it with "that claim."

> ***Response:*** The word "it" has been replaced with "the claim."

• **Gold and Hammes, Attorneys (BK-2021-0002-0023) (G&H)**

As previously discussed, G&H pointed out that the reference to Official Form 420(b) in 3007(a)(2)(A) should be qualified by the "substantially conforms" standard in the existing rule.

> ***Response***: Suggestion accepted.

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.

Committee Note

The language of Rule 3008 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 3009 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 3010 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 3011 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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: (1) the governmental unit has filed theproof of claim; or (2) the time to file it under Rule 3002(c)(1) has expired.

Committee Note

The language of Rule 3012 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC found the use of "it" in (c)(B) to be ambiguous and suggested using "the proof of claim."

> ***Response***: Rule 3002(c)(1) deals with the time to file a proof of claim. There is nothing else "it" could be. In addition, the proof of claim is specifically referenced in (c)(A). This is a matter of style and no change was made in response to this suggestion.

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 hearing on notice as the court directs—determine classes of creditors and equity security holders under §§ 1122, 1222(b)(1), and 1322(b)(1).

Committee Note

The language of Rule 3013 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.

Changes Made After Publication and Comment

• The language "on motion after notice and a hearing" was changed to "on motion after hearing on notice as the court directs" and the last sentence was deleted.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC expressed concern that changing "on motion after hearing on notice as the court may direct" in the existing rule to "after notice and hearing" (with the additional phrase "The notice must be served as the court directs" at the end) is a substantive change, given that Section 102(1) of the Code defines "after notice and a hearing" and that phrase was not used in the existing rule.

> ***Response:*** The language was returned to that included in the existing rule to avoid any argument that a substantive change was inadvertently made.

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.

Committee Note

The language of Rule 3014 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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 must 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 must file a Chapter 13 plan with the petition or within 14 days after the petition is filed. The timeto 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.

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(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

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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.

Committee Note

The language of Rule 3015 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.

Changes Made After Publication and Comment

- In 3015(a) and 3015(b)(1) the word "may" was changed to "must."

- In 3015(b)(1) the word "may was changed to "must" and the word "it" was changed to "the petition.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In 3015(b)(1), the NBC noted that the period specified in § 1221 is mandatory, not permissive, and suggested changing "may" to "must."

> ***Response***: Suggestion accepted.

Also in 3012(b)(1), the NBC expressed the view that the use of "it" is ambiguous and suggested replacing the word with "the petition."

> ***Response***: Suggestion accepted.

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 district may require that a single local form be used for a chapter 13 plan instead of Official Form 113 if it: (a) is adopted for the district 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

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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.

Committee Note

The language of Rule 3015.1 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.

Changes Made After Publication and Comment

- In the introductory paragraph to 3015.1, the word "court" was changed to "district" and the words "in its district" were deleted.

- In 3015(a) the words "for the district" were inserted after "is adopted."

Summary of Public Comment

- **Gold and Hammes, Attorneys (BK-2021-0002-0023) (G&H)**

G&H pointed out that existing Rule 3015.1 allows a "district" to require a local form in lieu of Official Form 113 if it is adopted for the district. The restyled rule seems to make this a decision for the "court" which is defined in Rule 9004(1) as the presiding judge. This is a substantive change.

> ***Response***: This is a valid comment, and restyled Rule 3015.1 has been amended accordingly.

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 or modification 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.

Committee Note

The language of Rule 3016 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.

Changes Made After Publication and Comment

- In 3016(a) the words "or modification" were inserted after "the plan" in the second sentence.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC noted that the words "or modification" were erroneously omitted from the second sentence in (a).

Response: Suggestion accepted.

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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

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	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.

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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

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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

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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.

Committee Note

The language of Rule 3017 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC interprets the revised 3017(a)(1)(B) as requiring that every chapter 11 disclosure statement be sent to the SEC. But they note that the current rule could be read the same way. They suggest adding language that requires submission to the SEC only if notice is required to the SEC under Rule 2002.

Response: This would be a substantive change.

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. On or 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) set the date to hold the hearing on final approval of the disclosure statement if a timely objection is filed; 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

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(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.

Committee Note

The language of Rule 3017.1 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.

Changes Made After Publication and Comment

- In the introductory language to 3017.1(a), the words "Before doing so" have been replaced with "On or before doing so."

- In 3017.1(a)(3), the phrase "if a timely objection is filed," was moved from the beginning of the clause to the end after "disclosure statement" and the words "to hold" replaced the word "for" before "the hearing."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC objects to the structure of 3017.1(a)(3), suggesting that the insertion of "if a timely objection is filed" at the beginning of the clause "creates confusion."

> ***Response:*** Suggestion accepted. The court does not set the date when the objection is filed but sets the date in advance of any objection.

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

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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

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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.

Committee Note

The language of Rule 3018 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case</td><td>Rule 3019. Chapter 9 or 11—Modifying a Plan</td></tr>
<tr><td>(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.</td><td>(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.</td></tr>
<tr><td>(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</td><td>(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</td></tr>
</table>

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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.

Committee Note

The language of Rule 3019 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC first suggested that 3019(a) be divided into four paragraphs, one for each sentence.

> ***Response***: Rule 3019(a) deals with modification before confirmation, and Rule 3019(b) deals with modification after confirmation. Creating more paragraphs does not seem desirable.

The NBC also suggests that 3019(b)(1) should revert to the original language "If the debtor is an individual" rather than referring to "a plan in an individual debtor's Chapter 11 case." They think the individual referred to could be a natural person or refer to a solo person (as opposed to a joint debtor).

> ***Response:*** "Individual debtor" is used in the heading of Rule 3019(b) in both the original version and the restyled version. In the Code "individual" is

contrasted with partnership or corporation (see definition of "person" in 11 U.S.C. § 101(41)). The term is never used to in the rules to mean anything other than a living, breathing person. No change was made in response to this suggestion.

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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 consideration required to be distributed upon confirmation be deposited with the trustee or debtor in possession. Any funds deposited must be kept in a special account established for the sole purpose of making 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

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	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.

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(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.

Committee Note

The language of Rule 3020 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.

Changes Made After Publication and Comment

• In 3020(a) the word "funds" was replaced with "consideration" and the final sentence was changed from "The funds must be kept in a special account and used only to make the distribution" to "Any funds deposited must be kept in a special account established for the sole purpose of making the distribution."

Summary of Public Comment

• National Bankruptcy Conference (BK-2021-0002-0001) (NBC)

The NBC objects to the change of the word "consideration" in the existing rule to "funds" as "too limiting." They also suggested changing the last sentence to refer to "any funds deposited" and return to that sentence the language "established for the exclusive purpose."

• National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)

The NCBJ objected to the change of the word "consideration" in the existing rule to "funds" because consideration could be in another form. The NCBJ also objected to the deletion of the language "established for the exclusive purpose of making the distribution" from the current rule.

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.

Committee Note

The language of Rule 3021 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.

Changes Made After Publication and Comment

• No changes were made after publication and comment.

Summary of Public Comment

• No comments were submitted.

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.

Committee Note

The language of Rule 3022 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

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<tr><td>PART IV—THE DEBTOR: DUTIES AND BENEFITS</td><td>PART IV. THE DEBTOR'S DUTIES AND BENEFITS</td></tr>
<tr><td>Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements</td><td>Rule 4001. Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Using Cash Collateral; Obtaining Credit; Various Agreements</td></tr>
<tr><td>(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</td><td>(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—</td></tr>
</table>

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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.

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(b) USE OF CASH COLLATERAL.	**(b) Using Cash Collateral.**
(1) Motion; Service.	**(1) *Motion; Contents; 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.	(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 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:	(B) *Contents.* The motion must consist of—or if the motion exceeds five pages, begin with— a concise statement of the relief requested, no longer than five pages. The statement must list or summarize all material provisions (citing their locations inthe relevant documents), including:
(i) the name of each entity with an interest in the cash collateral;	(i) the name of each entity with an interest in the cash collateral;
(ii) the purposes for the use of the cash collateral;	(ii) how it will be used;
(iii) the material terms, including duration, of the use of the cash collateral; and	(iii) the material terms of its use, including duration; 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.	(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 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	(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.

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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 consist of—or if the motion exceeds five pages, begin with— a concise statement of the relief requested, no longer than five pages. The statement must listor 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

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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:	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);	(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;	(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 commencement of the case, or of any lien securing 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 relating to the automatic stay;	(iv) a waiver or modification of Code provisions or applicable rules regarding 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;	(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

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(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;	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 relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;	(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 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;	(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;	(ix) the indemnification of any entity;
(x) a release, waiver, or limitation of any right under § 506(c); or	(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).	(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 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.	(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) *Hearing*. The court	**(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.

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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;

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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 consist of—or if the motion exceeds five pages, begin with— a concise statement of the relief requested, no longer than five pages. 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

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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.

Committee Note

The language of Rule 4001 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.

Changes Made After Publication and Comment

- In 4001(a)(3)(A)(i) and (d)(2) "debtor-in-possession" was changed to "debtor in possession."
- In 4001(b)(1)(B), 4001(c)(1)(B), and 4001(d)(1)(B) the word "include" was replaced with "consist of – or if the motion exceeds fives pages, begin with –" and the second sentence was eliminated.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC noted that the requirements of 4001(a)(2)(A) for "an affidavit or a verified motion" are "an anomaly in federal practice." 28 U.S.C. § 1746 allows an unsworn declaration made under penalty of perjury. They suggested a rule change or a comment on the anomaly.

> ***Response:*** As the NBC acknowledged, this is the language of the current rule so this would be a substantive change.

In 4001(a)(2)(B) the NBC objected to the term "it" as creating ambiguity. They suggested replacing the word with "additional or other notice."

> ***Response:*** The use of "it" in the clause clearly refers to notice. No change was made.

In 4001(a)(3)(A)(i) and (d)(2) the NBC suggested eliminating the hyphens in "debtor-in-possession both because it is inconsistent with the Code and the other rules and because it is not a compound modifier.

> ***Response***: This is correct. We have taken the view that any term defined in the Code should be used in the rules exactly as so defined. "Debtor in possession" (no hyphens) is defined in § 1101(1) and is used in the restyled rules to date without hyphens.

In 4001(b)(1)(B)(ii)-(iii), the NBC said the use of "it" and "its" ambiguous. They suggested "the cash collateral."

> ***Response:*** There is no ambiguity. There is nothing else that "it" or "its" could refer to. This is a matter of style and on style.

In 4001(b)(2)(A), the NBC believes that the phrase "using only the cash collateral necessary to avoid" is ambiguous, and should be changed to "using only that portion of the cash collateral which is necessary to avoid."

> ***Response***: "Only the cash collateral necessary" means only that portion of the total cash collateral that is necessary. There is no ambiguity.

In 4001(b)(1)(B), (c)(1)(B) and (d)(1)(B) the NBC notes that the current rule requires a motion of not more than five pages in length to "consist of" the concise statement. The restyled version states that it must "include a concise statement." They suggest alternative language if the intent to allow more than a concise statement for motions not more than five pages in length.

> ***Response:*** This was an unintentional substantive change. The existing rules require a motion of not more than five pages to consist of the concise statement, and we modified those sections to return to that language.

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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 the 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.

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(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 documents to be provided to the trustee under (3).

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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.

Committee Note

The language of Rule 4002 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.

Changes Made After Publication and Comment

- In 4002(a)(2) the phrase "a hearing" was changed to "the hearing."

- In 4002(b)(4) the words "tax information specified in (3)" was replaced with "documents to be provided to the trustee under (3)."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC questioned the language of Rule 4002(a)(2) requiring the debtor to "attend a hearing on a complaint objecting to discharge." They noted that there may be many hearings.

> ***Response***: The only difference in the restyled version of the rule from the original is a change from "the hearing" to "a hearing." The language was changed back to "the hearing" to avoid suggesting that the debtor may choose one hearing to attend and need not attend the others. Any other change would be substantive in nature.

- **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

In 4002(b)(4) the NCBJ did not think that the term "tax information specified in (3)" was helpful, and suggested changing the term to "documents specified in (3)."

Response: Comment accepted.

• **National Association of Consumer Bankruptcy Attorneys (BK-2021-0002-0032) (NCBJ)**

In 4002(b)(4), the NACBA detected a substantive change. The existing rule, they stated, requires the debtor to provide tax documents to a creditor that timely requests it only at the time the debtor provides those documents to the trustee, meaning that if the debtor has already provided the documents to the trustee when the creditor makes its request, the debtor does not have to honor the request. The restyled rule required the request to be honored whenever it was made at least 14 days before the first date set for the § 341 meeting.

Response: Without taking any position on the meaning of the existing rule, we have modified the language to use language that closely tracks the existing rule.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 4003. Exemptions</td><td>Rule 4003. Exemptions</td></tr>
<tr><td>(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.</td><td>(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.</td></tr>
<tr><td>(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</td><td>(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 to it 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.</td></tr>
</table>

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 a request under § 522(f) by challenging the validity of the exemption asserted to	**(d) Avoiding a Lien or Other Transfer of Exempt Property.** **(1)** ***Bringing a Proceeding.*** A proceeding under § 522(f) to avoid a lien or other transfer of exempt property must be commenced by: (A) filing a motion under Rule 9014; or (B) serving a Chapter 12 or 13 plan on the affected creditors as Rule 7004 provides for serving a summons and complaint.

ORIGINAL	REVISION
be impaired by the lien.	**(2)** ***Objecting to a Request Under § 522(f).*** 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.

Committee Note

The language of Rule 4003 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.

Changes Made After Publication and Comment

- The words "to it" have been inserted after the words "file an objection" in 4003(b)(2).

- 4003(d) has been divided into two new subsections, and new subsection (1) has been given the heading "Bringing a Proceeding" and new subsection (2) has been given the heading "Objecting to a Request Under § 522(f)." New subsection (1) now includes a new clause (A) in which the word "by" is replaced with "filing a" and the comma after "Rule 9014" has been replaced with a semicolon. The word "by" is also eliminated at the beginning of new clause (B).

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggested modifying the language "file an objection" in the first sentence of 4003(b)(2) to limit the objection to the claimed fraudulent exemption.

> ***Response:*** Suggestion accepted.

The NBC suggested adding "by the objection" at the end of the final sentence in 4003(c) after "the issues presented" for clarity.

> ***Response***: The substance of (c) is dealing with a hearing under Rule 4003, which is a hearing on objections to claimed exemptions. The only issues to be presented would be those raised by objections to the claimed exemptions. No change is necessary.

In 4002(d) the NBC suggested replacing "as Rule 7004 provides" with "in the manner Rule 7004 provides."

> ***Response:*** The Advisory Committee sees no difference in the two formulations, and "as Rule 7004 provides" is shorter.

• **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

The NCBJ found Rule 4003(d) difficult to read and suggested alternative language.

> ***Response***: Although the suggested language was not used, the subsection has been rewritten to be more comprehensible.

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

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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);	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 with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);	(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 to delay or postpone discharge under § 727(a)(12) is pending;	(I) a motion is pending to delay or postpone a discharge under § 727(a)(12);
(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;	(J) a motion is pending to extend the time to file a reaffirmation agreement under Rule 4008(a);
(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	(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).	(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.	**(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) 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.	**(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), (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).

Committee Note

The language of Rule 4004 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In the last sentence of 4004(b)(1) the NBC suggests inserting "to object" between "time" and "has expired."

> ***Response***: The only time to which the rule refers is the time to object. The heading of (b)(1) is "Motion Before the Time Expires." It is clear what time is referred to by the language.

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.

Committee Note

The language of Rule 4005 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 4006 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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; No Fee for a Reopened Case.** 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.

Committee Note

The language of Rule 4007 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.

Changes Made After Publication and Comment

- The heading of 4007(b) was modified to add a reference to fees.

Summary of Public Comment

- **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

In the heading of Rule 4007(b), the NCBJ suggests adding a reference to filing fees, because the second sentence of that provision deals with filing fees.

Response: Suggestion accepted in modified form.

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 an 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.

Committee Note

The language of Rule 4008 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.

Changes Made After Publication and Comment

- In 4008(a) the phrase "the agreement" has been changed to "an agreement."

Summary of Public Comment

• National Bankruptcy Conference (BK-2021-0002-0001) (NBC)

In 4008(a) the NBC suggests changing "file the agreement" to "file an agreement" because there may be multiple applicable agreements for which the debtor may request an extension.

Response: Suggestion accepted.

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).

Committee Note

The language of Rule 5001 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

NBC notes that the current rule and restyled version do not specify where the hearing is "held". They suggest a revision to state that "a hearing is considered conducted within the district if persons appearing at the hearing are doing so by using methods of communication operated or approved by the court."

> ***Response:*** As the NBC notes, this is "likely not within the present remit" (meaning it is a substantive change).

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.

Committee Note

The language of Rule 5002 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 5003. Records Kept By the Clerk</td><td>Rule 5003. Records to Be Kept by the Clerk</td></tr>
<tr><td>(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.</td><td>(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.</td></tr>
<tr><td>(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.</td><td>(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.</td></tr>
<tr><td>(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.</td><td>(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</td></tr>
</table>

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) a case or proceeding has been filed in or transferred to the court; or (B) 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. 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

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 any notice that is otherwise effectiveunder 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.

Committee Note

The language of Rule 5003 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.

Changes Made After Publication and Comment

- In 5003(d)(2) two subsections have been created and in the new subsection (A) the words "--and if so, whether" have been deleted and a semicolon inserted followed by the word "or."

- In 5003(e)(2)(D) the word "any" has been inserted before the word "notice."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In 5003(a)(1), the NBC suggests modifying "activity" with "in that case" as in the original rule.

> ***Response:*** The rule is specifying what is entered on the "docket in each case" and an activity would not be entered if it was not in that case. Those words are unnecessary.

In 5003(e)(2)(D) the NBC suggested retaining the word "any" before "notice" in the penultimate line to make clear that the reference is to a particular notice rather than notice in general.

> ***Response***: Suggestion accepted.

- **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

In 5003(d)(2) the NCBJ believes the restyling makes a substantive change. It assumes (by using the phrase "and if so") that, in order for a discharge to be entered, there must have been a case or proceeding filed in or transferred to the court. This is not true. For example an order of discharge may be registered with the district under Rule 4004(f). They recommended returning to the original language of the rule, "or if."

> ***Response***: Suggestion accepted.

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.

Committee Note

The language of Rule 5004 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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 required 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.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>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.</td><td></td></tr>
<tr><td>(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.</td><td>(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.</td></tr>
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Committee Note

The language of Rule 5005 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.

Changes Made After Publication and Comment

- In 5005(a)(1) last bullet point, the word "required" has been inserted before "papers."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggests in the last bullet point of 5005(a)(1) replacing "other papers" with "other required papers" to clarify that the only papers referred to are those required to be filed by the rules.

> ***Response***: The original rule refers to "other papers required to be filed by these rules, so "other required papers" seems an appropriate phrase to express that. Suggestion accepted.

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.

Committee Note

The language of Rule 5006 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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.

Committee Note

The language of Rule 5007 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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. **(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.

Committee Note

The language of Rule 5008 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.

Changes Made After Publication and Comment

- In 5008(a) the reference to "Rule 2002(f)(1)(J)" has been replaced with a reference to "Rule 2002.)

Summary of Public Comment

- **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

The NCBJ notes that the reference in (a) to Rule 2002(f)(1)(J) is a phantom reference; there is no such provision. They suggest referring to Rule 2002 generally or Rule 2002(f).

Response: Suggestion accepted.

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 subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a statement under Rule 1007(b) 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

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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 subdivision (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 movefor 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.

Committee Note

The language of Rule 5009 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.

Changes Made After Publication and Comment

• In 5009(b) and (d) the word "subdivision" replaces the word "rule" before "(b)" and "(d)" respectively.

Summary of Public Comment

• **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

The NCBJ objects to the word "closing" in the titles of various parts of rule 5009 because the word "closing" does not appear in the text itself.

> ***Response:*** The word "closing" is in the current heading of Rule 5009 and 5009(a). No change was made in response to this suggestion.

The NCBJ also suggests that Rule 5009(a) and Rule 5009(c) be rewritten to insert the words "and may be closed" after the words "fully administered."

> ***Response***: This is a substantive change.

The NCBJ also thinks the restyled Rule 5009(b) "does not simplify the paragraph and leads to the awkward "This rule (b)" and suggests the rule should not be restyled.

> ***Response***: The word "subdivision" replaces the word "rule" before "(b)" and "(d)" in 5009(b) and (d) respectively. No other change was made in response to this suggestion.

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

As previously mentioned, the NBC objected to the absence of the word "subdivision" before (b) in Rule 5009(b) and (d) in Rule 5009(d).

> ***Response***: The word "subdivision" replaces the word "rule" before "(b)" and "(d)" in 5009(b) and (d) respectively.

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.

Committee Note

The language of Rule 5010 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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 HEARINGA 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.

Committee Note

The language of Rule 5011 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In 5011(c) the NBC suggests amending the final clause to read "stay any or all contested matters or proceedings" because there may be more than one matter or proceeding affected by the motion to withdraw or abstain.

> ***Response***: The reference to "a proceeding" in the restyled rule does not limit the court to staying only one proceeding. It is consistent with the style of changing plural references to single. Adding "matter or" before "proceeding" would be a substantive change.

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.

Committee Note

The language of Rule 5012 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

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 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.

Committee Note

The language of Rule 6001 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.

Changes Made After Publication and Comment

- The heading of Part VI has been modified to remove the words "Property of."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC objects to the removal of nominalizations from the title, and insertion of the reference to "property of" the estate in the new title. They note that the current title replicates the language of subchapter II of chapter 7 of the Code ("Collection, Liquidation, and Distribution of the Estate"). Inserting the reference to property of the estate they view as a substantive change given case law holding, for example, that an avoidance action is not "property of the estate."

> ***Response:*** The elimination of nominalizations is a consistent style choice. The reference to "property of" the estate in the title has been removed.

The NBC questioned the insertion of "postpetition" before the word "transfer" in the text, suggesting it makes a substantive change. They ask whether the section applies to prepetition transfers.

> ***Response***: Because Rule 6001 has always been titled in a way that indicates it refers only to postpetition transfers, putting that word in the text is not a substantive change.

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 the Code 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, including whether disbursements have been reasonable.

Committee Note

The language of Rule 6002 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.

Changes Made After Publication and Comment

- In 6002(a), the words "§ 543" was replaced with "the Code."
- In 6002(b) the words "proper and" were replaced with "proper, including whether."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

NBC suggested that the change in 6002(a) from "required by the Code" to "required by § 543" is substantive and the language should be changed back. A custodian may be required to deliver property under § 362(a) and § 542, for example.

Response: Suggestion accepted.

NBC suggested that the drafting of (b) implies that disbursements are distinct from administration, rather than a part of it. They suggested revised language.

Response: Suggestion accepted.

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.

Committee Note

The language of Rule 6003 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.

Changes Made After Publication and Comment

• No changes were made after publication and comment.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggests a revision to the title by deleting "Made Immediately After the Petition Is Filed."

Response: That language is a substitute for the reference in the original rule to "Interim and Final Relief Immediately Following the Commencement of the Case." Without that language it is not clear what motions are covered by Rule 6003. No change was made.

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

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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 given to: • all creditors; • all indenture trustees; • any committees appointed or elected under the Code; • 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 consideration received for each item or lot or, if sold in bulk, for the entire property. (B) *If by an Auctioneer.* If the property is sold by an auctioneer, the auctioneer must file

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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 Not by an Auctioneer.* If the property is not sold by an auctioneer, 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

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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.

Committee Note

The language of Rule 6004 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.

Changes Made After Publication and Comment

- In 6004(d) the words "served on" were replaced with "given to." The word "all" was inserted at the beginning of each of the two following bullet points, and the third bullet point was modified to read "any committees appointed or elected under the Code."

- In 6004(f)(1)(A) the words "amount paid" have been changed to "consideration received" and the comma in the third bullet point was moved to follow the word "or" rather than the word "lot."

- In 6004(f)(1)(B) the title has been changed to "If by an Auctioneer" from "If by Auction" and the first clause is changed from "If the property is sold by auction" to "If the property is sold by an auctioneer." The heading to 6004(f)(1)(C) is changed to "If Not by an Auctioneer" from "If by Private Sale" and the phrase "sold by auction" is replaced by "sold by an auctioneer."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC first made comments on the bullet points in 6004(d). They objected to the omission of the word "all" before "creditors"; they suggested inserting "all" before "indenture trustees" as in restyled Rule 2002(a); and they suggested reverting to the language "any committees appointed or elected pursuant to the Code" rather than referring to § 705 and § 1102 because theoretically a committee could be elected or appointed pursuant to § 105 or § 1181(b), for example.

> ***Response***: Suggestion accepted, but changed "pursuant to the Code" to "under the Code."

Second, they suggested that the comma in 6004(f)(1)(A), last bullet point, be moved.

> ***Response***: Suggestion accepted.

Third, in 6004(f)(1)(A) they do not think "price received" (in the existing rule) is the same as "amount paid" and may not include noncash consideration. They suggested "price paid" or "consideration paid" or "consideration given."

> ***Response:*** An amount paid for an item is the price that is paid for it, whether cash or noncash. And when the amount is paid for an item, that is the consideration paid (and received). No change was made in response to this suggestion.

Fourth, the NBC believes the restyled version of 6004(f)(1)(B) &(C) is substantively different from the original because having property "sold by an auctioneer" is different from having property "sold by auction." They note that there may be auctions in which there is no auctioneer (such as one conducted virtually or by a lawyer).

> ***Response***: Suggestion accepted.

Fifth, in 6004(f)(2) the NBC questioned how a sale can be "complete" if the applicable transaction documents have not been signed. They also questioned the modification of the references in the existing rule to "execute" and "execution" to "sign" and "signing." They believe that execution may require more than signing, such as procuring witnesses, attestation, notarization, etc.

> ***Response***: The existing rule says "after a sale in accordance with this rule" the debtor will execute all the necessary documents. There is no difference between that and "when a sale is complete." The rule means that the winning bidder has been selected as provided in the rule.
>
> We have consistently changed "executed" and similar words) to "signed". See, for example, Rule 3001(b) and (f) and Rule 3003(c)(5).

No change was made in response to these suggestions.

Sixth, in 6004(g) the NBC objected to hyphenation of "consumer-privacy" even if grammatically superior because it deviates from the usage in the Code.

> ***Response***: "Consumer-privacy ombudsman" is not defined in the Code, and therefore it is a matter of style on which we defer to the style consultants. No change was made in response to this suggestion

Seventh, in the last sentence of 6004(g)(1), the NBC objected to the use of "it" and suggested replacing it with "the motion."

> ***Response***: There is nothing other than the motion that "it" can refer to. It certainly can't refer to Rule 9014, the subject of the immediately preceding sentence. No change was made in response to this suggestion.

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.

Committee Note

The language of Rule 6005 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggested adding "as an appraiser or auctioneer" at the end of the last sentence.

> ***Response***: Given that the rule is dealing with the employment of appraisers or auctioneers, there is no need for the additional language. No change was made in response to this suggestion.

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.

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(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)** ***Requests to Assume or Assign.*** 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)** ***Requests 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.

Committee Note

The language of Rule 6006 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.

Changes Made After Publication and Comment

• The title of 6006(e)(1) was changed to "Requests to Assume or Assign" and the title of 6006(e)(2) was changed to "Requests to Reject."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC expressed the view that the title of 6006(b) is "unduly long and cumbersome" and would prefer a title that reads: "Requiring Assumption or Rejection of a Contract or Lease."

> ***Response***: This is a matter of style rather than substance. We made no change in response to this suggestion.

In 6006(d) the NBC suggested deleting "an" from the title.

> ***Response***: This is a matter of style rather than substance. No change was made in response to this suggestion.

In 6006(e)(1)(A) the NBC suggested that the word "they" at the beginning of the clause is unclear and suggests "all of the contracts and leases."

> ***Response***: There is nothing else "they" could refer to other than the contracts and leases. There is no ambiguity. No change was made in response to this suggestion.

The NBC suggested changing the title of 6006(e)(1) to "Assumption or Assignment."

> ***Response***: The title to 6006(e)(1) has been changed to "Requests to Assume or Assign."

The NBC suggested changing the title of 6006(e)(2) to "Authority to Reject" or "Rejection." They do not think the substance of the paragraph is an "exception."

> ***Response***: The title to 6006(e)(2) has been changed to "Requests to Reject."

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 6007. Abandonment or Disposition of Property</td><td>Rule 6007. Abandoning or Disposing of Property</td></tr>
<tr><td>(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.</td><td>(a) Notice by the Trustee or Debtor in Possession.
(1) In General. 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;
all creditors;
all 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.</td></tr>
<tr><td>(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</td><td>(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;
all creditors;
all indenture trustees; and
any committees elected under § 705 or appointed under § 1102.</td></tr>
</table>

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.*** Unless the court orders otherwise, an order granting the motion to abandon property effects the trustee's or debtor in possession's abandonment without further notice.
[(c) HEARING]	

Committee Note

The language of Rule 6007 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.

Changes Made After Publication and Comment

• The phrase "; Objections" has been deleted from the title to the Rule

• The heading to 6007(a)(1) has been changed from "Notice" to "In General."

• The word "all" has been inserted at the beginning of the second and third bullet points in 6007(a)(1) and the third and fourth bullet points in 6007(b)(1).

• 6007(b)(3) has been rewritten to put replace the words "if the court grants the motion to abandon property, the order" with the clause "Unless the court orders otherwise, an order granting the motion to abandon property." The language "—unless the court orders otherwise" at the end has been deleted.

Summary of Public Comment

• National Bankruptcy Conference (BK-2021-0002-0001) (NBC)

The NBC suggested deleting "; Objections" from the title. They note that other rules (such as Rule 6004) include procedures governing objections without including it in the title

Response: Suggestion accepted.

The NBC suggested that the title of 6007(a)(1) should be "In General" as in Rule 6004(a)(1).

Response: Suggestion accepted.

With respect to the bullet points in (a)(1) and in (b)(1), the NBC suggested that the word "all" be inserted before "creditors" and "indenture trustees" consistent with other places in the restyled rules.

Response: Suggestion accepted.

In 6007(b)(3) the NBC objected to the use of the em dash as "cumbersome." They suggested moving the clause "unless the court orders otherwise" to the beginning of (b)(3).

Response: Suggestion accepted.

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.

Committee Note

The language of Rule 6008 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.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC objected to the new title. They suggested conforming to Section 722 of the Code – "Redemption" or "Redemption of Property."

> ***Response***: The new title accurately describes the content of the Rule. No change was made in response to this suggestion.

ORIGINAL	REVISION
Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession	**Rule 6009. Right of the Trustee or Debtor in Possession to Prosecute and Defend Proceedings**
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) prosecute—or appear in and defend—any pending action or proceeding by or against the debtor; or (b) commence and prosecute in any tribunal an action or proceeding on the estate's behalf.

Committee Note

The language of Rule 6009 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.

Changes Made After Publication and Comment

- The title of the Rule was changed from "Prosecuting and Defending the Debtor's Interests" to "Right of the Trustee or Debtor in Possession to Prosecute and Defend Proceedings."

- In 6009(a), the words "prosecute—or" were inserted before the words "appear in" and the words "and defend—" were inserted immediately following the words "appear in." The word "pending" was inserted before the words "action or proceeding" and the phrase "and act on the debtor's behalf" were deleted.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC objected to the phrase "the debtor's interests" in the title. The trustee is not acting on behalf of the individual debtor but on behalf of the estate.

> ***Response***: For the reasons given by the NBC, and because the term "interests" has a definite meaning in bankruptcy practice, the phrase was deleted.

The NBC also objected to "act on the debtor's behalf" because they believe it connotes agency with the agent having the power to bind the principal. They do not think the nature of the trustee's appearance in an action or proceeding has this quality. They suggested deleting this phrase and returning to language more like the original rule.

Response: Suggested accepted.

• **National Conference of Bankruptcy Judges (BK-2021-0002-0020) (NCBJ)**

The NCBJ suggests that 6009(a) is missing the words "before any tribunal" which they think are applicable to all clauses in the existing rule.

> ***Response***: Because the existing rule has a comma after the phrase "by or against the debtor," the words "before any tribunal" do not modify the first half of the existing rule. Nor are they necessary; presumably an action or proceeding by or against the debtor must be in a tribunal. No change was made in response to this suggestion.

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 of or creation of a lien on the debtor's nonexempt property. The suretymust be joined as a defendant in any proceedingto avoid that transfer or lien. The proceeding is governed by the rules in Part VII.

Committee Note

The language of Rule 6010 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.

Changes Made After Publication and Comment

- The word "of" was inserted after the word "transfer."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

The NBC suggested inserting the word "of" after the word "transfer" in the first sentence.

Response: Suggestion accepted.

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 the 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

The language of Rule 6011 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.

Changes Made After Publication and Comment

• In 6011(c) the word "the" was inserted immediately before "proof of compliance" and a comma was deleted after the words "reasonable time."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2021-0002-0001) (NBC)**

In 6011(a)(4) the NBC objected to use of the word "they" and suggested replacing it with "the records."

> ***Response***: "They" in (a)(4) clearly refers to the "records" in (a)(3). No change was made in response to this suggestion.

In 6011(b)(1)(B) NBC objected to the use of "it." They suggested replacing the word with "the notice."

> ***Response***: There is nothing else "it" could be other than the notice, which appears six words earlier. No change was made in response to this suggestion.

In 6011(c) the NBC also objected to the use of "it" and suggested replacing the phrase ", but not file it" with a separate sentence reading "The trustee must not file the proof of compliance."

> ***Response:*** We have inserted the word "the" before "proof of compliance" the second time that phrase appears, and with that insertion the reference to "it" clearly refers to the proof of compliance.

TAB 9B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: RESTYLING SUBCOMMITTEE

SUBJECT: RESTYLING TO PARTS VII-IX OF THE BANKRUPTCY RULES

DATE: MAR.1, 2022

The Subcommittee is very pleased to present to the Advisory Committee for approval and publication Parts VII-IX of the restyled Federal Rules of Bankruptcy Procedure, which are attached as exhibits to this memo, together with proposed Advisory Committee Notes. This is the final group of rules being presented for publication, with a goal of having all the rules finally approved by the Standing Committee in June 2023 and submitted to the Judicial Conference.

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 pleased 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 first group of restyled rules and 3001(g) in the last group, 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 7004(h) falls into that category, having been enacted in Pub. L. 103-394, 108 Stat. 4118 Section 114. As a result, it has not been restyled. The Advisory Committee Note to Rule 7004 explains this.

Committee Note to Rule 1001

Although it is not included in this set of restyled rules, the Committee Note to Rule 1001, which describes the process and principles used in the project, is equally applicable to all restyled rules. It is set forth here in full:

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.

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 VII-IX 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

7000 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.

[The Committee Note to Rule 1001 is included here for reference for purposes of publication. It will not be included in the final rule.

Committee Note to 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.

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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.]

ORIGINAL	REVISION
PART VII— ADVERSARY PROCEEDINGS	**PART VII. ADVERSARY PROCEEDINGS**
Rule 7001. Scope of Rules of Part VII	**Rule 7001. Types of Adversary Proceedings**
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 § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002; (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d); (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property; (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8),[1] (a)(9), or 1328(f); (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan; (6) a proceeding to determine the dischargeability of a debt; (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;	An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings: (a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002; (b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d); (c) a proceeding to obtain authority under § 363(h) to sell both the estate's interest in property and that of a co-owner; (d) a proceeding to revoke or object to a discharge—except an objection under § 727(a)(8) or (a)(9), or § 1328(f); (e) a proceeding to revoke an order confirming a plan in a Chapter 11, 12, or 13 case; (f) a proceeding to determine whether a debt is dischargeable; (g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan; (h) a proceeding to subordinate an allowed claim or interest—except when subordination is provided in a Chapter 9, 11, 12, or 13 plan;

1 So in original. Probably should be only one section symbol.

ORIGINAL	REVISION
(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination; (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.	(i) a proceeding to obtain a declaratory judgment relating to any proceeding described in (a)–(h); and (j) a proceeding to determine a claim or cause of action removed under 28 U.S.C § 1452.

Committee Note

The language of Rule 7001 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.

ORIGINAL	REVISION
Rule 7002. References to Federal Rules of Civil Procedure	**Rule 7002. References to the Federal Rules of Civil Procedure**
Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.	When a Federal Rule of Civil Procedure applicable to an adversary proceeding refers to another civil rule, that reference must be read as a reference to the civil rule as modified by this Part VII.

Committee Note

The language of Rule 7002 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.

ORIGINAL	REVISION
Rule 7003. Commencement of Adversary Proceeding	**Rule 7003. Commencing an Adversary Proceeding**
Rule 3 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 3 applies in an adversary proceeding.

Committee Note

The language of Rule 7003 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.

ORIGINAL	**REVISION**
Rule 7004. Process; Service of Summons, Complaint	**Rule 7004. Process; Issuing and Serving a Summons and Complaint**
(a) SUMMONS; SERVICE; PROOF OF SERVICE. (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1),(d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person. (2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.	(b) **Issuing, Delivering, and Personally Serving a Summons and Complaint.** (1) ***In General.*** Except as provided in (3), Fed. R. Civ. P. 4(a), (b), (c)(1), (d)(5), (e)–(j), (*l*), and (m) applies in an adversary proceeding. (2) ***Issuing and Delivering a Summons.*** The clerk may: • sign, seal, and issue the summons electronically by placing an "s/" before the clerk's name and adding the court's seal to the summons; and • deliver the summons for service. (3) ***Personally Serving a Summons and Complaint.*** Any person who is at least 18 years old and not a party may personally serve a summons and complaint under Fed. R.Civ. P. 4(e)–(j).
(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows: (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.	**(b) Service by Mail as an Alternative.** Except as provided in subdivision (h), in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)-(j), a copy of a summons and complaint may be served by first-class mail, postage prepaid, within the United States on: (1) an individual except an infant or an incompetent person—by mailing the copy to the individual's dwelling or usual place of abode or where the individual regularly conducts a business or profession;

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(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.	(2) an infant or incompetent person—by mailing the copy: (A) to a person who, under the law of the state where service is made, is authorized to receive service on behalf of the infant or incompetent person when an action is brought in that state's courts of general jurisdiction; and (B) at that person's dwelling or usual place of abode or where the person regularly conducts a business or profession;
(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.	(3) a domestic or foreign corporation, or a partnership or other unincorporated association—by mailing the copy: (A) to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service; and (B) also to the defendant if a statute authorizes an agent to receive service and the statute so requires;
(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The	(4) the United States, with these requirements: (A) a copy of the summons and complaint must be mailed to: (i) the civil-process clerk in the United States attorney's office in the district where the case is filed; (ii) the Attorney General of the United States in Washington, D.C.; and (iii) in an action attacking the validity of an order of a United States officer or agency that is not a party, also to that officer or agency; and

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court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.	(B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A);
(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.	(5) an officer or agency of the United States, with these requirements: (A) the summons and complaint must be mailed not only to the officer or the agency—as prescribed in (3) if the agency is a corporation—but also to the United States, as prescribed in (4);[2] (B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (4)(A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); and (C) if a United States trustee is the trustee in the case, service may be made on the United States trustee solely as trustee, as prescribed in (10); (6) a state or municipal corporation or other governmental organization subject to suit, with these requirements: (A) the summons and complaint must be mailed to the person or office that, under the law of the state where service is made, is authorized to receive service in a case filed against that defendant in that state's courts of general jurisdiction; and

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(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.	(B) if there is no such authorized person or office, the summons and complaint may be mailed to the defendant's chief executive officer; (7) a defendant of any class referred to in (1) and (3)—for whom it also suffices to mail the summons and complaint to the entity on which service must be made under a federal statute or under the law of the state where service is made when an action is brought against that defendant in that state's courts of general jurisdiction;
(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.	(8) any defendant—for whom it also suffices to mail the summons and complaint to the defendant's agent under these conditions: (A) the agent is authorized by appointment or by law to accept service of process; (B) the mail is addressed to the agent's dwelling or usual place of abode or where the agent regularly conducts a business or profession; and
(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.	(C) if the agent's authorization so requires, a copy is also mailed to the defendant as provided in this subdivision (b); (9) the debtor, with the qualification that after a petition has been filed by or served upon a debtor, and until the case is dismissed or closed—by addressing the mail to the debtor at the address shown on the debtor's petition or the address the debtor specifies in a filed writing;
(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is	(10) a United States trustee who is the trustee in the case and service is made upon the United States trustee solely as trustee—by addressing the mail to the

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dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing. (10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.	United States trustee's office or other place that the United States trustee designates within the district.
(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.	**(c) Service by Publication in an Adversary Proceeding Involving Property Rights.** If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under (b) or Fed. R. Civ. P. 4(e)–(j), the court may order the summons and complaint to be served by: (1) first-class mail, postage prepaid, to the party's last known address; and (2) at least one publication in a form and manner as the court orders.
(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.	**(d) Nationwide Service of Process.** A summons and complaint (and all other process, except a subpoena) may be served anywhere within the United States.
(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the	**(e) Time to Serve a Summons and Complaint.** **(1)** ***In General.*** A summons and complaint served under Fed. R. Civ. P. 4(e), (g), (h)(1), (i), or (j)(2) by delivery

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summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, another summons will be issued for service. This subdivision does not apply to service in a foreign country.	must be served within 7 days after the summons is issued. If served by mail, they must be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, a new summons must be issued. **(2)** *Exception.* This paragraph **Error! Reference source not found.** does not apply to service in a foreign country.
(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.	**(f) Establishing Personal Jurisdiction.** If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service under this Rule 7004 or the applicable provisions of Fed. R. Civ. P. 4 establishes personal jurisdiction over the person of a defendant: (A) in a bankruptcy case; (B) in a civil proceeding arising in or related to a bankruptcy case; or (C) in a civil proceeding under the Code.
(g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P.	**(g) Serving a Debtor's Attorney.** If, when served, a debtor is represented by an attorney, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b).
(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—	**(h) Service of Process on an Insured Depository Institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless— (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

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(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.	(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.
(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.	**(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.

Committee Note

The language of Rule 7004 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. The first clause of Rule 7004(b) and Rule 7004(h) have not been restyled because they were enacted by Congress, P.L. 103-394, 108 Stat. 361, Sec. 4118 (1994). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

ORIGINAL	REVISION
Rule 7005. Service and Filing of Pleadings and Other Papers	**Rule 7005. Serving and Filing Pleadings and Other Papers**
Rule 5 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 5 applies in an adversary proceeding.

Committee Note

The language of Rule 7005 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.

ORIGINAL	REVISION
Rule 7007. Pleadings Allowed	**Rule 7007. Pleadings Allowed**
Rule 7 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 7 applies in an adversary proceeding.

Committee Note

The language of Rule 7007 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.

ORIGINAL	REVISION
Rule 7007.1. Corporate Ownership Statement	**Rule 7007.1. Corporate Ownership Statement**
(a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, shall file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.	**(a) Required Disclosure.** Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.
(b) TIME FOR FILING; SUPPLEMENTAL FILING. The corporate ownership statement shall: (1) be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court; and (2) be supplemented whenever the information required by this rule changes.	**(b) Time for Filing; Supplemental Filing.** The statement must: (1) be filed with the corporation's first appearance, pleading, motion, response, or other request to the court; and (2) be supplemented whenever the information required by this rule changes.

Committee Note

The language of Rule 7007.1 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.

ORIGINAL	REVISION
Rule 7008. General Rules of Pleading	**Rule 7008. General Rules of Pleading**
Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.	Fed. R. Civ. P. 8 applies in an adversary proceeding. The allegation of jurisdiction required by that rule must include a reference to the name, number, and Code chapter of the case that the adversary proceeding relates to and the district and division where it is pending. In an adversary proceeding before a bankruptcy court, a complaint, counterclaim, crossclaim, or third-party complaint must state whether the pleader does or does not consent to the entry of a final order or judgment by the bankruptcy court.

Committee Note

The language of Rule 7008 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.

ORIGINAL	REVISION
Rule 7009. Pleading Special Matters	**Rule 7009. Pleading Special Matters**
Rule 9 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 9 applies in an adversary proceeding.

Committee Note

The language of Rule 7009 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.

ORIGINAL	REVISION
Rule 7010. Form of Pleadings	**Rule 7010. Form of Pleadings in an Adversary Proceeding**
Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.	Fed. R. Civ. P. 10 applies in an adversary proceeding—except that a pleading's caption must conform substantially to the appropriate version of Official Form 416.

Committee Note

The language of Rule 7010 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.

ORIGINAL	REVISION
Rule 7012. Defenses and Objections—When and How Presented— By Pleading or Motion—Motion for Judgment on the Pleadings	**Rule 7012. Defenses; Effect of a Motion; Motion for Judgment on the Pleadings and Other Procedural Matters**
(a) WHEN PRESENTED. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.	**(a) Time to Serve.** The time to serve a responsive pleading is as follows: (1) ***Answer to a Complaint in General.*** A defendant must serve an answer to a complaint within 30 days after the summons was issued, unless the court sets a different time. (2) ***Answer to a Complaint Served by Publication or on a Party in a Foreign Country.*** The court must set the time to serve an answer to a complaint served by publication or served on a party in a foreign country. (3) ***Answer to a Crossclaim.*** A party served with a pleading that states a crossclaim must serve an answer to the crossclaim within 21 days after being served. (4) ***Answer to a Counterclaim.*** A plaintiff served with an answer that contains a counterclaim must answer the counterclaim within 21 days after service of: (A) the answer; or (B) a court order requiring an answer, unless the order states otherwise. (5) ***Answer to a Complaint or Crossclaim—or Answer to a Counterclaim—Served on the United States or an Officer or Agency.*** The United States or its officer or agency must serve: (A) an answer to a complaint within 35 days after the summons was issued; and

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	(B) an answer to a crossclaim or an answer to a counterclaim within 35 days after the United States attorney is served with the pleading that asserts the claim. (6) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these times as follows: (A) if the court denies the motion or postpones disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or (B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the statement is served.
(b) APPLICABILITY OF RULE 12(b)–(i) F.R.CIV.P. Rule 12(b)–(i) F.R.Civ.P.[2] applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.	**(b) Applicability of Civil Rule 12(b)-(i).** Fed. R. Civ. P. 12(b)-(i) applies in an adversary proceeding. A responsive pleading must state whether the party does or does not consent to the entry of a final order or judgment by the bankruptcy court.

Committee Note

The language of Rule 7012 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.

2 The title of this rule refers to judgment on the pleadings. But that's Fed. R. Civ. P. 12(c). So is this citation to 12(c) or to 12(b)–(i). The latter doesn't seem to make sense. —Style Consultants.

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Rule 7013. Counterclaim and Cross-Claim	**Rule 7013. Counterclaim and Crossclaim**
Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.	Fed. R. Civ. P. 13 applies in an adversary proceeding. But a party sued by a trustee or debtor in possession need not state as a counterclaim any claim the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the order for relief. If, through oversight, inadvertence, or excusable neglect, a trustee or debtor in possession fails to plead a counterclaim—or when justice so requires—the court may permit the trustee or debtor in possession to: (a) amend the pleading; or (b) commence a new adversary proceeding or separate action.

Committee Note

The language of Rule 7013 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.

ORIGINAL	REVISION
Rule 7014. Third-Party Practice	**Rule 7014. Third-Party Practice**
Rule 14 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 14 applies in an adversary proceeding.

Committee Note

The language of Rule 7014 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.

ORIGINAL	REVISION
Rule 7015. Amended and Supplemental Pleadings	**Rule 7015. Amended and Supplemental Pleadings**
Rule 15 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 15 applies in an adversary proceeding.

Committee Note

The language of Rule 7015 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.

ORIGINAL	REVISION
Rule 7016. Pretrial Procedures	**Rule 7016. Pretrial Procedures**
(a) PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT. Rule 16 F.R.Civ.P. applies in adversary proceedings.	**(a) Pretrial Conferences; Scheduling; Management**. Fed. R. Civ. P. 16 applies in an adversary proceeding.
(b) DETERMINING PROCEDURE. The bankruptcy court shall decide, on its own motion or a party's timely motion, whether: (1) to hear and determine the proceeding; (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (3) to take some other action.	(b) **Determining Procedure**. On its own or a party's timely motion, the court must decide whether: (1) to hear and determine the proceeding; (2) to hear it and issue proposed findings of fact and conclusions of law; or (3) to take other action.

Committee Note

The language of Rule 7016 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.

ORIGINAL	REVISION
Rule 7017. Parties Plaintiff and Defendant; Capacity	**Rule 7017. Plaintiff and Defendant; Capacity; Public Officers**
Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).	Fed. R. Civ. P. 17 applies in an adversary proceeding, except as provided in Rule 2010(b).

Committee Note

The language of Rule 7017 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.

ORIGINAL	REVISION
Rule 7018. Joinder of Claims and Remedies	**Rule 7018. Joinder of Claims**
Rule 18 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 18 applies in an adversary proceeding.

Committee Note

The language of Rule 7018 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.

ORIGINAL	REVISION
Rule 7019. Joinder of Persons Needed for Just Determination	**Rule 7019. Required Joinder of Persons**
Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceedings and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.	Fed. R. Civ. P. 19 applies in an adversary proceeding. But these exceptions apply: (a) if an entity joined as a party raises the defense that the court lacks subject-matter jurisdiction and the defense is sustained, the court must dismiss the party; and (b) if an entity joined as a party properly and timely raises the defense of improper venue, the court must determine under 28 U.S.C. § 1412 whether to transfer to another district the entire adversary proceeding or just that part involving the joined party.

Committee Note

The language of Rule 7019 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.

ORIGINAL	REVISION
Rule 7020. Permissive Joinder of Parties	**Rule 7020. Permissive Joinder of Parties**
Rule 20 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 20 applies in an adversary proceeding.

Committee Note

The language of Rule 7020 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.

ORIGINAL	REVISION
Rule 7021. Misjoinder and Non-Joinder of Parties	**Rule 7021. Misjoinder and Nonjoinder of Parties**
Rule 21 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 21 applies in an adversary proceeding.

Committee Note

The language of Rule 7021 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.

ORIGINAL	REVISION
Rule 7022. Interpleader	**Rule 7022. Interpleader**
Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements—and does not limit—the joinder of parties allowed by Rule 7020.	Fed. R. Civ. P. 22(a) applies in an adversary proceeding. This rule supplements and does not limit the joinder of parties under Rule 7020.

Committee Note

The language of Rule 7022 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.

ORIGINAL	REVISION
Rule 7023. Class Proceedings	**Rule 7023. Class Actions**
Rule 23 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23 applies in an adversary proceeding.

Committee Note

The language of Rule 7023 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.

ORIGINAL	REVISION
Rule 7023.1. Derivative Actions	**Rule 7023.1. Derivative Actions**
Rule 23.1 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23.1 applies in an adversary proceeding.

Committee Note

The language of Rule 7023.1 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.

ORIGINAL	REVISION
Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations	**Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations**
Rule 23.2 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23.2 applies in an adversary proceeding.

Committee Note

The language of Rule 7023.2 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.

ORIGINAL	REVISION
Rule 7024. Intervention	**Rule 7024. Intervention**
Rule 24 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 24 applies in an adversary proceeding.

Committee Note

The language of Rule 7024 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.

ORIGINAL	REVISION
Rule 7025. Substitution of Parties	**Rule 7025. Substitution of Parties**
Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 25 applies in an adversary proceeding—but is subject to Rule 2012.

Committee Note

The language of Rule 7025 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.

ORIGINAL	REVISION
Rule 7026. General Provisions Governing Discovery	**Rule 7026. Duty to Disclose; General Provisions Governing Discovery**
Rule 26 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 26 applies in an adversary proceeding.

Committee Note

The language of Rule 7026 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.

ORIGINAL	REVISION
Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal	**Rule 7027. Depositions to Perpetuate Testimony**
Rule 27 F.R.Civ.P. applies to adversary proceedings.	Fed. R. Civ. P. 27 applies in an adversary proceeding.

Committee Note

The language of Rule 7027 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.

ORIGINAL	REVISION
Rule 7028. Persons Before Whom Depositions May Be Taken	**Rule 7028. Persons Before Whom Depositions May Be Taken**
Rule 28 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 28 applies in an adversary proceeding.

Committee Note

The language of Rule 7028 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.

ORIGINAL	REVISION
Rule 7029. Stipulations Regarding Discovery Procedure	**Rule 7029. Stipulations About Discovery Procedure**
Rule 29 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 29 applies in an adversary proceeding.

Committee Note

The language of Rule 7029 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.

ORIGINAL	REVISION
Rule 7030. Depositions Upon Oral Examination	**Rule 7030. Depositions by Oral Examination**
Rule 30 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 30 applies in an adversary proceeding.

Committee Note

The language of Rule 7030 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.

ORIGINAL	REVISION
Rule 7031. Deposition Upon Written Questions	**Rule 7031. Depositions by Written Questions**
Rule 31 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 31 applies in an adversary proceeding.

Committee Note

The language of Rule 7031 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.

ORIGINAL	REVISION
Rule 7032. Use of Depositions in Adversary Proceedings	**Rule 7032. Using Depositions in Court Proceedings**
Rule 32 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 32 applies in an adversary proceeding.

Committee Note

The language of Rule 7032 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.

ORIGINAL	REVISION
Rule 7033. Interrogatories to Parties	**Rule 7033. Interrogatories to Parties**
Rule 33 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 33 applies in an adversary proceeding.

Committee Note

The language of Rule 7033 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.

ORIGINAL	REVISION
Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	**Rule 7034. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**
Rule 34 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 34 applies in an adversary proceeding.

Committee Note

The language of Rule 7034 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.

ORIGINAL	REVISION
Rule 7035. Physical and Mental Examination of Persons	**Rule 7035. Physical and Mental Examinations**
Rule 35 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 35 applies in an adversary proceeding.

Committee Note

The language of Rule 7035 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.

ORIGINAL	REVISION
Rule 7036. Requests for Admission	**Rule 7036. Requests for Admission**
Rule 36 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 36 applies in an adversary proceeding.

Committee Note

The language of Rule 7036 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.

ORIGINAL	REVISION
Rule 7037. Failure to Make Discovery: Sanctions	**Rule 7037. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions**
Rule 37 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 37 applies in an adversary proceeding.

Committee Note

The language of Rule 7037 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.

ORIGINAL	REVISION
Rule 7040. Assignment of Cases for Trial	**Rule 7040. Scheduling Cases for Trial**
Rule 40 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 40 applies in an adversary proceeding.

Committee Note

The language of Rule 7040 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.

ORIGINAL	REVISION
Rule 7041. Dismissal of Adversary Proceedings	**Rule 7041. Dismissal of Adversary Proceedings**
Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.	Fed. R. Civ. P. 41 applies in an adversary proceeding. But a complaint objecting to the debtor's discharge may be dismissed on the plaintiff's motion only: (a) with notice to the trustee, the United States trustee, and any other person as the court designates; and (b) by a court order that sets out any conditions for the dismissal.

Committee Note

The language of Rule 7041 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.

ORIGINAL	REVISION
Rule 7042. Consolidation of Adversary Proceedings; Separate Trials	**Rule 7042. Consolidating Adversary Proceedings; Separate Trials**
Rule 42 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 42 applies in an adversary proceeding.

Committee Note

The language of Rule 7042 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.

ORIGINAL	REVISION
Rule 7052. Findings by the Court	**Rule 7052. Findings and Conclusions by the Court; Judgment on Partial Findings**
Rule 52 F.R.Civ.P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F.R.Civ.P. to the entry of judgment under Rule 58 F.R.Civ.P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a).	Fed. R. Civ. P. 52 applies in an adversary proceeding—except that a motion under Fed. R. Civ. P. 52(b) to amend or add findings must be filed within 14 days after the judgment is entered. The reference in Fed. R. Civ. P. 52(a) to entering a judgment under Fed. R. Civ. P. 58 must be read as referring to entering a judgment or order under Rule 5003(a).

Committee Note

The language of Rule 7052 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.

ORIGINAL	REVISION
Rule 7054. Judgments; Costs	**Rule 7054. Judgments; Costs**
(a) JUDGMENTS. Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings.	**(a) Judgment.** Fed. R. Civ. P. 54(a)–(c) applies in an adversary proceeding.
(b) COSTS; ATTORNEY'S FEES. (1) *Costs Other Than Attorney's Fees.* The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court. (2) *Attorney's Fees.* (A) Rule 54(d)(2)(A)–(C) and (E) F.R.Civ.P. applies in adversary proceedings except for the reference in Rule 54(d)(2)(C) to Rule 78. (B) By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings.	**(b) Costs and Attorney's Fees.** (1) ***Costs Other Than Attorney's Fees.*** The court may allow costs to the prevailing party, unless a federal statute or these rules provide otherwise. Costs against the United States, its officers, and its agencies may be imposed only to the extent permitted by law. The clerk, on 14 days' notice, may tax costs, and the court, on motion served within the next 7 days, may review the clerk's action. (2) ***Attorney's Fees.*** (A) *In General.* Fed. R. Civ. P. 54(d)(2)(A)–(C) and (E) applies in an adversary proceeding—except for the reference in Rule 54(d)(2)(C) to Rule 78. (B) *Local Rules for Resolving Issues.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings.

Committee Note

The language of Rule 7054 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.

ORIGINAL	REVISION
Rule 7055. Default	**Rule 7055. Default; Default Judgment**
Rule 55 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 55 applies in an adversary proceeding.

Committee Note

The language of Rule 7055 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.

ORIGINAL	REVISION
Rule 7056. Summary Judgment	**Rule 7056. Summary Judgment**
Rule 56 F.R.Civ.P. applies in adversary proceedings, except that any motion for summary judgment must be made at least 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a different time is set by local rule or the court orders otherwise.	Fed. R. Civ. P. 56 applies in an adversary proceeding. But a motion for summary judgment must be filed at least 30 days before the first date set for an evidentiary hearing on any issue that the motion addresses, unless a local rule sets a different time or the court orders otherwise.

Committee Note

The language of Rule 7056 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.

ORIGINAL	REVISION
Rule 7058. Entering Judgment in Adversary Proceeding	**Rule 7058. Entering Judgment**
Rule 58 F.R.Civ.P. applies in adversary proceedings. In these proceedings, the reference in Rule 58 F.R.Civ.P. to the civil docket shall be read as a reference to the docket maintained by the clerk under Rule 5003(a).	Fed. R. Civ. P. 58 applies in an adversary proceeding. A reference in that rule to the civil docket must be read as referring to the docket maintained by the clerk under Rule 5003(a).

Committee Note

The language of Rule 7058 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.

ORIGINAL	REVISION
Rule 7062. Stay of Proceedings to Enforce a Judgment	**Rule 7062. Stay of Proceedings to Enforce a Judgment**
Rule 62 F.R.Civ.P. applies in adversary proceedings, except that proceedings to enforce a judgment are stayed for 14 days after its entry.	Fed. R. Civ. P. 62 applies in an adversary proceeding—except that a proceeding to enforce a judgment is stayed for 14 days after its entry.

Committee Note

The language of Rule 7062 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.

ORIGINAL	REVISION
Rule 7064. Seizure of Person or Property	**Rule 7064. Seizing a Person or Property**
Rule 64 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 64 applies in an adversary proceeding.

Committee Note

The language of Rule 7064 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.

ORIGINAL	REVISION
Rule 7065. Injunctions	**Rule 7065. Injunctions**
Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).	Fed. R. Civ. P. 65 applies in an adversary proceeding. But on application of a debtor, trustee, or debtor in possession, the court may issue a temporary restraining order or preliminary injunction without complying with subdivision (c) of that rule.

Committee Note

The language of Rule 7065 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.

ORIGINAL	REVISION
Rule 7067. Deposit in Court	**Rule 7067. Deposit into Court**
Rule 67 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 67 applies in an adversary proceeding.

Committee Note

The language of Rule 7067 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.

ORIGINAL	REVISION
Rule 7068. Offer of Judgment	**Rule 7068. Offer of Judgment**
Rule 68 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 68 applies in an adversary proceeding.

Committee Note

The language of Rule 7068 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.

ORIGINAL	REVISION
Rule 7069. Execution	**Rule 7069. Execution**
Rule 69 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 69 applies in an adversary proceeding.

Committee Note

The language of Rule 7069 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.

ORIGINAL	REVISION
Rule 7070. Judgment for Specific Acts; Vesting Title	**Rule 7070. Enforcing a Judgment for a Specific Act; Vesting Title**
Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.	Fed. R. Civ. P. 70 applies in an adversary proceeding. When real or personal property is within the court's jurisdiction, the court may enter a judgment divesting a party's title and vesting it in another person.

Committee Note

The language of Rule 7070 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.

ORIGINAL	REVISION
Rule 7071. Process in Behalf of and Against Persons Not Parties	**Rule 7071. Enforcing Relief For or Against a Nonparty**
Rule 71 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 71 applies in an adversary proceeding.

Committee Note

The language of Rule 7071 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.

ORIGINAL	REVISION
Rule 7087. Transfer of Adversary Proceeding	**Rule 7087. Transferring an Adversary Proceeding**
On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).	On motion and after a hearing, the court may transfer an adversary proceeding, or any part of it, to another district under 28 U.S.C. § 1412—except as provided in Rule 7019(b).

Committee Note

The language of Rule 7087 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.

Bankruptcy Rules Restyling

8000 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 VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL	**PART VIII. APPEAL TO A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL**
Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission	**Rule 8001. Scope; Definition of "BAP"; Sending Documents Electronically**
(a) GENERAL SCOPE. These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a judgment, order, or decree of a bankruptcy court. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d).	**(a) Scope.** These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a bankruptcy court's judgment, order, or decree. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d).
(b) DEFINITION OF "BAP." "BAP" means a bankruptcy appellate panel established by a circuit's judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158.	**(b) Definition of "BAP."** "BAP" means a bankruptcy appellate panel established by a circuit judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158.
(c) METHOD OF TRANSMITTING DOCUMENTS. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery.	**(c) Requirement to Send Documents Electronically.** Under these Part VIII rules, a document must be sent electronically, unless: (1) it is sent by or to an individual who is not represented by counsel; or (2) the court's local rules permit or require mailing or delivery by other means.

Committee Note

The language of Rule 8001 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.

ORIGINAL	REVISION
Rule 8002. Time for Filing Notice of Appeal	**Rule 8002. Time to File a Notice of Appeal**
(a) IN GENERAL. (1) Fourteen-Day Period. Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed. (2) Filing Before the Entry of Judgment. A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry. (3) Multiple Appeals. If one party files a timely notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later. (4) Mistaken Filing in Another Court. If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, the clerk of that court must state on the notice the date on which it was received and transmit it to the bankruptcy clerk. The notice of appeal is then considered filed in the bankruptcy court on the date so stated. (5) Entry Defined.	**(a) In General.** **(1)** ***Time to File.*** Except as (b) and (c) provide otherwise, a notice of appeal must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered. **(2)** ***Filing Before the Entry of Judgment.*** A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry. **(3)** ***Multiple Appeals.*** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later. **(4)** ***Mistaken Filing in Another Court.*** If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, that court's clerk must note on it the date when it was received and send it to the bankruptcy clerk. The notice is then considered filed in the bankruptcy court on the date noted. **(5)** ***Entry Defined.*** (A) *In General.* A judgment, order, or decree is entered for purposes of this subdivision (a): (i) when it is entered in the docket under Rule 5003(a); or (ii) if Rule 7058 applies and Fed. R. Civ. P. 58(a) requires a separate document, when the judgment, order, or decree is

ORIGINAL	REVISION
(A) A judgment, order, or decree is entered for purposes of this Rule 8002(a): (i) when it is entered in the docket under Rule 5003(a), or (ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs: • the judgment, order, or decree is set out in a separate document; or • 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a). (B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R.Civ.P. does not affect the validity of an appeal from that judgment, order, or decree.	entered in the docket under Rule 5003(a) and when the earlier of these events occurs: • the judgment, order, or decree is set out in a separate document; or • 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a). (B) *Failure to Use a Separate Document.* A failure to set out a judgment, order, or decree in a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment, order, or decree.
(b) EFFECT OF A MOTION ON THE TIME TO APPEAL. (1) In General. If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the	**(b) Effect of a Motion on the Time to Appeal.** **(1)** ***In General.*** If a party files in the bankruptcy court any of the following motions—and does so within the time allowed by these rules—the time to file an appeal runs for all parties from the

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last such remaining motion:	entry of the order disposing of the last such remaining motion:
(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;	(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;
(B) to alter or amend the judgment under Rule 9023;	(B) to alter or amend the judgment under Rule 9023;
(C) for a new trial under Rule 9023; or	(C) for a new trial under Rule 9023; or
(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.	(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.
(2) Filing an Appeal Before the Motion is Decided. If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in subdivision (b)(1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.	**(2)** ***Notice of Appeal Filed Before a Motion Is Decided.*** If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in (1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.
(3) Appealing the Ruling on the Motion. If a party intends to challenge an order disposing of any motion listed in subdivision (b)(1)—or the alteration or amendment of a judgment, order, or decree upon the motion—the party must file a notice of appeal or an amended notice of appeal. The notice or amended notice must comply with Rule 8003 or 8004 and be filed within the time prescribed by this rule, measured from the entry of the order disposing of	**(3)** ***Appealing the Ruling on the Motion.*** A party intending to challenge an order disposing of a motion listed in (1)—or an alteration or amendment of a judgment, order, or decree made by a decision on the motion—must file a notice of appeal or an amended notice of appeal. It must: (A) comply with Rule 8003 or 8004; and (B) be filed within the time prescribed by this rule, measured from the entry of the order disposing of the last such remaining motion. **(4)** ***No Additional Fee for an Amended Notice.*** No additional fee is required to file an amended notice of appeal.

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the last such remaining motion. (4) No Additional Fee. No additional fee is required to file an amended notice of appeal.	
(c) APPEAL BY AN INMATE CONFINED IN AN INSTITUTION. (1) In General. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and: (A) it is accompanied by: (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being pre-paid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or (B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(A)(i).	**(c) Appeal by an Inmate Confined in an Institution.** **(1)** ***In General.*** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this paragraph (1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and: (A) it is accompanied by: (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or (B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies (A)(i). **(2)** ***Multiple Appeals.*** If an inmate files under this subdivision (c) the first notice of appeal, the 14-day period provided in (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk dockets the first notice.

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(2) Multiple Appeals. If an inmate files under this subdivision the first notice of appeal, the 14-day period provided in subdivision (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk dockets the first notice.	
(d) EXTENDING THE TIME TO APPEAL. (1) When the Time May be Extended. Except as provided in subdivision (d)(2), the bankruptcy court may extend the time to file a notice of appeal upon a party's motion[1] that is filed: (A) within the time prescribed by this rule; or (B) within 21 days after that time, if the party shows excusable neglect. (2) When the Time May Not be Extended. The bankruptcy court may not extend the time to file a notice of appeal if the judgment, order, or decree appealed from: (A) grants relief from an automatic stay under § 362, 922, 1201, or 1301 of the Code;	**(d) Extending the Time to File a Notice of Appeal.** **(1)** ***When the Time May Be Extended.*** Except as (2) provides otherwise, the bankruptcy court may, on motion, extend the time to file a notice of appeal[2] if the motion is filed: (A) within the time prescribed by this rule; or (B) within 21 days after that time expires if the party shows excusable neglect. **(2)** ***When the Time May Not Be Extended.*** The bankruptcy court may not extend the time to file the notice if the judgment, order, or decree being appealed: (A) grants relief from the automatic stay under § 362, 922, 1201, or 1301; (B) authorizes the sale or lease of property or the use of cash collateral under § 363; (C) authorizes obtaining credit under § 364; (D) authorizes assuming or assigning an executory contract or unexpired lease under § 365;

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(B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Code;	(E) approves a disclosure statement under § 1125; or
(C) authorizes the obtaining of credit under § 364 of the Code;	(F) confirms a plan under § 943, 1129, 1225, or 1325.
(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Code;	**(3)** ***Limit on Extending Time.*** An extension of time must not exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered—whichever is later.
(E) approves a disclosure statement under § 1125 of the Code; or	
(F) confirms a plan under § 943, 1129, 1225, or 1325 of the Code.	
(3) TIME LIMITS ON AN EXTENSION. No extension of time may exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered, whichever is later.	

Committee Note

The language of Rule 8002 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.

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Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal	**Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal**
(a) FILING THE NOTICE OF APPEAL.	**(a) Filing a Notice of Appeal.**
(1) In General. An appeal from a judgment, order, or decree of a bankruptcy court to a district court or BAP under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.	(1) ***Time to File.*** An appeal under 28 U.S.C. § 158(a)(1) or (2) from a judgment, order, or decree of a bankruptcy court to a district court or a BAP may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.
(2) Effect of Not Taking Other Steps. An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.	(2) ***Failure to Take Any Other Step.*** An appellant's failure to take any other step does not affect the appeal's validity, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal.
(3) Contents. The notice of appeal must:	(3) ***Content of the Notice of Appeal.*** A notice of appeal must:
(A) conform substantially to the appropriate Official Form;	(A) conform substantially to Form 417A;
(B) be accompanied by the judgment, order, or decree, or the part of it, being appealed; and	(B) be accompanied by the judgment, order, or decree, or the part of it, being appealed; and
(C) be accompanied by the prescribed fee.	(C) be accompanied by the prescribed filing fee.
	(4) ***Clerk's Request for Additional Copies of the Notice of Appeal.*** On the bankruptcy clerk's request, the appellant must provide enough copies of the notice of appeal to enable the clerk to comply with (c).

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(4) Additional Copies. If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with subdivision (c).	
(b) JOINT OR CONSOLIDATED APPEALS. (1) Joint Notice of Appeal. When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) Consolidating Appeals. When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.	**(b) Joint or Consolidated Appeals.** (1) ***Joint Notice of Appeal.*** When two or more parties are entitled to appeal from a bankruptcy court's judgment, order, or decree and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) ***Consolidating Appeals.*** When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.
(c) SERVING THE NOTICE OF APPEAL. (1) Serving Parties and Transmitting to the United States Trustee. The bankruptcy clerk must serve the notice of appeal on counsel of record for each party to the appeal, excluding the appellant, and transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice of appeal to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) Effect of Failing to Serve or Transmit Notice. The bankruptcy clerk's	**(c) Serving the Notice of Appeal.** (1) ***Serving Parties; Sending to the United States Trustee.*** The bankruptcy clerk must serve the notice of appeal by sending a copy to counsel of record for each party to the appeal—excluding the appellant's—and send it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) ***Failure to Serve the Notice of Appeal.*** The bankruptcy clerk's failure to serve notice on a party or send notice to the United States trustee does not affect the validity of the appeal.

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failure to serve notice on a party or transmit notice to the United States trustee does not affect the validity of the appeal. (3) Noting Service on the Docket. The clerk must note on the docket the names of the parties served and the date and method of the service.	(3) ***Entry of Service on the Docket.*** The clerk must note on the docket the names of the parties served and the date and method of service.
(d) TRANSMITTING THE NOTICE OF APPEAL TO THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL. (1) Transmitting the Notice. The bankruptcy clerk must promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice to the district clerk. (2) Docketing in the District Court or BAP. Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.	**(d) Sending the Notice of Appeal to the District Court or BAP; Docketing the Appeal.** (1) ***Where to Send the Notice of Appeal.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send it to the district clerk. (2) ***Docketing the Appeal.*** Upon receiving the notice of appeal, the BAP clerk or district clerk must: (A) docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding; and (B) identify the appellant, adding the appellant's name if necessary.

Committee Note

The language of Rule 8003 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.

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Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal	**Rule 8004. Appeal by Leave from an Interlocutory Order or Decree Under 28 U.S.C. § 158(a)(3)**
(a) NOTICE OF APPEAL AND MOTION FOR LEAVE TO APPEAL. To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the bankruptcy clerk a notice of appeal as prescribed by Rule 8003(a). The notice must: (1) be filed within the time allowed by Rule 8002; (2) be accompanied by a motion for leave to appeal prepared in accordance with subdivision (b); and (3) unless served electronically using the court's transmission equipment, include proof of service in accordance with Rule 8011(d).	**(a) Notice of Appeal and Accompanying Motion for Leave to Appeal.** To appeal under 28 U.S.C. § 158(a)(3) from a bankruptcy court's interlocutory order or decree, a party must file with the bankruptcy clerk a notice of appeal under Rule 8003(a). The notice must: (1) be filed within the time allowed by Rule 8002; (2) be accompanied by a motion for leave to appeal prepared in accordance with (b); and (3) unless served electronically using the court's electronic-filing system, include proof of service in accordance with Rule 8011(d).
(b) CONTENTS OF THE MOTION; RESPONSE. (1) Contents. A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include the following: (A) the facts necessary to understand the question presented; (B) the question itself; (C) the relief sought;	**(b) Content of the Motion for Leave to Appeal; Response.** **(1)** *Content.* A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include: (A) the facts needed to understand the question presented; (B) the question itself; (C) the relief sought; (D) the reasons why leave to appeal should be granted; and (E) a copy of the interlocutory order or decree and any related opinion or memorandum.

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(D) the reasons why leave to appeal should be granted; and (E) a copy of the interlocutory order or decree and any related opinion or memorandum. (2) Response. A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served.	**(2)** ***Response.*** Within 14 days after the motion for leave has been served, a party may file with the district clerk or BAP clerk a response in opposition or a cross-motion.
(c) TRANSMITTING THE NOTICE OF APPEAL AND THE MOTION; DOCKETING THE APPEAL; DETERMINING THE MOTION. (1) Transmitting to the District Court or BAP. The bankruptcy clerk must promptly transmit the notice of appeal and the motion for leave to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice and motion to the district clerk. (2) Docketing in the District Court or BAP. Upon receiving the notice and motion, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary. (3) Oral Argument Not	**(c) Sending the Notice of Appeal and Motion for Leave to Appeal; Docketing the Appeal; Oral Argument Not Required.** **(1)** ***Sending to the District Court or BAP.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal and the motion for leave to appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send the notice and motion to the district clerk. **(2)** ***Docketing the Appeal.*** Upon receiving the notice and motion, the district or BAP clerk must docket the appeal as prescribed by Rule 8003(d)(2). **(3)** ***Oral Argument Not Required.*** Unless the district court or BAP orders otherwise, a motion, a cross-motion, and any response will be submitted without oral argument.

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Required. The motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.	
(d) FAILURE TO FILE A MOTION WITH A NOTICE OF APPEAL. If an appellant timely files a notice of appeal under this rule but does not include a motion for leave, the district court or BAP may order the appellant to file a motion for leave, or treat the notice of appeal as a motion for leave and either grant or deny it. If the court orders that a motion for leave be filed, the appellant must do so within 14 days after the order is entered, unless the order provides otherwise.	**(d) Failure to File a Motion for Leave to Appeal.** If an appellant files a timely notice of appeal under this rule but fails to include a motion for leave to appeal, the district court or BAP may: (1) treat the notice of appeal as a motion for leave to appeal and grant or deny it; or (2) order the appellant to file a motion for leave to appeal within 14 days after the order has been entered—unless the order provides otherwise.
(e) DIRECT APPEAL TO A COURT OF APPEALS. If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement.	**(e) Direct Appeal to a Court of Appeals.** If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization by a court of appeals for a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the requirement.

Committee Note

The language of Rule 8004 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.

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Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP	**Rule 8005. Election to Have an Appeal Heard in a District Court Instead of the BAP**
(a) FILING OF A STATEMENT OF ELECTION. To elect to have an appeal heard by the district court, a party must: (1) file a statement of election that conforms substantially to the appropriate Official Form; and (2) do so within the time prescribed by 28 U.S.C. § 158(c)(1).	**(a) Filing a Statement of Election.** To elect to have an appeal heard in a district court, a party must file a statement of election within the time prescribed by 28 U.S.C. § 158(c)(1). The statement must conform substantially to Form 417A.
(b) TRANSMITTING THE DOCUMENTS RELATED TO THE APPEAL. Upon receiving an appellant's timely statement of election, the bankruptcy clerk must transmit to the district clerk all documents related to the appeal. Upon receiving a timely statement of election by a party other than the appellant, the BAP clerk must transmit to the district clerk all documents related to the appeal and notify the bankruptcy clerk of the transmission.	**(b) Sending Documents Relating to the Appeal.** Upon receiving an appellant's timely statement of election, the bankruptcy clerk must send all documents related to the appeal to the district clerk. A BAP clerk who receives a timely statement of election from a party other than the appellant must: (1) send those documents to the district clerk; and (2) notify the bankruptcy clerk that they have been sent.
(c) DETERMINING THE VALIDITY OF AN ELECTION. A party seeking a determination of the validity of an election must file a motion in the court where the appeal is then pending. The motion must be filed within 14 days after the statement of election is filed.	**(c) Determining the Validity of an Election.** Within 14 days after the statement of election has been filed, a party seeking to determine the election's validity must file a motion in the court where the appeal is pending.
(d) MOTION FOR LEAVE WITHOUT A NOTICE OF APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If an appellant moves for leave to appeal under Rule 8004 but fails to file a separate notice of appeal with the	**(d) Effect of Filing a Motion for Leave to Appeal Without Filing a Notice of Appeal.** If an appellant moves for leave to appeal under Rule 8004 but fails to file a notice of appeal with the motion, it must be treated as a notice of appeal in determining

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motion, the motion must be treated as a notice of appeal for purposes of determining the timeliness of a statement of election.	whether the statement of election has been timely filed.

Committee Note

The language of Rule 8005 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.

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Rule 8006. Certifying a Direct Appeal to the Court of Appeals	**Rule 8006. Certifying a Direct Appeal to a Court of Appeals**
(a) EFFECTIVE DATE OF A CERTIFICATION. A certification of a judgment, order, or decree of a bankruptcy court for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) is effective when: (1) the certification has been filed; (2) a timely appeal has been taken under Rule 8003 or 8004; and (3) the notice of appeal has become effective under Rule 8002.	**(a) Effective Date of a Certification.** A certification of a bankruptcy court's judgment, order, or decree to a court of appeals for direct review under 28 U.S.C. § 158(d)(2) becomes effective when: (1) it is filed; (2) a timely appeal is taken under Rule 8003 or Rule 8004; and (3) the notice of appeal becomes effective under Rule 8002.
(b) FILING THE CERTIFICATION. The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date under Rule 8002 of the first notice of appeal from the judgment, order, or decree for which direct review is sought. A matter is pending in the district court or BAP thereafter.	**(b) Filing the Certification.** The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the first notice of appeal concerning that matter becomes effective under Rule 8002. After that time, the matter is pending in the district court or BAP.
(c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES. (1) How Accomplished. A joint certification by all the appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using the appropriate Official Form. The parties may supplement the certification with a short statement of the basis for the certification, which may include the	**(c) Joint Certification by All Appellants and Appellees.** **(1)** ***In General.*** A joint certification by all appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made using Form 424. The parties may supplement the certification with a short statement about its basis. The statement may include the information required by (f)(2).

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information listed in subdivision (f)(2). (2) Supplemental Statement by the Court. Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.	**(2)** ***Supplemental Statement by the Court.*** Within 14 days after the parties file the certification, the bankruptcy court—or the court where the matter is pending—may file a short supplemental statement about the certification's merits.
(d) THE COURT THAT MAY MAKE THE CERTIFICATION. Only the court where the matter is pending, as provided in subdivision (b), may certify a direct review on request of parties or on its own motion.	**(d) Court's Authority to Certify a Direct Appeal.** On a party's request or on its own, the court where the matter is pending under (b) may certify a direct appeal to a court of appeals.
(e) CERTIFICATION ON THE COURT'S OWN MOTION. (1) How Accomplished. A certification on the court's own motion must be set forth in a separate document. The clerk of the certifying court must serve it on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification must be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(2)(A)–(D). (2) Supplemental Statement by a Party. Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement regarding the merits of certification.	**(e) Certification by the Court Acting on Its Own.** **(1)** ***Separate Document Required; Service; Content.*** A certification by a court acting on its own must be set forth in a separate document. The clerk of the certifying court must serve the document on the parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). It must be accompanied by an opinion or memorandum that contains the information required by (f)(2)(A)–(D). **(2)** ***Supplemental Statement by a Party.*** Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement about the merits of certification.

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(f) CERTIFICATION BY THE COURT ON REQUEST.	**(f) Certification by the Court on Request.**
(1) How Requested. A request by a party for certification that a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) applies—or a request by a majority of the appellants and a majority of the appellees—must be filed with the clerk of the court where the matter is pending within 60 days after the entry of the judgment, order, or decree.	**(1)** ***How Requested.*** A party's request for certification under 28 U.S.C. § 158(d)(2)(A)—or a request by a majority of the appellants and of the appellees—must be filed with the clerk of the court where the matter is pending. The request must be filed within 60 days after the judgment, order, or decree is entered.
(2) Service and Contents. The request must be served on all parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1), and it must include the following:	**(2)** ***Service; Content.*** The request must be served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). The request must include:
(A) the facts necessary to understand the question presented;	(A) the facts needed to understand the question presented;
(B) the question itself;	(B) the question itself;
(C) the relief sought;	(C) the relief sought;
(D) the reasons why the direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and	(D) the reasons why a direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and
(E) a copy of the judgment, order, or decree and any related opinion or memorandum.	(E) the judgment, order, or decree, and any related opinion or memorandum.
(3) Time to File a Response or a	**(3)** ***Time to File a Response or a Cross-Request.***
	(A) Response. A party may file a response within 14 days after the request has been served, or within such other time as the court where the matter is pending allows.
	(B) Cross-Request. A party may file a cross-request for certification within 14 days after the request has been served or within 60 days after the judgment, order, or decree has been entered—whichever occurs first.

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Cross-Request. A party may file a response to the request within 14 days after the request is served, or such other time as the court where the matter is pending allows. A party may file a cross-request for certification within 14 days after the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first. (4) Oral Argument Not Required. The request, cross-request, and any response are submitted without oral argument unless the court where the matter is pending orders otherwise. (5) Form and Service of the Certification. If the court certifies a direct appeal in response to the request, it must do so in a separate document. The certification must be served on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1).	**(4)** ***Oral Argument Not Required.*** Unless the court where the matter is pending orders otherwise, a request, a cross-request, and any response will be submitted without oral argument. **(5)** ***Form of a Certification; Service.*** The court that certifies a direct appeal in response to a request must do so in a separate document served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1).
(g) PROCEEDING IN THE COURT OF APPEALS FOLLOWING A CERTIFICATION. Within 30 days after the date the certification becomes effective under subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with F.R.App.P. 6(c).	**(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** Within 30 days after the certification has become effective under (a), a request for leave to take a direct appeal to a court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c).

Committee Note

The language of Rule 8006 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.

ORIGINAL	REVISION
Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings	**Rule 8007. Stay Pending Appeal; Bond; Suspending Proceedings**
(a) INITIAL MOTION IN THE BANKRUPTCY COURT. (1) In General. Ordinarily, a party must move first in the bankruptcy court for the following relief: (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal; (B) the approval of a bond or other security provided to obtain a stay of judgment; (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or (D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e). (2) Time to File. The motion may be made either before or after the notice of appeal is filed.	**(a) Initial Motion in the Bankruptcy Court.** (1) *In General.* Ordinarily, a party must move first in the bankruptcy court for the following relief: (A) a stay of the bankruptcy court's judgment, order, or decree pending appeal; (B) the approval of a bond or other security provided to obtain a stay of judgment; (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or (D) an order suspending or continuing proceedings or granting other relief permitted by (e). (2) *Time to File.* The motion may be filed either before or after the notice of appeal is filed.
(b) MOTION IN THE DISTRICT COURT, THE BAP, OR THE COURT OF APPEALS ON DIRECT APPEAL. (1) Request for Relief. A motion for the relief specified in subdivision (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be made in the court where	**(b) Motion in the District Court, BAP, or Court of Appeals on Direct Appeal.** (1) *In General.* A motion for the relief specified in (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be filed in the court where the appeal is pending.

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the appeal is pending. (2) Showing or Statement Required. The motion must: (A) show that moving first in the bankruptcy court would be impracticable; or (B) if a motion was made in the bankruptcy court, either state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling. (3) Additional Content. The motion must also include: (A) the reasons for granting the relief requested and the facts relied upon; (B) affidavits or other sworn statements supporting facts subject to dispute; and (C) relevant parts of the record. (4) Serving Notice. The movant must give reasonable notice of the motion to all parties.	(2) ***Required Showing.*** The motion must: (A) show that moving first in the bankruptcy court would be impracticable; or (B) if a motion has already been made in the bankruptcy court, state whether the court has ruled on it, and if so, state any reasons given for the ruling. (3) ***Additional Requirements.*** The motion must also include: (A) the reasons for granting the relief requested and the facts relied on; (B) affidavits or other sworn statements supporting facts subject to dispute; and (C) relevant parts of the record. (4) ***Serving Notice.*** The movant must give reasonable notice of the motion to all parties.
(c) FILING A BOND OR OTHER SECURITY. The district court, BAP, or court of appeals may condition relief on	**(c) Filing a Bond or Other Security as a Condition of Relief.** The district court, BAP, or court of appeals may condition

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filing a bond or other security with the bankruptcy court.	relief on filing a bond or other security with the bankruptcy court.
(d) BOND OR OTHER SECURITY FOR A TRUSTEE OR THE UNITED STATES. The court may require a trustee to file a bond or other security when the trustee appeals. A bond or other security is not required when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government.	**(d) Bond or Other Security for a Trustee; Not for the United States.** The court may require a trustee who appeals to file a bond or other security. No bond or security is required when: (1) the United States, its officer, or its agency appeals; or (2) an appeal is taken by direction of any federal governmental department.
(e) CONTINUATION OF PROCEEDINGS IN THE BANKRUPTCY COURT. Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may: (1) suspend or order the continuation of other proceedings in the case; or (2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest.	**(e) Continuing Proceedings in the Bankruptcy Court.** Despite Rule 7062—but subject to the authority of the district court, BAP, or court of appeals—while the appeal is pending, the bankruptcy court may: (1) suspend or order the continuation of other proceedings in the case, or (2) issue any appropriate order to protect the rights of all parties in interest.

Committee Note

The language of Rule 8007 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.

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Rule 8008. Indicative Rulings	**Rule 8008. Indicative Rulings**
(a) RELIEF PENDING APPEAL. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may: (1) defer considering the motion; (2) deny the motion; or (3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.	**(a) Motion for Relief Filed When an Appeal Is Pending; Bankruptcy Court's Options.** If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may: (1) defer considering the motion; (2) deny the motion; (3) state that it would grant the motion if the court where the appeal is pending remands for that purpose; or (4) state that the motion raises a substantial issue.
(b) NOTICE TO THE COURT WHERE THE APPEAL IS PENDING. The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue.	**(b) Notice to the Court Where the Appeal Is Pending.** The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue.
(c) REMAND AFTER AN INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand.	**(c) Remand After an Indicative Ruling.** If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand.

Committee Note

The language of Rule 8008 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.

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Rule 8009. Record on Appeal; Sealed Documents	**Rule 8009. Record on Appeal; Sealed Documents**
(a) DESIGNATING THE RECORD ON APPEAL; STATEMENT OF THE ISSUES.	**(a) Designating the Record on Appeal; Statement of the Issues; Content of the Record.**
(1) Appellant.	**(1)** ***Appellant's Designation.*** The appellant must:
(A) The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.	(A) file with the bankruptcy clerk a designation of the items to be included in the record on appeal and a statement of the issues to be presented; and
(B) The appellant must file and serve the designation and statement within 14 days after:	(B) file and serve the designation and statement on the appellee within 14 days after:
(i) the appellant's notice of appeal as of right becomes effective under Rule 8002; or	• the notice of appeal as of right has become effective under Rule 8002; or
(ii) an order granting leave to appeal is entered. A designation and statement served prematurely must be treated as served on the first day on which filing is timely.	• an order granting leave to appeal has been entered. Premature service is treated as service on the first day on which filing is timely.
(2) Appellee and Cross-Appellant. Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented	**(2)** ***Appellee's and Cross-Appellant's Designation.*** (A) Appellee. Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. (B) Cross-Appellant. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal. **(3)** ***Cross-Appellee's Designation.*** Within 14 days after the cross-

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on the cross-appeal.	appellant's designation and statement have been served, the cross-appellee may file with the bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.
(3) Cross-Appellee. Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file with the bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.	
(4) Record on Appeal. The record on appeal must include the following:	**(4)** ***Record on Appeal.*** The record on appeal must include:
• docket entries kept by the bankruptcy clerk; • items designated by the parties; • the notice of appeal; • the judgment, order, or decree being appealed; • any order granting leave to appeal; • any certification required for a direct appeal to the court of appeals; • any opinion, findings of fact, and conclusions of law relating to the issues on appeal, including transcripts of all oral rulings; • any transcript ordered under subdivision (b); • any statement required by subdivision (c); and • any additional items from the record that the court where the appeal is pending orders.	• the docket entries; • items designated by the parties; • the notice of appeal; • the judgment, order, or decree being appealed; • any order granting leave to appeal; • any certification required for a direct appeal to the court of appeals; • any opinion, findings of fact and conclusions of law relating to the issues on appeal, and transcripts of all oral rulings; • any transcript ordered under (b); • any statement required by (c); and • any other items from the record that the court where the appeal is pending orders.
	(5) ***Copies for the Bankruptcy Clerk.*** If paper copies are needed and the bankruptcy clerk requests copies of designated items, the party filing the designation must provide them. If the party fails to do so, the bankruptcy clerk must prepare them at that party's expense.

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(5) Copies for the Bankruptcy Clerk. If paper copies are needed, a party filing a designation of items must provide a copy of any of those items that the bankruptcy clerk requests. If the party fails to do so, the bankruptcy clerk must prepare the copy at the party's expense.	
(b) TRANSCRIPT OF PROCEEDINGS. (1) Appellant's Duty to Order. Within the time period prescribed by subdivision (a)(1), the appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript. (2) Cross-Appellant's Duty to Order. Within 14 days after the appellant files a copy of the transcript order or a certificate of not ordering a transcript, the appellee as cross-appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the	**(b) Transcript of Proceedings.** **(1)** ***Appellant's Duty to Order.*** Within the period prescribed by (a)(1), the appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript. **(2)** ***Appellee's Duty to Order as a Cross-Appellant.*** Within 14 days after the appellant has filed a copy of the transcript order—or a certificate stating that the appellant is not ordering a transcript—the appellee as cross-appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.

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order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.	**(3)** ***Appellee's or Cross-Appellee's Right to Order.*** Within 14 days after the appellant or cross-appellant has filed a copy of a transcript order—or a certificate stating that the appellant or cross-appellant is not ordering a transcript—the appellee or cross-appellee: (A) may order in writing from the reporter (as defined in Rule 8010(a)(1)) a transcript of any additional parts of the proceeding that the appellee or cross-appellee considers necessary for the appeal; and (B) must file a copy of the order with the bankruptcy clerk.
(3) Appellee's or Cross-Appellee's Right to Order. Within 14 days after the appellant or cross-appellant files a copy of a transcript order or certificate of not ordering a transcript, the appellee or cross-appellee may order in writing from the reporter a transcript of such additional parts of the proceedings as the appellee or cross-appellee considers necessary for the appeal. A copy of the order must be filed with the bankruptcy clerk.	
(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.	**(4)** ***Payment.*** At the time of ordering, a party must make satisfactory arrangements with the reporter to pay for the transcript.
(5) Unsupported Finding or Conclusion. If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and copies of all relevant exhibits.	**(5)** ***Unsupported Finding or Conclusion.*** If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and a copy of all relevant exhibits.
(c) STATEMENT OF THE EVIDENCE WHEN A TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement	**(c) When a Transcript Is Unavailable.** **(1)** ***Statement of the Evidence.*** If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>must be filed within the time prescribed by subdivision (a)(1) and served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal.</td><td>recollection. The statement must be filed within the time prescribed by (a)(1) and served on the appellee.

(2) Appellee's Response. The appellee may serve objections or proposed amendments within 14 days after being served.

(3) Court Approval. The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal.</td></tr>
<tr><td>(d) AGREED STATEMENT AS THE RECORD ON APPEAL. Instead of the record on appeal as defined in subdivision (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court. The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal—must be approved by the bankruptcy court and must then be certified to the court where the appeal is pending as the record on appeal. The bankruptcy clerk must then transmit it to the clerk of that court within the time provided by Rule 8010. A copy of the agreed statement may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by F.R.App.P. 30.</td><td>(d) Agreed Statement as the Record on Appeal.

(1) Agreed Statement. Instead of the record on appeal as defined in (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court.

(2) Content. The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal—must be:

(A) approved by the bankruptcy court; and

(B) certified to the court where the appeal is pending as the record on appeal.

(3) Time to Send the Agreed Statement to the Appellate Court. The bankruptcy clerk must then send the</td></tr>
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	agreed statement to the clerk of the court where the appeal is pending within the time provided by Rule 8010. A copy may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by Fed. R. App. P. 30.
(e) CORRECTING OR MODIFYING THE RECORD. (1) Submitting to the Bankruptcy Court. If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item. (2) Correcting in Other Ways. If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted: (A) on stipulation of the parties; (B) by the bankruptcy court before or after the record has been forwarded; or (C) by the court where the appeal is pending.	**(e) Correcting or Modifying the Record.** **(1)** ***Differences About Accuracy and Improper Designations.*** If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike it. **(2)** ***Omissions and Misstatements.*** If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and sent: (A) on stipulation of the parties; (B) by the bankruptcy court before or after the record has been sent; or (C) by the court where the appeal is pending. **(3)** ***Remaining Questions.*** All other questions as to the form and content of the record must be presented to the court where the appeal is pending.

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(3) Remaining Questions. All other questions as to the form and content of the record must be presented to the court where the appeal is pending.	
(f) SEALED DOCUMENTS. A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending.	**(f) Sealed Documents.** **(1)** ***In General.*** A document placed under seal by the bankruptcy court may be designated as a part of the record on appeal. But a document so designated: (A) must be identified without revealing confidential or secret information; and (B) may be sent only as (2) prescribes. **(2)** ***When to Send a Sealed Document.*** To have a sealed document sent as part of the record, a party must file in the court where the appeal is pending a motion to accept the document under seal. If the motion is granted, the movant must so notify the bankruptcy court, and the bankruptcy clerk must promptly send the sealed document to the clerk of the court where the appeal is pending.
(g) OTHER NECESSARY ACTIONS. All parties to an appeal must take any other action necessary to enable the bankruptcy clerk to assemble and transmit the record.	**(g) Duty to Assist the Bankruptcy Clerk.** All parties to an appeal must take any other action needed to enable the bankruptcy clerk to assemble and send the record.

Committee Note

The language of Rule 8009 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.

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Rule 8010. Completing and Transmitting the Record	**Rule 8010. Transcribing the Proceedings; Filing the Transcript; Sending the Record**
(a) REPORTER'S DUTIES. (1) Proceedings Recorded Without a Reporter Present. If proceedings were recorded without a reporter being present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule. (2) Preparing and Filing the Transcript. The reporter must prepare and file a transcript as follows: (A) Upon receiving an order for a transcript in accordance with Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment of the request that shows when it was received, and when the reporter expects to have the transcript completed. (B) After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing. (C) If the transcript cannot be completed within 30 days after receiving the order, the reporter must request an extension of time from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted.	**(a) Reporter's Duties.** **(1)** ***Proceedings Recorded Without a Court Reporter Present.*** If proceedings were recorded without a reporter present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule. **(2)** ***Preparing and Filing the Transcript.*** The reporter must prepare and file a transcript as follows: (A) *Initial Steps*. Upon receiving a transcript order under Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment showing when the order was received and when the reporter expects to have the transcript completed. (B) *Filing the Transcript*. After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing. (C) *Extending the Time to Complete a Transcript*. If the transcript cannot be completed within 30 days after the order has been received, the reporter must request an extension from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted. (D) *Failure to File on Time*. If the reporter fails to file the transcript

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(D) If the reporter does not file the transcript on time, the bankruptcy clerk must notify the bankruptcy judge.	on time, the bankruptcy clerk must notify the bankruptcy judge.
(b) CLERK'S DUTIES. (1) Transmitting the Record—In General. Subject to Rule 8009(f) and subdivision (b)(5) of this rule, when the record is complete, the bankruptcy clerk must transmit to the clerk of the court where the appeal is pending either the record or a notice that the record is available electronically. (2) Multiple Appeals. If there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must transmit a single record. (3) Receiving the Record. Upon receiving the record or notice that it is available electronically, the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal. (4) If Paper Copies Are Ordered. If the court where the appeal is pending directs that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense. (5) When Leave to Appeal is Requested. Subject to subdivision (c), if a motion for leave to appeal has been filed under Rule 8004, the bankruptcy	**(b) Clerk's Duties.** **(1)** ***Sending the Record.*** Subject to Rule 8009(f) and paragraph (5) below, when the record is complete, the bankruptcy clerk must send to the clerk of the court where the appeal is pending either the record or a notice that the record is available electronically. **(2)** ***Multiple Appeals.*** When there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must send a single record. **(3)** ***Docketing the Record in the Appellate Court.*** Upon receiving the record—or a notice that it is available electronically—the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal. **(4)** ***If the Court Orders Paper Copies.*** If the court where the appeal is pending orders that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense. **(5)** ***Motion for Leave to Appeal.*** Subject to (c), if a motion for leave to appeal is filed under Rule 8004, the bankruptcy clerk must prepare and send the record only after the motion is granted.

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clerk must prepare and transmit the record only after the district court, BAP, or court of appeals grants leave.	
(c) RECORD FOR A PRELIMINARY MOTION IN THE DISTRICT COURT, BAP, OR COURT OF APPEALS. This subdivision (c) applies if, before the record is transmitted, a party moves in the district court, BAP, or court of appeals for any of the following relief: • leave to appeal; • dismissal; • a stay pending appeal; • approval of a bond or other security provided to obtain a stay of judgment; or • any other intermediate order. The bankruptcy clerk must then transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically.	**(c) When a Preliminary Motion Is Filed in the District Court, BAP, or Court of Appeals.** **(1)** ***In General.*** This subdivision (c) applies if, before the record is sent, a party moves in the district court, BAP, or court of appeals for: • leave to appeal; • dismissal; • a stay pending appeal; • approval of a bond or other security provided to obtain a stay of judgment; or • any other intermediate order. **(2)** ***Sending the Record.*** The bankruptcy clerk must send to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal—or send a notice that they are available electronically.

Committee Note

The language of Rule 8010 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.

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Rule 8011. Filing and Service; Signature	**Rule 8011. Filing and Service; Signature**
(a) FILING. (1) With the Clerk. A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court. (2) Method and Timeliness. (A) Nonelectronic Filing. (i) In General. For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in subdivision (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed for filing. (ii) Brief or Appendix. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is: • mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or • dispatched to a third-party commercial carrier for delivery within 3 days to the clerk. (iii) Inmate Filing. If an institution has a system	**(a) Filing.** **(1)** ***With the Clerk.*** A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court. **(2)** ***Method and Timeliness.*** (A) *Nonelectronic Filing.* (i) In General. For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in (ii) and (iii), filing is timely only if the clerk receives the document within the time set for filing. (ii) Brief or Appendix. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is: • mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or • dispatched to a third-party commercial carrier for delivery to the clerk within 3 days. (iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this item (iii). A document not filed electronically by an inmate

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designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8011(a)(2)(A)(iii). A document not filed electronically by an inmate confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:	confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:
• it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or	• it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or by evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or
• the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this Rule 8011(a)(2)(A)(iii).	• the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this item (iii).
(B) Electronic Filing.	(B) *Electronic Filing.*
(i) By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.	(i) By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule.
(ii) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney:	(ii) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney:
• may file electronically only if	• may file electronically only if allowed by court order or by local rule; and

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allowed by court order or by local rule; and • may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules. (C) Copies. If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular case the filing or furnishing of a specified number of paper copies. (3) Clerk's Refusal of Documents. The court's clerk must not refuse to accept for filing any document transmitted for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.	• may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules. (C) *When Paper Copies Are Required.* No paper copies are required when a document is filed electronically. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may, by local rule or order in a particular case, require that a specific number of paper copies be filed or furnished. **(3)** ***Clerk's Refusal of Documents.*** The court's clerk must not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.
(b) SERVICE OF ALL DOCUMENTS REQUIRED. Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.	**(b) Service of All Documents Required.** Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.

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(c) MANNER OF SERVICE. (1) Nonelectronic Service. Nonelectronic service may be by any of the following: (A) personal delivery; (B) mail; or (C) third-party commercial carrier for delivery within 3 days. (2) Electronic Service. Electronic service may be made by sending a document to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing. (3) When Service Is Complete. Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.	**(c) Manner of Service.** **(1)** ***Nonelectronic Service.*** Nonelectronic service may be by any of the following: (A) personal delivery; (B) mail; or (C) third-party commercial carrier for delivery within 3 days. **(2)** ***Service By Electronic Means.*** Electronic service may be made by: (A) sending a document to a registered user by filing it with the court's electronic-filing system; or (B) using other electronic means that the person served consented to in writing. **(3)** ***When Service Is Complete.*** Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served.
(d) PROOF OF SERVICE. (1) What Is Required. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:	**(d) Proof of Service.** **(1)** ***Requirements.*** A document presented for filing must contain either of the following if it was served other

ORIGINAL	REVISION
(A) an acknowledgment of service by the person served; or	than through the court's electronic-filing system: (A) an acknowledgement of service by the person served; or
(B) proof of service consisting of a statement by the person who made service certifying:	(B) proof of service consisting of a statement by the person who made service certifying:
(i) the date and manner of service;	(i) the date and manner of service;
(ii) the names of the persons served; and	(ii) the names of the persons served; and
(iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served.	(iii) the mail or electronic address, the fax number, or the address of the place of delivery—as appropriate for the manner of service—for each person served.
(2) Delayed Proof. The district or BAP clerk may permit documents to be filed without acknowledgment or proof of service, but must require the acknowledgment or proof to be filed promptly thereafter.	**(2)** ***Delayed Proof of Service.*** A district or BAP clerk may accept a document for filing without an acknowledgement or proof of service, but must require the acknowledgment or proof of service to be filed promptly thereafter.
(3) Brief or Appendix. When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.	**(3)** ***For a Brief or Appendix.*** When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.
(e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a	**(e) Signature Always Required.** **(1)** ***Electronic Filing.*** Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that

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signature block, constitutes the person's signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.	person—together with that person's name on a signature block—constitutes the person's signature. **(2)** ***Paper Filing*.** Every document filed in paper form must be signed by the person filing it or, if the person is represented, by the person's counsel.

Committee Note

The language of Rule 8011 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.

ORIGINAL	REVISION
Rule 8012. Disclosure Statement	**Rule 8012. Disclosure Statement**
(a) NONGOVERNMENTAL COPRORATIONS. Any nongovernmental corporation that is a party to a proceeding in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.	**(a) Disclosure by a Nongovernmental Corporation.** Any nongovernmental corporation that is a party to a proceeding in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.
(b) DISCLOSURE ABOUT THE DEBTOR. The debtor, the trustee, or, if neither is a party, the appellant must file a statement that: (1) identifies each debtor not named in the caption; and (2) for each debtor that is a corporation, discloses the information required by Rule 8012(a).	**(b) Disclosure About the Debtor.** The debtor, the trustee, or, if neither is a party, the appellant must file a statement that: (1) identifies each debtor not named in the caption; and (2) for each debtor that is a corporation, discloses the information required by (a).
(c) TIME TO FILE; SUPPLEMENTAL FILING. A Rule 8012 statement must: (1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing; (2) be included before the table of contents in the principal brief; and (3) be supplemented whenever the information required by Rule 8012 changes.	**(c) Time to File; Supplemental Filing.** A Rule 8012 statement must: (1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing; (2) be included before the table of contents in the principal brief; and (3) be supplemented whenever the information required by this rule changes.

Committee Note

The language of Rule 8012 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.

ORIGINAL	REVISION
Rule 8013. Motions; Intervention	**Rule 8013. Motions; Interventions**
(a) CONTENTS OF A MOTION; RESPONSE; REPLY. (1) Request for Relief. A request for an order or other relief is made by filing a motion with the district or BAP clerk. (2) Contents of a Motion. (A) Grounds and the Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. (B) Motion to Expedite an Appeal. A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. If the district court or BAP grants the motion, it may accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument, and the resolution of the appeal. A motion to expedite an appeal may be filed as an emergency motion under subdivision (d). (C) Accompanying Documents. (i) Any affidavit or other document necessary to support a motion must be served and filed with the motion.	**(a) Content of a Motion; Response; Reply.** **(1)** ***Request for Relief.*** A request for an order or other relief is made by filing a motion with the district or BAP clerk. **(2)** ***Content of a Motion.*** (A) *Grounds and the Relief Sought.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. (B) *Motion to Expedite an Appeal.* A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. The motion may be filed as an emergency motion under (d). If it is granted, the district court or BAP may accelerate the time to: (i) send the record; (ii) file briefs and other documents; (iii) conduct oral argument; and (iv) resolve the appeal. (C) *Accompanying Documents.* (i) Supporting Document. Any affidavit or other document necessary to support a motion must be served and filed with the motion. (ii) Content of Affidavit. An affidavit must contain only factual information, not legal argument. (iii) Motion Seeking Substantive Relief. A motion seeking substantive relief must include a copy of the

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(ii) An affidavit must contain only factual information, not legal argument.	bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit.
(iii) A motion seeking substantive relief must include a copy of the bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit.	
(D) Documents Barred or Not Required.	(D) *Documents Barred or Not Required.*
(i) A separate brief supporting or responding to a motion must not be filed.	(i) No Separate Brief. A separate brief supporting or responding to a motion must not be filed.
(ii) Unless the court orders otherwise, a notice of motion or a proposed order is not required.	(ii) Notice and Proposed Order Not Required. Unless the court orders otherwise, a notice of motion or a proposed order is not required.
(3) Response and Reply; Time to File. Unless the district court or BAP orders otherwise,	**(3)** ***Response and Reply; Time to File.*** Unless the district court or BAP orders otherwise:
(A) any party to the appeal may file a response to the motion within 7 days after service of the motion; and	(A) any party to the appeal may—within 7 days after the motion is served—file a response to the motion; and
(B) the movant may file a reply to a response within 7 days after service of the response, but may only address matters raised in the response.	(B) the movant may—within 7 days after the response is served—file a reply that addresses only matters raised in the response.

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(b) DISPOSITION OF A MOTION FOR A PROCEDURAL ORDER. The district court or BAP may rule on a motion for a procedural order—including a motion under Rule 9006(b) or (c)—at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify it within 7 days after the procedural order is served.	**(b) Disposition of a Motion for a Procedural Order.** The district court or BAP may rule on a motion for a procedural order— including a motion under Rule 9006(b) or (c)—at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify it within 7 days after the order is served.
(c) ORAL ARGUMENT. A motion will be decided without oral argument unless the district court or BAP orders otherwise.	**(c) Oral Argument.** A motion will be decided without oral argument unless the district court or BAP orders otherwise.
(d) EMERGENCY MOTION. (1) Noting the Emergency. When a movant requests expedited action on a motion because irreparable harm would occur during the time needed to consider a response, the movant must insert the word "Emergency" before the title of the motion. (2) Contents of the Motion. The emergency motion must (A) be accompanied by an affidavit setting out the nature of the emergency; (B) state whether all grounds for it were submitted to the bankruptcy court and, if not, why the motion should not be remanded for the bankruptcy court to consider; (C) include the e-mail	**(d) Emergency Motion.** **(1)** ***Noting the Emergency.*** A movant who requests expedited action—because irreparable harm would occur during the time needed to consider a response—must insert "Emergency" before the motion's title. **(2)** ***Content.*** An emergency motion must: (A) be accompanied by an affidavit setting forth the nature of the emergency; (B) state whether all grounds for it were previously submitted to the bankruptcy court and, if not, why the motion should not be remanded; (C) include: (i) the email address, office address, and telephone number of the moving counsel; and (ii) when known, the same information as in (i) for opposing counsel and

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addresses, office addresses, and telephone numbers of moving counsel and, when known, of opposing counsel and any unrepresented parties to the appeal; and (D) be served as prescribed by Rule 8011. (3) Notifying Opposing Parties. Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented parties in time for them to respond. The affidavit accompanying the emergency motion must state when and how notice was given or state why giving it was impracticable.	any unrepresented party to the appeal; and (D) be served as Rule 8011 prescribes. **(3)** ***Notifying Opposing Parties.*** Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented party in time for them to respond. The affidavit accompanying the motion must state: (A) when and how notice was given; or (B) why giving notice was impracticable.
(e) POWER OF A SINGLE BAP JUDGE TO ENTERTAIN A MOTION. (1) Single Judge's Authority. A BAP judge may act alone on any motion, but may not dismiss or otherwise determine an appeal, deny a motion for leave to appeal, or deny a motion for a stay pending appeal if denial would make the appeal moot. (2) Reviewing a Single Judge's Action. The BAP may review a single judge's action, either on its own motion or on a party's motion.	**(e) Motion Considered by a Single BAP Judge.** **(1)** ***Judge's Authority.*** A BAP judge may act alone on any motion but may not: (A) dismiss or otherwise determine an appeal; (B) deny a motion for leave to appeal; or (C) deny a motion for a stay pending appeal if denial would make the appeal moot. **(2)** ***Reviewing a Single Judge's Action.*** The BAP, on its own or on a party's motion, may review a single judge's action.
(f) FORM OF DOCUMENTS; LENGTH LIMITS; NUMBER OF COPIES.	**(f) Form of Documents; Length Limits; Number of Copies.** **(1)** ***Document Filed in Paper Form.*** Fed. R. App. P. 27(d)(1) applies to a

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(1) Format of a Paper Document. Rule 27(d)(1) F.R.App.P. applies in the district court or BAP to a paper version of a motion, response, or reply.	motion, response, or reply filed in paper form in the district court or BAP.
(2) Format of an Electronically Filed Document. A motion, response, or reply filed electronically must comply with the requirements for a paper version regarding covers, line spacing, margins, typeface, and type style. It must also comply with the length limits under paragraph (3).	**(2)** ***Document Filed Electronically.*** A motion, response, or reply filed electronically must comply with the requirements in (1) for covers, line spacing, margins, typeface, and type style. It must also comply with the length limits in (3).
(3) Length Limits. Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by subdivision (a)(2)(C):	**(3)** ***Length Limits.*** Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by (a)(2)(C):
(A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words;	(A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words;
(B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;	(B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages;
(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and	(C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and
(D) a handwritten or typewritten reply must not exceed 10 pages.	(D) a handwritten or typewritten reply must not exceed 10 pages.
	(4) ***Providing Paper Copies.*** Paper copies must be provided only if required by a local rule or by an order in a particular case.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>(4) Paper Copies. Paper copies must be provided only if required by local rule or by an order in a particular case.</td><td></td></tr>
<tr><td>(g) INTERVENING IN AN APPEAL. Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed. It must
concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate.</td><td>(g) Motion for Leave to Intervene.
(1) Time to File. Unless a statute provides otherwise, an entity seeking to intervene in an appeal in the districtcourt or BAP must move for leave to intervene and serve a copy of the motion on all parties to the appeal. The motion—or other notice of intervention authorized by statute— must be filed within 30 days after the appeal is docketed.
(2) Content. The motion must concisely state:
(A) the movant's interest;
(B) the grounds for intervention;
(C) whether intervention was sought inthe bankruptcy court;
(D) why intervention is being sought at this stage of the proceedings; and
(E) why participating as an amicus curiae—rather than intervening— would not be adequate.</td></tr>
</table>

Committee Note

The language of Rule 8013 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.

ORIGINAL	REVISION
Rule 8014. Briefs	**Rule 8014. Briefs**
(a) APPELLANT'S BRIEF. The appellant's brief must contain the following under appropriate headings and in the order indicated:	**(a) Appellant's Brief.** The appellant's brief must contain the following under appropriate headings and in the order indicated:
(1) a corporate disclosure statement, if required by Rule 8012;	(1) a disclosure statement, if required by Rule 8012;
(2) a table of contents, with page references;	(2) a table of contents, with page references;
(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;	(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
(4) a jurisdictional statement, including:	(4) a jurisdictional statement, including:
(A) the basis for the bankruptcy court's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;	(A) the basis for the bankruptcy court's subject-matter jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;
(B) the basis for the district court's or BAP's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;	(B) the basis for the district court's or BAP's jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;
(C) the filing dates establishing the timeliness of the appeal; and	(C) the filing dates establishing the timeliness of the appeal; and
(D) an assertion that the	(D) an assertion that the appeal is from a final judgment, order, or decree, or information establishing the district court's or BAP's jurisdiction on another basis;
	(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review;
	(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and

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appeal is from a final judgment, order, or decree, or information establishing the district court's or BAP's jurisdiction on another basis;	identifying the rulings presented for review, with appropriate references to the record;
(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review;	(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;	(8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;
(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;	(9) a short conclusion stating the precise relief sought; and
(8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies;	(10) the certificate of compliance, if required by Rule 8015(a)(7) or (b).
(9) a short conclusion stating the precise relief sought; and	
(10) the certificate of compliance, if required by Rule 8015(a)(7) or (b).	

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(b) APPELLEE'S BRIEF. The appellee's brief must conform to the requirements of subdivision (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement: (1) the jurisdictional statement; (2) the statement of the issues and the applicable standard of appellate review; and (3) the statement of the case.	**(b) Appellee's Brief.** The appellee's brief must conform to the requirements of (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement: (1) the jurisdictional statement; (2) the statement of the issues and the applicable standard of appellate review; and (3) the statement of the case.
(c) REPLY BRIEF. The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with the requirements of subdivision (a)(2)–(3).	**(c) Reply Brief.** The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with (a)(2)–(3).
(d) STATUTES, RULES, REGULATIONS, OR SIMILAR AUTHORITY. If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum.	**(d) Setting Out Statutes, Rules, Regulations, or Similar Authorities.** If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum.
(e) BRIEFS IN A CASE INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.	**(e) Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
(f) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to a party's	**(f) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief

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attention after the party's brief has been filed—or after oral argument but before a decision— a party may promptly advise the district or BAP clerk by a signed submission setting forth the citations. The submission, which must be served on the other parties to the appeal, must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be made within 7 days after the party is served, unless the court orders otherwise, and must be similarly limited.	has been filed—or after oral argument but before a decision—a party may promptly advise the district or BAP clerk by a signed submission, with a copy to all other parties, setting forth the citations. The submission must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be made within 7 days after service, unless the court orders otherwise, and must be similarly limited.

Committee Note

The language of Rule 8014 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.

ORIGINAL	REVISION
Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers	**Rule 8015. Form and Length of a Brief; Form of an Appendix or Other Paper**
(a) PAPER COPIES OF A BRIEF. If a paper copy of a brief may or must be filed, the following provisions apply:	**(a) Paper Copies of a Brief.** If a paper copy of a brief may or must be filed, the following provisions apply:
(1) Reproduction.	(1) ***Reproduction.***
(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.	(A) *Printing.* The brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.	(B) *Text.* Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.	(C) *Other Reproductions.* Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.
(2) Cover. The front cover of a brief must contain:	(2) ***Cover.*** The front cover of the brief must contain:
(A) the number of the case centered at the top;	(A) the number of the case centered at the top;
(B) the name of the court;	(B) the name of the court;
(C) the title of the case as	(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);
	(D) the nature of the proceeding and the name of the court below;
	(E) the title of the brief, identifying the party or parties for whom the brief is filed; and
	(F) the name, office address, telephone number, and e-mail address of counsel representing the party for whom the brief is filed.

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prescribed by Rule 8003(d)(2) or 8004(c)(2); (D) the nature of the proceeding and the name of the court below; (E) the title of the brief, identifying the party or parties for whom the brief is filed; and (F) the name, office address, telephone number, and e- mail address of counsel representing the party for whom the brief is filed. (3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open. (4) Paper Size, Line Spacing, and Margins. The brief must be on 81⁄2-by-11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. (5) Typeface. Either a proportionally spaced or monospaced face may be used. (A) A proportionally spaced face must include serifs, but	(3) ***Binding.*** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open. (4) ***Paper Size, Line Spacing, and Margins.*** The brief must be on 8½”-by-11” paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. (5) ***Typeface.*** Either a proportionally spaced or monospaced face may be used. (A) Proportional Spacing. A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger. (B) Monospacing. A monospaced face may not contain more than 10½ characters per inch. (6) ***Type Styles.*** The brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. (7) ***Length.*** (A) *Page Limitation.* A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with (B). (B) *Type-Volume Limitation.* (i) Principal Brief. A principal brief is acceptable if it

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sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.	contains a certificate under (h) and: • contains no more than 13,000 words; or • uses a monospaced face and contains no more than 1,300 lines of text.
(B) A monospaced face may not contain more than 101⁄2 characters per inch.	(ii) Reply Brief. A reply brief is acceptable if it includes a certificate under (h) and contains no more than half the type volume specified in item (i).
(6) Type Styles. A brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.	
(7) Length.	
(A) Page Limitation. A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with subparagraph (B).	
(B) Type-volume Limitation.	
(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:	
• contains no more than 13,000 words; or • uses a monospaced face and contains no more than 1,300 lines of text.	
(ii) A reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no	

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more than half of the type volume specified in item (i).	
(b) ELECTRONICALLY FILED BRIEFS. A brief filed electronically must comply with subdivision (a), except for (a)(1), (a)(3), and the paper requirement of (a)(4).	**(b) Brief Filed Electronically.** A brief filed electronically must comply with (a)—except for (a)(1), (a)(3), and the paper requirement of (a)(4).
(c) PAPER COPIES OF APPENDICES. A paper copy of an appendix must comply with subdivision (a)(1), (2), (3), and (4), with the following exceptions: (1) An appendix may include a legible photocopy of any document found in the record or of a printed decision. (2) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 81⁄2-by-11 inches, and need not lie reasonably flat when opened.	**(c) Paper Copies of an Appendix.** A paper copy of an appendix must comply with (a)(1), (2), (3), and (4), with the following exceptions: (1) ***Photocopy of Court Document.*** An appendix may include a legible photocopy of any document found in the record or of a printed decision. (2) ***Odd-Sized Document.*** When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½" by 11", and need not lie reasonably flat when opened.
(d) ELECTRONICALLY FILED APPENDICES. An appendix filed electronically must comply with subdivision (a)(2) and (4), except for the paper requirement of (a)(4).	**(d) Appendix Filed Electronically.** An appendix filed electronically must comply with (a)(2) and (4)—except for the paper requirement of (a)(4).
(e) OTHER DOCUMENTS. (1) Motion. Rule 8013(f) governs the form of a motion, response, or reply. (2) Paper Copies of Other Documents. A paper copy of any other document, other than a submission under Rule 8014(f), must comply with	**(e) Other Documents.** (1) ***Motion.*** Rule 8013(f) governs the form of a motion, response, or reply. (2) ***Paper Copies of Other Documents.*** A paper copy of any other document—except one submitted

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subdivision (a), with the following exceptions: (A) A cover is not necessary if the caption and signature page together contain the information required by subdivision (a)(2). (B) Subdivision (a)(7) does not apply. (3) Other Documents Filed Electronically. Any other document filed electronically, other than a submission under Rule 8014(f), must comply with the appearance requirements of paragraph (2).	under Rule 8014(f)—must comply with (a), with the following exceptions: (A) a cover is not necessary if the caption and signature page together contain the information required by (a)(2); and (B) the length limits of (a)(7) do not apply. (3) ***Document Filed Electronically.*** Any other document filed electronically—except a document submitted under Rule 8014(f)—must comply with the requirements of (2).
(f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by Part VIII of these rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by Part VIII of these rules.	**(f) Local Variation.** A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by this Part VIII. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by this Part VIII.
(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not: • the cover page; • disclosure statement under Rule 8012; • table of contents; • table of citations; • statement regarding oral argument;	**(g) Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not: • cover page; • disclosure statement under Rule 8012; • table of contents; • table of citations; • statement regarding oral argument;

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• addendum containing statutes, rules, or regulations; • certificates of counsel; • signature block; • proof of service; and • any item specifically excluded by these rules or by local rule.	• addendum containing statutes, rules, or regulations; • certificate of counsel; • signature block; • proof of service; and • any item specifically excluded by these rules or by local rule.
(h) CERTIFICATE OF COMPLIANCE. (1) Briefs and Documents That Require a Certificate. A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of mono-spaced type—in the document. (2) Acceptable Form. The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form.	**(h) Certificate of Compliance.** (1) ***Briefs and Documents That Require a Certificate.*** A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document. (2) ***Using the Official Form.*** A certificate of compliance that conforms substantially to Form 417C satisfies the certificate requirement.

Committee Note

The language of Rule 8015 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.

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Rule 8016. Cross-Appeals	**Rule 8016. Cross-Appeals**
(a) APPLICABILITY. This rule applies to a case in which a cross- appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, except as otherwise provided in this rule.	**(a) Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, unless this rule states otherwise.
(b) DESIGNATION OF APPELLANT. The party who files a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.	**(b) Designation of Appellant.** The party who files a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.
(c) BRIEFS. In a case involving a cross-appeal: (1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a). (2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement. (3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same	**(c) Briefs.** In a case involving a cross-appeal: (1) ***Appellant's Principal Brief.*** The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a). *(2)* ***Appellee's Principal and Response Brief.*** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), but the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement. (3) ***Appellant's Response and Reply Brief.*** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), but none of the following need appear unless the appellant is dissatisfied with the

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brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal: (A) the jurisdictional statement; (B) the statement of the issues and the applicable standard of appellate review; and (C) the statement of the case. (4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.	appellee's statement in the cross-appeal: (A) the jurisdictional statement; (B) the statement of the issues; (C) the statement of the case; and (D) the statement of the applicable standard of appellate review. (4) ***Appellee's Reply Brief.*** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.
(d) LENGTH. (1) Page Limitation. Unless it complies with paragraph (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages. (2) Type-volume Limitation. (A) The appellant's	**(d) Length.** (1) ***Page Limitation.*** Unless it complies with (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages. (2) ***Type-Volume Limitation.*** (A) *Appellant's Brief.* The appellant's principal brief or the appellant's response and reply brief is

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principal brief or the appellant's response and reply brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 13,000 words; or (ii) uses a monospaced face and contains no more than 1,300 lines of text. (B) The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 15,300 words; or (ii) uses a monospaced face and contains no more than 1,500 lines of text. (C) The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in subparagraph (A).	acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 13,000 words; or (ii) uses a monospaced face and contains no more than 1,300 lines of text. (B) *Appellee's Principal and Response Brief.* The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 15,300 words; or (ii) uses a monospaced face and contains no more than 1,500 lines of text. (C) *Appellee's Reply Brief.* The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half the type volume specified in (A).
(e) TIME TO SERVE AND FILE A BRIEF. Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits: (1) the appellant's principal brief,	**(e) Time to Serve and File a Brief.** Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or sets different time limits: (1) the appellant's principal brief, within 30 days after the docketing of a notice

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within 30 days after the docketing of notice that the record has been transmitted or is available electronically;	that the record has been sent or is available electronically;
(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;	(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;
(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and	(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and
(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing.	(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing.

Committee Note

The language of Rule 8016 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.

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Rule 8017. Brief of an Amicus Curiae	**Rule 8017. Brief of an Amicus Curiae**
(a) DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS. (1) Applicability. This Rule 8017(a) governs amicus filings during a court's initial consideration of a case on the merits. (2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own motion, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae. (3) Motion for Leave to File. The motion must be accompanied by the proposed brief and state: (A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal. (4) Contents and Form. An amicus brief must comply with Rule	**(a) During the Initial Consideration of a Case on the Merits.** **(1)** ***Applicability.*** This subdivision (a) governs amicus filings during a court's initial consideration of a case on the merits. **(2)** ***When Permitted.*** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae. **(3)** ***Motion for Leave to File.*** The motion for leave must be accompanied by the proposed brief and state: (A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal. **(4)** ***Content and Form.*** An amicus brief must comply with Rule 8015. In addition, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus

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8015. In addition to the requirements of Rule 8015, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus brief need not comply with Rule 8014, but must include the following:	brief need not comply with Rule 8014, but must include the following:
(A) a table of contents, with page references;	(A) a table of contents, with page references;
(B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;	(B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
(C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;	(C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;
(D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether:	(D) unless the amicus curiae is one listed in the first sentence of (2), a statement that indicates whether:
(i) a party's counsel authored the brief in whole or in part;	(i) a party's counsel authored the brief in whole or in part;
(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and	(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and
	(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;
	(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and
	(F) a certificate of compliance, if required by Rule 8015(h).
	(5) ***Length.*** Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the

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(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;	court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.
(E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and	**(6)** ***Time for Filing.*** An amicus curiae must file its brief—accompanied by a motion for leave to file when required—within 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief within 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.
(F) a certificate of compliance, if required by Rule 8015(h).	**(7)** ***Reply Brief.*** Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief.
(5) Length. Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.	**(8)** ***Oral Argument.*** An amicus curiae may participate in oral argument only with the district court's or BAP's permission.
(6) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer.	
(7) Reply Brief. Except by the district court's or BAP's permission, an	

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amicus curiae may not file a reply brief. (8) Oral Argument. An amicus curiae may participate in oral argument only with the district court's or BAP's permission.	
(b) DURING CONSIDERATION OF WHETHER TO GRANT REHEARING. (1) Applicability. This Rule 8017(b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a case provides otherwise. (2) When Permitted. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court. (3) Motion for Leave to File. Rule 8017(a)(3) applies to a motion for leave. (4) Contents, Form, and Length. Rule 8017(a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words. (5) Time for Filing. An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a	**(b) During Consideration of Whether to Grant Rehearing.** **(1)** ***Applicability.*** This subdivision (b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a particular case provides otherwise. **(2)** ***When Permitted.*** The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court. **(3)** ***Motion for Leave to File.*** Paragraph (a)(3) applies to a motion for leave to file. **(4)** ***Content, Form, and Length.*** Paragraph (a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words. **(5)** ***Time for Filing.*** An amicus curiae supporting a motion for rehearing or supporting neither party must file its brief—accompanied by a motion for leave to file when required—within 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief—accompanied by a motion for leave to file when required—no later than the date set by the court for the response.

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motion for filing when necessary, no later than 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.	

Committee Note

The language of Rule 8017 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.

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Rule 8018. Serving and Filing Briefs; Appendices	**Rule 8018. Serving and Filing Briefs and Appendices**
(a) TIME TO SERVE AND FILE A BRIEF. The following rules apply unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits: (1) The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically. (2) The appellee must serve and file a brief within 30 days after service of the appellant's brief. (3) The appellant may serve and file a reply brief within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing. (4) If an appellant fails to file a brief on time or within an extended time authorized by the district court or BAP, an appellee may move to dismiss the appeal—or the district court or BAP, after notice, may dismiss the appeal on its own motion. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission.	**(a) Time to Serve and File a Brief.** Unless the district court or BAP by order in a particular case excuses the filing of briefs or sets a different time, the following time limits apply: (1) ***Appellant's Brief.*** The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been sent or that it is available electronically. (2) ***Appellee's Brief.*** The appellee must serve and file a brief within 30 days after the appellant's brief is served. (3) ***Appellant's Reply Brief.*** The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but at least 7 days before scheduled argument—unless the district court or BAP, for good cause, allows a later filing. (4) ***Consequence of Failure to File.*** If an appellant fails to file a brief on time or within an extended time authorized under (a)(3), the district court or BAP may—on its own after notice or on the appellee's motion—dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission.
(b) DUTY TO SERVE AND FILE AN APPENDIX TO THE BRIEF.	**(b) Duty to Serve and File an Appendix.** (1) ***Appellant's Duty.*** Subject to (e) and Rule 8009(d), the appellant must serve

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(1) Appellant. Subject to subdivision (e) and Rule 8009(d), the appellant must serve and file with its principal brief excerpts of the record as an appendix. It must contain the following:	and file with its principal brief an appendix containing excerpts from the record. It must contain:
(A) the relevant entries in the bankruptcy docket;	(A) the relevant docket entries;
(B) the complaint and answer, or other equivalent filings;	(B) the complaint and answer or equivalent filings;
(C) the judgment, order, or decree from which the appeal is taken;	(C) the judgment, order, or decree from which the appeal is taken;
(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;	(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;
(E) the notice of appeal; and	(E) the notice of appeal; and
(F) any relevant transcript or portion of it.	(F) any relevant transcript or portion of it.
(2) Appellee. The appellee may also serve and file with its brief an appendix that contains material required to be included by the appellant or relevant to the appeal or cross-appeal, but omitted by the appellant.	(2) ***Appellee's Duty.*** The appellee may serve and file with its brief an appendix containing any material that is required to be included or is relevant to the appeal or cross-appeal but that is omitted from the appellant's appendix.
(3) Cross-Appellee. The appellant as cross-appellee may also	(3) ***Appellant's Duty as Cross-Appellee.*** The appellant—as cross-appellee—may also serve and file with its response an appendix containing material that is relevant to matters raised initially by the cross-appeal, but that is omitted by the cross-appellant.

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serve and file with its response an appendix that contains material relevant to matters raised initially by the principal brief in the cross-appeal, but omitted by the cross-appellant.	
(c) FORMAT OF THE APPENDIX. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of documents or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, and the like) should be omitted.	**(c) Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. These provisions apply: (1) ***Page Numbers.*** When transcript pages are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. (2) ***Omissions.*** Omissions from the text of a document or of the transcript must be indicated by asterisks. (3) ***Immaterial Formal Matters.*** Immaterial formal matters (captions, subscriptions, acknowledgments, and the like) should be omitted.
(d) EXHIBITS. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.	**(d) Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.
(e) APPEAL ON THE ORIGINAL RECORD WITHOUT AN APPENDIX. The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the district court or BAP orders the parties to file.	**(e) Appeal on the Original Record Without an Appendix.** The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case: (1) dispense with the appendix, and (2) permit an appeal to proceed on the original record with the submission of any relevant parts that the district court or BAP orders the parties to file.

Committee Note

The language of Rule 8018 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.

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Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter	**Rule 8018.1. Reviewing a Judgment That the Bankruptcy Court Lacked Authority to Enter**
If, on appeal, a district court determines that the bankruptcy court did not have the power under Article III of the Constitution to enter the judgment, order, or decree appealed from, the district court may treat it as proposed findings of fact and conclusions of law.	If, on appeal, a district court determines that the bankruptcy court did not have authority under Article III of the Constitution to enter the judgment, order, or decree being appealed, the district court may treat it as proposed findings of fact and conclusions of law.

Committee Note

The language of Rule 8018.1 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.

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Rule 8019. Oral Argument	**Rule 8019. Oral Argument**
(a) PARTY'S STATEMENT. Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted.	**(a) Party's Statement.** Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted.
(b) PRESUMPTION OF ORAL ARGUMENT AND EXCEPTIONS. Oral argument must be allowed in every case unless the district judge—or all the BAP judges assigned to hear the appeal—examine the briefs and record and determine that oral argument is unnecessary because (1) the appeal is frivolous; (2) the dispositive issue or issues have been authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.	**(b) Presumption of Oral Argument; Exceptions.** Oral argument must be allowed in every case unless the district judge—or all the BAP judges assigned to hear the appeal—examines the briefs and record and determines that oral argument is unnecessary because: (1) the appeal is frivolous; (2) the dispositive issue or issues have been authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
(c) NOTICE OF ARGUMENT; POSTPONEMENT. The district court or BAP must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.	**(c) Notice of Oral Argument; Motion to Postpone.** The district court or BAP must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably before the hearing date.
(d) ORDER AND CONTENTS OF ARGUMENT. The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities.	**(d) Order and Content of Argument.** The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities.

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(e) CROSS-APPEALS AND SEPARATE APPEALS. If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.	**(e) Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP orders otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.
(f) NONAPPEARANCE OF A PARTY. If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise.	**(f) Nonappearance of a Party.** If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise.
(g) SUBMISSION ON BRIEFS. The parties may agree to submit a case for decision on the briefs, but the district court or BAP may direct that the case be argued.	**(g) Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the district court or BAP may order that the case be argued.
(h) USE OF PHYSICAL EXHIBITS AT ARGUMENT; REMOVAL. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the district court or BAP directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.	**(h) Use of Physical Exhibits at Argument; Removal.** Any attorney intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the district court or BAP orders otherwise. The clerk may destroy or dispose of them if counsel does not reclaim them within a reasonable time after the clerk gives notice to do so.

Committee Note

The language of Rule 8019 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.

ORIGINAL	REVISION
Rule 8020. Frivolous Appeal and Other Misconduct	**Rule 8020. Frivolous Appeal; Other Misconduct**
(a) FRIVOLOUS APPEAL—DAMAGES AND COSTS. If the district court or BAP determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.	**(a) Frivolous Appeal—Damages and Costs.** If the district court or BAP determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.
(b) OTHER MISCONDUCT. The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including failure to comply with any court order. First, however, the court must afford the attorney or party reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.	**(b) Other Misconduct; Sanctions.** The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including a failure to comply with a court order. But the court must first give the attorney or party reasonable notice and an opportunity to show cause to the contrary—and if requested, grant a hearing.

Committee Note

The language of Rule 8020 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.

ORIGINAL	REVISION
Rule 8021. Costs	**Rule 8021. Costs**
(a) AGAINST WHOM ASSESSED. The following rules apply unless the law provides or the district court or BAP orders otherwise:	**(a) Against Whom Assessed.** The following rules apply unless the law provides or the district court or BAP orders otherwise:
(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;	(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;
(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;	(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;
(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;	(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;
(4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders.	(4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders.
(b) COSTS FOR AND AGAINST THE UNITED STATES. Costs for or against the United States, its agency, or its officer may be assessed under subdivision (a) only if authorized by law.	**(b) Costs For and Against the United States.** Costs for or against the United States, its agency, or its officer may be assessed under (a) only if authorized by law.
(c) COSTS ON APPEAL TAXABLE IN THE BANKRUPTCY COURT. The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule:	**(c) Costs on Appeal Taxable in the Bankruptcy Court.** The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule:
(1) the production of any required copies of a brief, appendix, exhibit, or the record;	(1) producing any required copies of a brief, appendix, exhibit, or the record; (2) preparing and sending the record; (3) the reporter's transcript, if needed to determine the appeal;

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(2) the preparation and transmission of the record; (3) the reporter's transcript, if needed to determine the appeal; (4) premiums paid for a bond or other security to preserve rights pending appeal; and (5) the fee for filing the notice of appeal.	(4) premiums paid for a bond or other security to preserve rights pending appeal; and (5) the fee for filing the notice of appeal.
(d) BILL OF COSTS; OBJECTIONS. A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after service of the bill of costs, unless the bankruptcy court extends the time.	**(d) Bill of Costs; Objections.** A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after the bill of costs is served, unless the bankruptcy court extends the time.

Committee Note

The language of Rule 8021 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.

ORIGINAL	REVISION
Rule 8022. Motion for Rehearing	**Rule 8022. Motion for Rehearing**
(a) TIME TO FILE; CONTENTS; RESPONSE; ACTION BY THE DISTRICT COURT OR BAP IF GRANTED.	**(a) Time to File; Content; Response; Action by the District Court or BAP if Granted.**
(1) Time. Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after entry of judgment on appeal.	(1) ***Time.*** Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after judgment on appeal is entered.
(2) Contents. The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted.	(2) ***Content.*** The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted.
(3) Response. Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.	(3) ***Response.*** Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.
(4) Action by the District Court or BAP. If a motion for rehearing is granted, the district court or BAP may do any of the following:	(4) ***Action by the District Court or BAP.*** If a motion for rehearing is granted, the district court or BAP may do any of the following:
(A) make a final disposition of the appeal without reargument;	(A) make a final disposition of the appeal without reargument;
(B) restore the case to the calendar for reargument or	(B) restore the case to the calendar for reargument or resubmission; or
	(C) issue any other appropriate order.

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resubmission; or (C) issue any other appropriate order.	
(b) FORM OF THE MOTION; LENGTH. The motion must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as provided by Rule 8011. Except by the district court's or BAP's permission: (1) a motion for rehearing produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and (2) a handwritten or typewritten motion must not exceed 15 pages.	**(b) Form; Length.** The motion for rehearing must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as Rule 8011 provides. Except by the district court's or BAP's permission: (1) a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and (2) a handwritten or typewritten motion must not exceed 15 pages.

Committee Note

The language of Rule 8022 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.

ORIGINAL	REVISION
Rule 8023. Voluntary Dismissal	**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.	**(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.	**(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 beyond the mere dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.	**(c) Other Relief.** A court order is required for any relief beyond the mere 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 settlement, payment, or other consideration.	**(d) Court Approval.** This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Committee Note

The language of Rule 8023 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.

ORIGINAL	REVISION
Rule 8024. Clerk's Duties on Disposition of the Appeal	**Rule 8024. Clerk's Duties on Disposition of the Appeal**
(a) JUDGMENT ON APPEAL. The district or BAP clerk must prepare, sign, and enter the judgment after receiving the court's opinion or, if there is no opinion, as the court instructs. Noting the judgment on the docket constitutes entry of judgment.	**(a) Preparing the Judgment.** After receiving the court's opinion—or instructions if there is no opinion—the district or BAP clerk must: (1) prepare and sign the judgment; and (2) note it on the docket, which act constitutes entry of judgment.
(b) NOTICE OF A JUDGMENT. Immediately upon the entry of a judgment, the district or BAP clerk must: (1) transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the bankruptcy clerk, together with a copy of any opinion; and (2) note the date of the transmission on the docket.	**(b) Giving Notice of the Judgment.** Immediately after entering a judgment, the district or BAP clerk must: (1) send notice of its entry, together with a copy of any opinion, to: • the parties to the appeal; • the United States trustee; and • the bankruptcy clerk; and (2) note on the docket the date the notice was sent.
(c) RETURNING PHYSICAL ITEMS. If any physical items were transmitted as the record on appeal, they must be returned to the bankruptcy clerk on disposition of the appeal.	**(c) Returning Physical Items.** On disposition of the appeal, the district or BAP clerk must return to the bankruptcy clerk any physical items sent as the record on appeal.

Committee Note

The language of Rule 8024 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.

ORIGINAL	REVISION
Rule 8025. Stay of a District Court or BAP Judgment	**Rule 8025. Staying a District Court or BAP Judgment**
(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after entry.	**(a) Automatic Stay of a Judgment on Appeal.** Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after its entry.
(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. (1) In General. On a party's motion and notice to all other parties to the appeal, the district court or BAP may stay its judgment pending an appeal to the court of appeals. (2) Time Limit. The stay must not exceed 30 days after the judgment is entered, except for cause shown. (3) Stay Continued. If, before a stay expires, the party who obtained the stay appeals to the court of appeals, the stay continues until final disposition by the court of appeals. (4) Bond or Other Security. A bond or other security may be required as a condition for granting or continuing a stay of the judgment. A bond or other security may be required if a trustee obtains a stay, but not if a stay is obtained by the United States or its officer or agency or at the direction of any department of the United States government.	**(b) Stay Pending an Appeal to a United States Court of Appeals.** (1) ***In General.*** The district court or BAP may—on a party's motion with notice to all other parties to the appeal—stay its judgment pending an appeal to the court of appeals. (2) ***Time Limit.*** Except for cause shown, the stay must not exceed 30 days after the judgment is entered. (3) ***Stay Continued When an Appeal Is Filed.*** If, before a stay expires, the party who obtained it appeals to a court of appeals, the stay continues until final disposition by the court of appeals. (4) ***Bond or Other Security.*** A bond or other security may be required as a condition for granting or continuing a stay. If a trustee obtains a stay, a bond or other security may be required, but not if a stay is obtained by the United States or its officer or agency, or by direction of any department of the United States government.
(c) AUTOMATIC STAY OF AN ORDER, JUDGMENT, OR DECREE OF A BANKRUPTCY COURT. If the	**(c) Automatic Stay of a Bankruptcy Court's Order, Judgment, or Decree.** If a district court or BAP enters a judgment affirming a

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district court or BAP enters a judgment affirming an order, judgment, or decree of the bankruptcy court, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the appellate stay.	bankruptcy court's order, judgment, or decree, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the appellate stay.
(d) POWER OF A COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any of its judges to do the following: (1) stay a judgment pending appeal; (2) stay proceedings while an appeal is pending; (3) suspend, modify, restore, vacate, or grant a stay or an injunction while an appeal is pending; or (4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment to be entered.	**(d) Power of a Court of Appeals or One of Its Judges Not Limited.** This rule does not limit the power of a court of appeals or one of its judges to: (1) stay a judgment pending appeal; (2) stay proceedings while an appeal is pending; (3) suspend, modify, restore, vacate, or grant a stay or injunction while an appeal is pending; or (4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment that might be entered.

Committee Note

The language of Rule 8025 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.

ORIGINAL	REVISION
Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law	**Rule 8026. Making and Amending Local Rules; Procedure When There Is No Controlling Law**
(a) LOCAL RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS. (1) Adopting Local Rules. A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the BAP. A district court may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the district court. Local rules must be consistent with, but not duplicative of, Acts of Congress and these Part VIII rules. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals. (2) Numbering. Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (3) Limitation on Imposing Requirements of Form. A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.	**(a) Local Rules.** (1) ***Making and Amending Local Rules.*** (A) *BAP Local Rules*. A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend local rules governing the practice and procedure on appeal to the BAP from a bankruptcy court's judgment, order, or decree. (B) *District-Court Local Rules*. A district court may make and amend local rules governing the practice and procedure on appeal to the district court from a bankruptcy court's judgment, order, or decree. (C) *Procedure*. Fed. R. Civ. P. 83 governs the procedure for making and amending local rules. A local rule must be consistent with—but not duplicate—an Act of Congress and these Part VIII rules. (2) ***Numbering.*** Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United Sates. (3) ***Limit on Enforcing a Local Rule Relating to Form.*** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.
(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. (1) In General. A district court	**(b) Procedure When There Is No Controlling Law.** (1) ***In General.*** A district court or BAP may regulate practice in any manner

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or BAP may regulate practice in any manner consistent with federal law, applicable federal rules, the Official Forms, and local rules.	consistent with federal law, applicable federal rules, the official forms, and local rules.
(2) Limitation on Sanctions. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, applicable federal rules, the Official Forms, or local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.	(2) ***Limit on Imposing Sanctions.*** Unless an alleged violator has been given actual notice of a requirement in the particular case, no sanction or other disadvantage may be imposed for failing to comply with any requirement not in federal law, applicable federal rules, the official forms, or local rules.

Committee Note

The language of Rule 8026 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.

ORIGINAL	REVISION
Rule 8027. Notice of a Mediation Procedure	**Rule 8027. Notice of a Mediation Procedure**
If the district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of: (a) the requirements of the mediation procedure; and (b) any effect the mediation procedure has on the time to file briefs.	If a district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of: (a) the requirements of the mediation procedure; and (b) any effect the mediation procedure has on the time to file briefs.

Committee Note

The language of Rule 8027 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.

ORIGINAL	REVISION
Rule 8028. Suspension of Rules in Part VIII	**Rule 8028. Suspending These Part VIII Rules**
In the interest of expediting decision or for other cause in a particular case, the district court or BAP, or where appropriate the court of appeals, may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.	To expedite a decision or for other cause, a district court or BAP—or when appropriate, the court of appeals—may, in a particular case, suspend the requirements of these Part VIII rules—except Rules 8001–8007, 8012, 8020, 8024–8026, and 8028.

Committee Note

The language of Rule 8028 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.

Bankruptcy Rules Restyling

9000 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.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>PART IX—GENERAL PROVISIONS</td><td>PART IX. GENERAL PROVISIONS</td></tr>
<tr><td>Rule 9001. General Definitions</td><td>Rule 9001. Definitions</td></tr>
<tr><td>The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in § 102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) “Bankruptcy clerk” means a clerk appointed pursuant to 28 U.S.C. § 156(b).

(2) “Bankruptcy Code” or “Code” means title 11 of the United States Code.

(3) “Clerk” means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.

(4) “Court” or “judge” means the judicial officer before whom a case or proceeding is pending.

(5) “Debtor.” When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, “debtor” includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, “debtor” includes any or all of its general partners or, if designated by the court, any other person in control.

(6) “Firm” includes a partnership or professional corporation of attorneys or accountants.</td><td>(a) In the Code. The definitions of words and phrases in §§ 101, 902, 1101, and 1502 and the rules of construction in § 102 apply in these rules.

(b) In These Rules. In these rules, the following words and phrases have these meanings:

(1) “Bankruptcy clerk” means a clerk appointed under 28 U.S.C. § 156(b).

(2) “Bankruptcy Code” or “Code” means Title 11 U.S.C.

(3) “Clerk” means a bankruptcy clerk if one has been appointed; otherwise, it means the district clerk.

(4) “Court” or “judge” means the judicial officer who presides over the case or proceeding.

(5) “Debtor,” when the debtor is not a natural person and either is required by these rules to perform an act or must be compelled to appear for examination, includes any or all of the following:

(A) if the debtor is a corporation and if the court so designates:
• any or all of its officers, directors, trustees, or members of a similar controlling body;
• a controlling stockholder or member; or
• any other person in control; or

(B) if the debtor is a partnership:
• any or all of its general partners; or
• if the court so designates, any</td></tr>
</table>

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	other person in control.
	(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.
(7) "Judgment" means any appealable order.	(7) "Judgment" means any appealable order.
(8) "Mail" means first class, postage prepaid.	(8) "Mail" means first-class mail, postage prepaid.
(9) "Notice provider" means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).	(9) "Notice provider" means an entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).
(10) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.	(10) "Regular associate" means an attorney regularly employed by, associated with, or counsel to an individual or firm.
(11) "Trustee" includes a debtor in possession in a chapter 11 case.	(11) "Trustee" includes a debtor in possession in a Chapter 11 case.
(12) "United States trustee" includes an assistant United States trustee and any designee of the United States trustee.	(12) "United States trustee" includes any assistant United States trustee and United States trustee's designee.

Committee Note

The language of Rule 9001 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code</td><td>Rule 9002. Meaning of Words in the Federal Rules of Civil Procedure</td></tr>
<tr><td>The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) “Action” or “civil action” means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) “Appeal” means an appeal as provided by 28 U.S.C. § 158.

(3) “Clerk” or “clerk of the district court” means the court officer responsible for the bankruptcy records in the district.

(4) “District Court,” “trial court,” “court,” “district judge,” or “judge” means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.

(5) “Judgment” includes any order appealable to an appellate court.</td><td>Unless they are inconsistent with the context, the following words and phrases in the Federal Rules of Civil Procedure—when made applicable by these rules—have these meanings:

(a) “Action” or “civil action” means an adversary proceeding or, when appropriate:
(1) a contested petition;
(2) a proceeding to vacate an order for relief; or
(3) a proceeding to determine any other contested matter.

(b) “Appeal” means an appeal under 28 U.S.C. § 158.

(c) “Clerk” or “clerk of the district court” means the officer responsible for maintaining the district’s bankruptcy records.

(d) “District court,” “trial court,” “court,” “district judge,” or “judge” means “bankruptcy judge” if the case or proceeding is pending before a bankruptcy judge.

(e) “Judgment” includes an appealable order.</td></tr>
</table>

Committee Note

The language of Rule 9002 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9003. Prohibition of Ex Parte Contacts	**Rule 9003. Ex Parte Contacts Prohibited**
(a) GENERAL PROHIBITION. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.	**(a) In General.** Unless permitted by applicable law, the following persons must refrain from ex parte meetings and communications with the court about matters affecting a particular case or proceeding: • an examiner; • a party in interest: • a party in interest's attorney, accountant, or employee; and • the United States trustee and any of its assistants, agents, or employees.
(b) UNITED STATES TRUSTEE. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.	**(b) Exception for a United States Trustee.** A United States trustee and any of its assistants, agents, or employees are not prohibited from communicating with the court about general problems of bankruptcy administration and how to improve it—including the operation of the United States trustee system.

Committee Note

The language of Rule 9003 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9004. General Requirements of Form	**Rule 9004. General Requirements of Form**
(a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.	**(a) Legibility; Abbreviations.** A petition, pleading, schedule, or other document must be clearly legible. An abbreviation commonly used in English is acceptable.
(b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.	**(b) Caption.** To be filed, a document must contain a caption that sets forth: (1) the court's name; (2) the case's title; (3) the case number and, if appropriate, adversary-proceeding number; and (4) a brief designation of the document's character.

Committee Note

The language of Rule 9004 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9005. Harmless Error	**Rule 9005. Harmless Error**
Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.	Fed. R. Civ. P. 61 applies in a bankruptcy case. When appropriate, the court may order the correction of any error or defect—or the cure of any omission—that does not affect substantial rights.

Committee Note

The language of Rule 9005 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention	**Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention**
Rule 5.1 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 5.1 applies in a bankruptcy case.

Committee Note

The language of Rule 9005.1 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9006. Computing and Extending Time; Time for Motion Papers	**Rule 9006. Computing and Extending Time; Motions**
(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time. (1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. (2) *Period Stated in Hours*. When the period is stated in hours: (A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday. (3) *Inaccessibility of Clerk's Office*. Unless the court orders otherwise, if the	**(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time. (1) ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. (2) ***Period Stated in Hours.*** When the period is stated in hours: (A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same hour on the next day that is not a Saturday, Sunday, or legal holiday. (3) ***Inaccessibility of the Clerk's Office When a Filing Is Due.*** Unless the court orders otherwise, if the clerk's

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clerk's office is inaccessible:	office is inaccessible:
(A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or	(A) on the last day for filing under (1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
(B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.	(B) during the last hour for filing under (2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:	(4) ***"Last Day" Defined.*** Unless a different time is set by statute, local rule, or order in a case, the last day ends:
(A) for electronic filing, at midnight in the court's time zone; and	(A) for electronic filing, at midnight in the court's time zone; and
(B) for filing by other means, when the clerk's office is scheduled to close.	(B) for filing by other means, when the clerk's office is scheduled to close.
(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.	(5) ***"Next Day" Defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event, and backward when measured before an event.
(6) *"Legal Holiday" Defined.* "Legal holiday" means:	(6) ***"Legal Holiday" Defined.*** "Legal holiday" means:
(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;	(A) the day set aside by statute for observing New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day;
(B) any day declared a holiday by the President or Congress; and	(B) any day declared a holiday by the President or Congress; and
(C) for periods that are measured after an event, any other day declared a holiday by the state where the	(C) for periods that are measured after an event, any other day declared a holiday by the State where the

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district court is located. (In this rule, "state" includes the District of Columbia and any United States commonwealth or territory.)	district court is located. (In this rule, "State" includes the District of Columbia and any United States commonwealth or territory.)
(b) ENLARGEMENT. (1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. (2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024. (3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).	**(b) Extending Time.** (1) ***In General.*** This paragraph (1) applies when these rules, a notice given under these rules, or a court order requires or allows an act to be performed at or within a specified period. Except as provided in (2) and (3), the court may—at any time and for cause shown—extend the time to act if: (A) with or without a motion or notice, the request is made before the period (or a previously extended period) expires; or (B) on motion made after the specified period expires, the failure to act within that period resulted from excusable neglect. (2) ***Exceptions.*** The court must not extend the time to act under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024. (3) ***Extensions Governed by Other Rules.*** The court may extend the time to: (A) act under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033—but only to the extent and under the conditions stated in those rules; and (B) file the statement required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c).

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(c) REDUCTION. (1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced. (2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).	**(c) Reducing Time Limits.** (1) ***When Permitted.*** When a rule, notice given under a rule, or court order requires or allows an act to be done within a specified time, the court may—for cause shown and with or without a motion or notice—reduce the period to act. (2) ***When Not Permitted.*** The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not, under Rule 1007(c), reduce the time to file the statement required by Rule 1007(b)(7).
(d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise.	**(d) Time to Serve a Motion.** (1) ***In General.*** A motion (other than one that may be heard ex parte) and notice of any hearing must be served at least 7 days before the hearing date, unless the court or these rules set a different period. Any affidavit supporting the motion must be served with it. An application to change the period for service may be made ex parte for cause shown. (2) ***Response.*** Except as provided in Rule 9023, any response must be served at least 1 day before the hearing—unless the court allows otherwise.
(e) TIME OF SERVICE. Service of process and service of any paper other than process or of notice by mail is complete on mailing.	**(e) Service Complete on Mailing.** Service by mail of process, any other document, or notice is complete upon mailing.
(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER	**(f) Additional Time After Certain Kinds of Service.** When a party may or must act

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RULE 5(b)(2)(D) OR (F) F.R.CIV.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).	within a specified time after being served and service is made by mail or under Fed. R. Civ. P. 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to), 3 days are added after the period would otherwise expire under (a).
v(g) GRAIN STORAGE FACILITY CASES. This rule shall not limit the court's authority under § 557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility.	**(g) Grain-Storage Facility.** This rule does not limit the court's authority under § 557 to issue an order governing procedures in a case in which the debtor owns or operates a grain-storage facility.

Committee Note

The language of Rule 9006 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9007. General Authority to Regulate Notices	**Rule 9007. Authority to Regulate Notices.**
When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.	**(a) In General.** Unless these rules provide otherwise, when notice is to be given, the court must designate: (1) the deadline for giving it; (2) the entities to whom it must be given; and (3) the form and manner of giving it. **(b) Combined Notices**. When feasible, the court may order any notices under these rules to be combined.

Committee Note

The language of Rule 9007 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9008. Service or Notice by Publication	**Rule 9008. Service or Notice by Publication**
Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.	When these rules require or authorize service or notice by publication, and to the extent that they do not provide otherwise, the court must determine the form and manner of publication—including the newspaper or other medium to be used and the number of publications.

Committee Note

The language of Rule 9008 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9009. Forms	**Rule 9009. Using Official Forms; Director's Forms**
(a) OFFICIAL FORMS. The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that: (1) expand the prescribed areas for responses in order to permit complete responses; (2) delete space not needed for responses; or (3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.	**(a) Official Forms.** The Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by these rules, the form itself, or the national instructions for a particular official form. An Official Form may be modified to permit minor changes not affecting wording or the order of presentation, including a change that: (1) expands the prescribed response area to permit a complete response; (2) deletes space not needed for a response; or (3) deletes items requiring detail in a question or category if the filer indicates—either by checking "no" or "none," or by stating in words—that there is nothing to report on that item.
(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.	**(b) Director's Forms.** The Director of the Administrative Office of the United States Courts may issue additional forms.
(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.	**(c) Construing Forms.** The forms must be construed to be consistent with these rules and the Code.

Committee Note

The language of Rule 9009 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9010. Representation and Appearances; Powers of Attorney	**Rule 9010. Authority to Act Personally or by an Attorney; Power of Attorney**
(a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.	**(a) In General.** A debtor, creditor, equity security holder, indenture trustee, committee, or other party may: (1) appear in a case and act either on the entity's own behalf or through an attorney authorized to practice in the court; and (2) perform—through an authorized agent, attorney-in-fact, or proxy—any act not constituting the practice of law.
(b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.	**(b) Attorney's Notice of Appearance.** An attorney appearing for a party in a case must file a notice of appearance that contains the attorney's name, office address, and telephone number—unless the appearance is already noted in the record.
(c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.	**(c) Power of Attorney to Represent a Creditor.** The authority of an agent, attorney-in-fact, or proxy to represent a creditor—for any purpose other than executing and filing a proof of claim or accepting or rejecting a plan—must be evidenced by a power of attorney that conforms substantially to the appropriate version of Form 411. A power of attorney must be acknowledged before: (1) an officer listed in 28 U.S.C. § 459 or § 953 or in Rule 9012; or (2) a person authorized to administer oaths under the state law where the oath is administered.

Committee Note

The language of Rule 9010 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers	**Rule 9011. Signing Documents; Representations to the Court; Sanctions; Verifying and Providing Copies**
(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.	**(a) Signature.** Every petition, pleading, written motion, and other document—except a list, schedule, or statement, or any amendment to one—must be signed by at least one attorney of record in the attorney's individual name. A party not represented by an attorney must sign all documents. Each document must state the signer's address and telephone number, if any. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention.
(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—[1] (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other	**(b) Representations to the Court.** By presenting to the court a petition, pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances: (1) it is not presented for any improper purpose, such as to harass or to cause unnecessary delay, or needlessly increase litigation costs; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law; (3) the allegations and factual contentions have evidentiary support—or if specifically so identified, are likely to have evidentiary support after a

1 So in original. The comma probably should not appear.

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factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.	reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence—or if specifically so identified, are reasonably based on a lack of information or belief.
(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. (1) *How Initiated.* (A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional	**(c) Sanctions.** **(1)** ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction on any attorney, law firm, or party that committed the violation or is responsible for it. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee. **(2)** ***By Motion.*** (A) *In General.* A motion for sanctions must be made separately from any other motion or request, describe the specific conduct alleged to violate (b), and be served under Rule 7004. (B) *When to File.* The motion for sanctions must not be filed or presented to the court if the challenged document, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected within 21 days after the motion was served (or within another period as the court may order). This limitation does not apply if the

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circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees. (B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto. (2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in sub-paragraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation. (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2). (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned. (3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the	conduct alleged is filing a petition in violation of (b). (C) *Awarding Damages.* If warranted, the court may award to the prevailing party reasonable expenses and attorney's fees incurred in presenting or opposing the motion. **(3)** ***By the Court.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated (b). **(4)** ***Nature of a Sanction; Limitations.*** (A) *In General.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or deter comparable conduct by others similarly situated. The sanction may include: (i) a nonmonetary directive; (ii) an order to pay a penalty into court; or (iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of all or part of the reasonable attorney's fees and other expenses directly resulting from the violation. (B) *Limitations on a Monetary Sanction.* The court must not impose a monetary sanction: (i) against a represented party for violating (b)(2); or (ii) on its own, unless it issued the show-cause order under (c)(3) before voluntary dismissal or settlement of the

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basis for the sanction imposed.	claims made by or against the party that is, or whose attorneys are, to be sanctioned. **(5)** *Content of a Court Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
(d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.	**(d) Inapplicability to Discovery.** Subdivisions (a)–(c) do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to Rules 7026–7037.
(e) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.	**(e) Verification.** A document filed in a bankruptcy case need not be verified unless these rules provide otherwise. When these rules require verification, an unsworn declaration under 28 U.S.C. § 1746 suffices.
(f) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.	**(f) Copies of Signed or Verified Documents.** When these rules require copies of a signed or verified document, if the original is signed or verified, a copy that conforms to the original suffices.

Committee Note

The language of Rule 9011 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9012. Oaths and Affirmations	**Rule 9012. Oaths and Affirmations**
(a) PERSONS AUTHORIZED TO ADMINISTER OATHS. The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.	**(a) Who May Administer an Oath.** These persons may administer an oath or affirmation or take an acknowledgment: • a bankruptcy judge; • a clerk; • a deputy clerk; • a United States trustee; • an officer authorized to do so in a proceeding before a federal court or by state law in the state where the oath is taken; or • a United States diplomatic or consular officer in a foreign country.
(b) AFFIRMATION IN LIEU OF OATH. When in a case under the Code an oath is required to be taken a solemn affirmation may be accepted in lieu thereof.	**(b) Affirmation as an Alternative.** If an oath is required, a solemn affirmation suffices.

Committee Note

The language of Rule 9012 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 9013. Motions: Form and Service</td><td>Rule 9013. Motions; Form and Service</td></tr>
<tr><td rowspan="2">A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.</td><td>(a) Request for an Order. A request for an order must be made by written motion unless:

(1) an application is authorized by these rules; or

(2) the request is made during a hearing.</td></tr>
<tr><td>(b) Form and Service of the Motion. The motion must state its grounds with particularity and set forth the relief or order sought. Unless a written motion may be considered ex parte, the movant must, within the time prescribed by Rule 9006(d), serve the motion on:

• the trustee or debtor in possession and those entities specified by these rules; or

• if these rules do not require service or specify the entities to be served, the entities designated by the court.</td></tr>
</table>

Committee Note

The language of Rule 9013 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9014. Contested Matters	**Rule 9014. Contested Matters**
(a) MOTION. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.	**(a) Motion Required.** In a contested matter not otherwise governed by these rules, relief must be requested by motion. Reasonable notice and an opportunity to be heard must be given to the party against whom relief is sought. No response is required unless the court orders otherwise.
(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P.	**(b) Service.** (1) ***Motion.*** The motion must be served within the time prescribed by Rule 9006(d) and in the manner for serving a summons and complaint provided by Rule 7004. (2) ***Response.*** Any written response must be served within the time prescribed by Rule 9006(d). (3) ***Later Filing.*** After a motion is served, any other document must be served in the manner prescribed by Fed. R. Civ. P. 5(b).
(c) APPLICATION OF PART VII RULES. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7042, 7052, 7054–7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pretrial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a	**(c) Applying Part VII Rules.** (1) ***In General.*** Unless this rule or a court order provides otherwise, the following rules apply in a contested matter: 7009, 7017, 7021, 7025–7026, 7028–7037, 7041–7042, 7052, 7054–7056, 7064, 7069, and 7071. At any stage of a matter, the court may order that one or more other Part VII rules apply. (2) ***Exception.*** Unless the court orders otherwise, the following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in a contested matter: • (a)(1), mandatory disclosure; • (a)(2), disclosures about expert

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deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.	testimony; • (a)(3), other pretrial disclosures; and • (f), mandatory meeting before a scheduling conference/discovery plan. (3) ***Procedural Order.*** In issuing any procedural order under this subdivision (c), the court must give the parties notice and a reasonable opportunity to comply. (4) ***Perpetuating Testimony.*** An entity desiring to perpetuate testimony may do so in the manner provided by Rule 7027 for taking a deposition before an adversary proceeding.
(d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.	**(d) Taking Testimony.** A witness's testimony on a disputed material factual issue must be taken in the same manner as testimony in an adversary proceeding.
(e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.	**(e) Evidentiary Hearing.** The court must provide procedures that allow parties— at a reasonable time before a scheduled hearing—to determine whether it will be an evidentiary hearing at which witnesses may testify.

Committee Note

The language of Rule 9014 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9015. Jury Trials	**Rule 9015. Jury Trial.**
(a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, 47–49, and 51, F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.	**(a) In General.** In a bankruptcy case or proceeding, Fed. R. Civ. P. 38–39, 47–49, 51, and 81(c) (insofar as it applies to jury trials) apply, but a demand for a jury trial under Fed. R. Civ. P. 38(b) must be filed in accordance with Rule 5005.
(b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.	**(b) Jury Trial Before a Bankruptcy Judge.** The parties may—jointly or separately—file a statement consenting to a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) if: (1) the right to a jury trial applies; (2) a timely demand has been filed under Fed. R. Civ. P. 38(b); (3) the bankruptcy judge has been specially designated to conduct the jury trial; and (4) the statement is filed within any time specified by local rule.
(c) APPLICABILITY OF RULE 50 F.R.CIV.P. Rule 50 F.R.Civ.P. applies in cases and proceedings, except that any renewed motion for judgment or request for a new trial shall be filed no later than 14 days after the entry of judgment.	**(c) Judgment as a Matter of Law; Motion for a New Trial.** Fed. R. Civ. P. 50 applies in a bankruptcy case or proceeding—except that a renewed motion for judgment, or a request for a new trial, must be filed within 14 days after the judgment is entered.

Committee Note

The language of Rule 9015 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9016. Subpoena	**Rule 9016. Subpoena**
Rule 45 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 45 applies in a bankruptcy case.

Committee Note

The language of Rule 9016 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9017. Evidence	**Rule 9017. Evidence**
The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.	The Federal Rules of Evidence and Fed. R. Civ. P. 43, 44, and 44.1 apply in a bankruptcy case.

Committee Note

The language of Rule 9017 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter	**Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter**
On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.	**(a) In General.** On motion or on its own, the court may—with or without notice—issue any order that justice requires to: (1) protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information; (2) protect an entity from scandalous or defamatory matter in any document filed in a bankruptcy case; or (3) protect governmental matters made confidential by statute or regulation. **(b) Motion to Vacate or Modify an Order Issued Without Notice.** An entity affected by an order issued under (a) without notice may move to vacate or modify it. After notice and a hearing, the court must rule on the motion.

Committee Note

The language of Rule 9018 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9019. Compromise and Arbitration	**Rule 9019. Compromise; Arbitration**
(a) COMPROMISE. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.	**(a) Approving a Compromise.** On the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement. Notice must be given to: • the creditors; • the United States trustee; • the debtor; • indenture trustees as provided in Rule 2002; and • any other entity the court designates.
(b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.	**(b) Compromising or Settling Controversies in Classes.** After a hearing on such notice as the court may direct, the court may: (1) fix a class or classes of controversies; and (2) authorize the trustee to compromise or settle controversies within the class or classes without further hearing or notice.
(c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.	**(c) Arbitration of Controversies Affecting an Estate.** If the parties so stipulate, the court may authorize a controversy affecting an estate to be submitted to final and binding arbitration.

Committee Note

The language of Rule 9019 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9020. Contempt Proceedings	**Rule 9020. Contempt Proceedings**
Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.	Rule 9014 governs a motion for a contempt order made by the United States trustee or a party in interest.

Committee Note

The language of Rule 9020 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9021. Entry of Judgment	**Rule 9021. When a Judgment or Order Becomes Effective**
A judgment or order is effective when entered under Rule 5003.	A judgment or order becomes effective when it is entered under Rule 5003.

Committee Note

The language of Rule 9021 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9022. Notice of Judgment or Order	**Rule 9022. Notice of a Judgment or Order**
(a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F.R.Civ.P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.	**(a) Issued by a Bankruptcy Judge.** (1) ***In General.*** Upon entering a judgment or order, the clerk must: (A) promptly serve notice of the entry on the contesting parties and other entities the court designates; (B) do so in the manner provided by Fed. R. Civ. P. 5(b); (C) except in a Chapter 9 case, promptly send a copy of the judgment or order to the United States trustee; and (D) note service on the docket. (2) ***Lack of Notice; Time to Appeal.*** Except as permitted by Rule 8002, lack of notice of the entry does not affect the time to appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed.
(b) JUDGMENT OR ORDER OF DISTRICT JUDGE. Notice of a judgment or order entered by a district judge is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of a judgment or order entered by a district judge.	**(b) Issued by a District Judge.** Notice of a district judge's judgment or order is governed by Fed. R. Civ. P. 77(d). Except in a Chapter 9 case, the clerk must promptly send a copy to the United States trustee.

Committee Note

The language of Rule 9022 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9023. New Trials; Amendment of Judgments	**Rule 9023. New Trial; Amending a Judgment**
Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.	**(a) By Motion.** Except as this rule and Rule 3008 provide otherwise, Fed. R. Civ. P. 59 applies in a bankruptcy case. A motion for a new trial or to alter or amend a judgment must be filed within 14 days after the judgment is entered. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending. **(b) By the Court.** Within 14 days after judgment is entered, the court may, on its own, order a new trial.

Committee Note

The language of Rule 9023 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9024. Relief from Judgment or Order	**Rule 9024. Relief from a Judgment or Order**
Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.	**(a) In General.** Fed. R. Civ. P. 60 applies in a bankruptcy case—except that: (1) the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an uncontested order allowing or disallowing a claim; (2) a complaint to revoke a discharge in a Chapter 7 case must be filed within the time allowed by § 727(e); and (3) a complaint to revoke an order confirming a plan must be filed within the time allowed by § 1144, 1230, or 1330. **(b) Indicative Ruling**. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.

Committee Note

The language of Rule 9024 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9025. Security: Proceedings Against Security Providers	**Rule 9025. Security; Proceeding Against a Security Provider**
Whenever the Code or these rules require or permit a party to give security, and security is given with one or more security providers, each provider submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.	When the Code or these rules require or permit a party to give security, and the party gives security with one or more security providers, each provider submits to the court's jurisdiction. Liability may be determined in an adversary proceeding governed by the Part VII rules.

Committee Note

The language of Rule 9025 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9026. Exceptions Unnecessary	**Rule 9026. Objecting to a Ruling or Order**
Rule 46 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 46 applies in a bankruptcy case.

Committee Note

The language of Rule 9026 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9027. Removal	**Rule 9027. Removing a Claim or Cause of Action from Another Court**
(a) NOTICE OF REMOVAL. (1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings. (2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief. (3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial	**(a) Notice of Removal.** (1) ***Where Filed; Form and Content.*** A notice of removal must be filed with the clerk for the district and division where the state or federal civil action is pending. The notice must be signed—under Rule 9011—and must: (A) contain a short and plain statement of the facts that entitle the party to remove; (B) contain a statement that the party filing the notice does or does not consent to the bankruptcy court's entry of a final judgment or order; and (C) be accompanied by a copy of all process and pleadings. (2) ***Time to File When the Claim Was Filed Before the Bankruptcy Case Was Commenced.*** If the claim or cause of action in a civil action is pending when a bankruptcy case is commenced, the notice of removal must be filed within the longest of these periods: (A) 90 days after the order for relief in the bankruptcy case; (B) if the claim or cause of action has been stayed under § 362, 30 days after an order terminating the stay is entered; or (C) in a Chapter 11 case, 30 days after a trustee qualifies—but no later than 180 days after the order for relief. (3) ***Time to File When the Claim Is Filed After the Bankruptcy Case Was Commenced.*** If a claim or cause

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pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.	of action is asserted in another court after the bankruptcy case was commenced, a party filing a notice of removal must do so within the shorter of these periods: (A) 30 days after receiving (by service or otherwise) the initial pleading setting forth the claim or cause of action sought to be removed; or (B) 30 days after receiving the summons if the initial pleading has been filed but not served with the summons.
(b) NOTICE. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.	**(b) Notice to Other Parties and to the Court from Which the Claim Was Removed.** A party filing a notice of removal must promptly: (1) serve a copy on all other parties to the removed claim or cause of action; and (2) file a copy with the clerk of the court from which it was removed.
(c) FILING IN NON-BANKRUPTCY COURT. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.	**(c) Effective Date of Removal.** Removal becomes effective when the notice is filed under (b)(2). The parties must proceed no further in the court from which the claim or cause of action was removed unless the claim or cause of action is remanded.
(d) REMAND. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.	**(d) Remand After Removal.** A motion to remand is governed by Rule 9014. The party filing the motion must serve a copy on all parties to the removed claim or cause of action.
(e) PROCEDURE AFTER REMOVAL.	**(e) Procedure After Removal.** **(1)** ***Bringing Proper Parties Before the***

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(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise. (2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed. (3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.	***Court.*** After removal, the district court—or the bankruptcy judge to whom the bankruptcy case has been referred—may issue all necessary orders and process to bring before it all proper parties. It does not matter whether they were served by process issued by the court from which the claim or cause of action was removed, or otherwise. **(2)** ***Records of Prior Proceedings.*** The judge may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action that were filed in the court from which the removal occurred. **(3)** ***Statement by a Party to a Removed Claim.*** A party who has filed a pleading in a removed claim or cause of action—except the party filing the notice of removal—must: (A) file a statement that the party does or does not consent to the entry of a final order or judgment of the bankruptcy court; (B) ensure that the statement is signed as Rule 9011 provides; (C) file it within 14 days after the notice of removal is filed; and (D) mail a copy to every other party to the removed claim or cause of action.
(f) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued	**(f) Process Regarding a Defendant After Removal.** If a defendant has not been served—or service has not been completed before removal or has been proved defective—process or service may be completed or new process issued as the Part VII rules provide. A defendant served

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pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.	after removal may move to remand the claim or cause of action to the court from which it was removed.
(g) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.	**(g) Applying Part VII Rules.** **(1)** *In General.* The Part VII rules apply to a claim or cause of action removed to a district court from a federal or state court and govern the procedure after removal. Repleading is not necessary unless the court orders otherwise. **(2)** *Time to File an Answer.* In a removed action, a defendant that has not previously done so must file an answer—or present other defenses or objections available under the Part VII rules. The defendant must do so within the longest of these periods: (A) 21 days after receiving—by service or otherwise—a copy of the initial pleading that sets forth the claim for relief; (B) 21 days after a summons on the original pleading was served; or (C) 7 days after the notice of removal was filed.
(h) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be	**(h) Clerk's Failure to Supply Certified Records of Court Proceedings.** If a party is entitled to copies of the records and proceedings in a civil action or proceeding in a federal or state court for use in the removed action or proceeding, the party may demand certified copies from that court's clerk. After the party pays for them or tenders the fees, if the clerk fails to provide them, the court to which the action or proceeding is removed may—after receiving an affidavit stating these facts—order that the record be supplied by

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had in the court, and all process awarded, as if certified copies had been filed.	affidavit or otherwise. The court may then proceed to trial and judgment, and may award all process, as if certified copies had been filed.
(i) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.	**(i) Property Attached or Sequestered; Security; Injunction.** **(1)** ***Property Attached or Sequestered.*** The court from which a claim or cause of action has been removed must hold attached or sequestered property to answer the final judgment or decree in the same way it would have been held had there been no removal. **(2)** ***Security.*** Any bond, undertaking, or security given by either party before the removal remains valid. **(3)** ***Injunction.*** Any injunction or order issued, or other proceeding had, before the removal remains in effect until dissolved or modified by the court.

Committee Note

The language of Rule 9027 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9028. Disability of a Judge	**Rule 9028. Judge's Disability**
Rule 63 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 63 applies in a bankruptcy case.

Committee Note

The language of Rule 9028 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law	**Rule 9029. Adopting Local Rules; Limit on Enforcing a Local Rule; Absence of Controlling Law**
(a) LOCAL BANKRUPTCY RULES. (1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement.	**(a) Adopting Local Rules.** (1) ***By District Courts.*** Each district court, acting by a majority of its judges, may make and amend rules governing practice and procedure in all cases and proceedings within its bankruptcy jurisdiction. Fed. R. Civ. P. 83 governs the procedure for adopting local rules. The rules must: (A) be consistent with—but not duplicate—federal statutes and these rules; (B) not prohibit or limit using Official Forms; and (C) conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (2) ***Delegating Authority to the Bankruptcy Judges.*** A district court may—subject to any limitation or condition it may prescribe and Fed. R. Civ. P. 83—authorize the district's bankruptcy judges to do the same. **(b) Limit on Enforcing a Local Rule Regarding Form.** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose rights because of a nonwillful failure to comply.
(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement	**(c) Procedure When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law, these rules, the Official Forms, and the district's local rules. But for any requirement set out elsewhere a sanction or other disadvantage may be imposed for noncompliance only if the alleged violator

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not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.	has been given actual notice of the requirement in the particular case.

Committee Note

The language of Rule 9029 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9030. Jurisdiction and Venue Unaffected	**Rule 9030. Jurisdiction and Venue**
These rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein.	These rules must not be construed to extend or limit jurisdiction of the courts or the venue of any matters.

Committee Note

The language of Rule 9030 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9031. Masters Not Authorized	**Rule 9031. Using Masters Not Authorized**
Rule 53 F.R.Civ.P. does not apply in cases under the Code.	Fed. R. Civ. P. 53 does not apply in a bankruptcy case.

Committee Note

The language of Rule 9031 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure	**Rule 9032. Effect of an Amendment to the Federal Rules of Civil Procedure**
The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules.	To the extent these rules incorporate by reference the Federal Rules of Civil Procedure, an amendment to the Federal Rules of Civil Procedure is also effective under these rules, unless the amendment or these rules provide otherwise.

Committee Note

The language of Rule 9032 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9033. Proposed Findings of Fact and Conclusions of Law	**Rule 9033. Proposed Findings of Fact and Conclusions of Law**
(a) SERVICE. In a proceeding in which the bankruptcy court has issued proposed findings of fact and conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.	**(a) Service.** When a bankruptcy court issues proposed findings of fact and conclusions of law, the clerk must promptly serve a copy, by mail, on every party and must note the date of mailing on the docket.
(b) OBJECTIONS: TIME FOR FILING. Within 14 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 14 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.	**(b) Objections; Time to File.** (1) ***Time to File.*** Within 14 days after being served, a party may file and serve objections. The objections must identify each proposed finding or conclusion objected to and state the grounds for objecting. A party may respond to another party's objections within 14 days after being served with a copy. (2) ***Ordering a Transcript.*** Unless the district judge orders otherwise, a party filing objections must promptly order a transcript of the record—or the parts of it that all parties agree to or the bankruptcy judge considers sufficient.
(c) EXTENSION OF TIME. The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 21 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.	(3) **Extending the Time.** On request made before the time to file objections expires, the bankruptcy judge may, for cause, extend the time to file for any party for no more than 21 days after the time otherwise provided by this rule expires. But a request made within 21 days after that time expires may be granted upon a showing of excusable neglect.
(d) STANDARD OF REVIEW. The	**(c) Review by the District Judge.** The

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district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.	district judge: (1) must review de novo—on the record or after receiving additional evidence—any part of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made under (b); and (2) may accept, reject, or modify them, take additional evidence, or remand the matter to the bankruptcy judge with instructions.

Committee Note

The language of Rule 9033 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee	**Rule 9034. Sending Copies to the United States Trustee**
Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper: (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business; (b) the approval of a compromise or settlement of a controversy; (c) the dismissal or conversion of a case to another chapter; (d) the employment of professional persons; (e) an application for compensation or reimbursement of expenses; (f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit; (g) the appointment of a trustee or examiner in a chapter 11 reorganization case; (h) the approval of a disclosure statement; (i) the confirmation of a plan; (j) an objection to, or waiver or revocation of, the debtor's discharge; (k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies	Except in a Chapter 9 case or when the United States trustee requests otherwise, an entity filing a pleading, motion, objection, or similar document relating to any of the following must send a copy to the United States trustee within the time required for service: (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business; (b) the approval of a compromise or settlement of a controversy; (c) the dismissal or conversion of a case to another chapter; (d) the employment of a professional person; (e) an application for compensation or reimbursement of expenses; (f) a motion for, or the approval of an agreement regarding, the use of cash collateral or the authority to obtain credit; (g) the appointment of a trustee or examiner in a Chapter 11 case; (h) the approval of a disclosure statement; (i) the confirmation of a plan; (j) an objection to, or waiver or revocation of, the debtor's discharge; or (k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies sent

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transmitted to the United States trustee.	to the United States trustee.

Committee Note

The language of Rule 9034 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina	**Rule 9035. Applying These Rules in a Judicial District in Alabama and North Carolina**
In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute effective in the case.	In a bankruptcy case filed in or transferred to a district in Alabama or North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent they are not inconsistent with any applicable federal statute.

Committee Note

The language of Rule 9035 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9036. Notice and Service by Electronic Transmission	**Rule 9036. Electronic Notice and Service**
(a) IN GENERAL. This rule applies whenever these rules require or permit sending a notice or serving a paper by mail or other means. (b) NOTICES FROM AND SERVICE BY THE COURT. (1) *Registered Users*. The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system. (2) *All Recipients*. For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at	**(a) In General.** This rule applies whenever these rules require or permit sending a notice or serving a document by mail or other means. **(b) Notices From and Service by the Court.** (1) ***Registered Users***. The clerk may send notice to or serve a registered user by filing the notice or document with the court's electronic-filing system. (2) ***All Recipients***. For any recipient, the clerk may send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk must use that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the document electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f). (c) **Notices From and Service by an Entity.** An entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).

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an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code. (c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).	**(d) Completing Notice or Service.** Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served. The recipient must keep its electronic address current with the clerk.
(d) COMPLETING NOTICE OR SERVICE. Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk. (e) INAPPLICABILITY. This rule does not apply to any paper required to be served in accordance with Rule 7004.	**(e) Inapplicability**. This rule does not apply to any document required to be served in accordance with Rule 7004.

Committee Note

The language of Rule 9036 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 9037. Privacy Protection For Filings Made with the Court	**Rule 9037. Protecting Privacy for Filings**
(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only: (1) the last four digits of the social-security number and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number.	**(a) Required Redaction.** Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual other than the debtor known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only: (1) the last four digits of a social-security and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number.
(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following: (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; (2) the record of an administrative or agency proceeding unless filed with a proof of claim; (3) the official record of a state-court proceeding; (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; (5) a filing covered by subdivision (c) of this rule; and	**(b) Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following: (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; (2) the record of an administrative or agency proceeding, unless filed with a proof of claim; (3) the official record of a state-court proceeding; (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; (5) a filing covered by (c); and (6) a filing subject to § 110.

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(6) a filing that is subject to § 110 of the Code.	
(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.	**(c) Order for a Filing Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made it to file a redacted version for the public record.
(d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.	**(d) Protective Orders**. For cause, the court may by order in a case under the Code: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.
(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.	**(e) Option to File an Additional Unredacted Document Under Seal.** An entity filing a redacted document may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.
(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.	**(f) Option to File a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. A reference in the case to a listed identifier will be construed to refer to the corresponding item of information.
(g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.	**(g) Waiver of Protection of Identifiers.** An entity waives the protection of (a) for the entity's own information by filing it without redaction and not under seal.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT.

(1) Content of the Motion; Service. Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must:

(A) file a motion to redact identifying the proposed redactions;

(B) attach to the motion the proposed redacted document;

(C) include in the motion the docket or proof-of-claim number of the previously filed document; and

(D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

(2) Restricting Public Access to the Unredacted Document; Docketing the Redacted Document. The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise.</td><td>(h) Motion to Redact a Previously Filed Document.

(1) Content; Service. Unless the court orders otherwise, an entity seeking to redact from a previously filed document information that is protected under (a) must:

(A) file a motion that identifies the proposed redactions;

(B) attach to it the proposed redacted document;

(C) include the docket number—or proof-of-claim number—of the previously filed document; and

(D) serve the motion and attachment on;

• the debtor;
• the debtor's attorney;
• any trustee;
• the United States trustee;
• the person who filed the unredacted document; and
• any individual whose personal identifying information is to be redacted.

(2) Restricting Public Access to the Unredacted Document; Docketing the Redacted Document. Pending its ruling, the court must promptly restrict access to the motion and the unredacted document. If the court grants the motion, the clerk must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies the motion, the restrictions must be lifted, unless</td></tr>
</table>

ORIGINAL	REVISION
	the court orders otherwise.

Committee Note

The language of Rule 9037 has been amended as part of the general restyling of the BankruptcyRules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Consent Tab 1

Consent Tab 1A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: PRIVACY, PUBLIC ACCESS, AND APPEALS SUBCOMMITTEE

SUBJECT: 21-BK-L AND 21-BK-N – UNCLAIMED FUNDS

DATE: FEB. 28, 2022

We have received two suggestions relating to the issue of unclaimed funds. The first, 21-BK-L, is from Stephen C. Brown who suggests that individuals who have separated from their spouses be allowed to receive ½ of the unclaimed funds that have been deposited under the joint names of the spouses. The second, 21-BK-N, is a series of suggestions from the Unclaimed Funds Expert Panel relating to Fed. R. Bankr. P. 3011.

Under 11 U.S.C. § 347(a), "[n]inety days after the final distribution . . . in a case under chapter 7, subchapter V of chapter 11, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28."

28 U.S.C. § 2041, entitled "Deposit of moneys in pending or adjudicated cases," states as follows:

> All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.
>
> This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

Withdrawal of such funds is governed by 28 U.S.C. § 2042, which states:

> No money deposited under section 2041 of this title shall be withdrawn except by order of court.
>
> In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the

name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

In response to a suggestion from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), 19-BK-A, the Advisory Committee recommended amendments to Federal Rule of Bankruptcy 3011 for the purpose of allowing claimants to search for unclaimed funds through the court's website. The proposed amendments to Rule 3011 were approved for publication by the Standing Committee at its meeting in June 2021, and the comments on such proposed amendments will be discussed in a separate memorandum.

Form 1340 (Application for Payment of Unclaimed Funds) is a Director's Form that provides a template to be used by courts in developing their own localized form to assist parties in seeking the payment of unclaimed funds held by bankruptcy courts. On the form, the applicant for the unclaimed funds must either be the claimant(s) and owner(s) of record (original payee(s)) of the funds, or must be entitled to the funds by assignment, purchase, merger, acquisition, succession or other means, or be the representative of the estate(s) of the claimant(s) or deceased claimant(s).

I. Suggestion 31-BK-L

The Subcommittee recommends no action on the suggestion that separated claimants be allowed to withdraw ½ of the amount of unclaimed funds to which the joint claimants are entitled.

When spouses separate, the allocation of joint assets between them is determined under state law. To the extent that one of the spouses is the applicant for unclaimed funds, files a motion to withdraw those funds and can establish (by a divorce decree or affidavit signed by the other spouse) that the applicant is entitled to all or part of the unclaimed funds, the court may already enter an order awarding to the applicant that portion of the unclaimed funds to which the applicant is entitled under state law. But in the absence of a state law determination of the applicant's right to all or any part of the unclaimed funds, the bankruptcy court should not be in the business of usurping the role of making that determination.

II. Suggestion 21-BK-N

The Unclaimed Funds Expert Panel, a sub-group of the Financial Managers Working Group, conducted a survey of court executives and financial staff in bankruptcy courts in April-May 2020 with respect to unclaimed funds. The Panel has issued a report titled "Rethinking Unclaimed Funds" in which it makes several suggestions for amendments to Rule 3011 and adoption of additional rules and forms to attempt to reduce unclaimed funds and locate those who are entitled to withdraw them.

A. Steps to Locate Claimants

The Panel first stated that there is some concern about the extent to which U.S. trustees and bankruptcy trustees act in a diligent manner to locate parties who are entitled to unclaimed funds before depositing them with the court. Some courts have adopted local rules requiring the trustee to file a motion/application attesting to the trustee's inability to locate the creditor before filing unclaimed funds in excess of $500. The Panel recommends amending Rule 3011 to (1) require the trustee to file a motion/application to deposit unclaimed funds and do so only when the court decides the motion; (2) require the trustees to take additional steps to locate creditors before turning over unclaimed funds. The Panel further suggests (without specifying any implicated rules) barring bankruptcy trustees from disbursing funds to creditors if the trustee becomes aware that the creditor's address is invalid, and require more efforts by the bankruptcy trustee to identify the creditor's correct address.

The Subcommittee recommended no action on the grounds that the suggestions are inconsistent with the language of § 347(a). The trustee is required to take action 90 days after the final distribution, without filing a motion or application or taking any additional steps.

As to the third suggestion, the Subcommittee does not have any evidence that the trustee is mailing funds to creditors at addresses that the trustee knows are invalid. Barring any evidence of a problem, the Subcommittee recommends no action.

The Panel further suggests that the trustees should be asked for "more effort" "to identify the correct creditor address." This does not seem to be an Advisory Committee issue.

B. Strategies to Reduce Deposit of Funds

The Panel makes five suggestions to reduce the deposit of funds, some of which relate to Rule 3011 and some of which do not.

First, the Panel suggests an amendment to Rule 3011 to not permit deposit of unclaimed funds under designated threshold dollar amounts and allow for those funds to be redistributed to creditors or, if all claims are satisfied, returned to the debtor.

The problem with this suggestion is that it is inconsistent with 11 U.S.C. § 347(a), which has no threshold dollar amount and does not provide any circumstances under which unclaimed funds are distributed to other creditors or the debtor.

Second, the Panel suggests adoption of local rules to permit distribution of small dividends pursuant to Fed. R. Bankr. P. 3010 to reduce unclaimed funds deposits. Rule 3010 bars the trustee from distributing a dividend in an amount less than $5 in a chapter 7 case, or less than $15 in a chapter 12 or chapter 13 case, in the absence of a local rule or order of the court.

Some courts have adopted local rules to permit such distributions and the Panel encourages others to do so. This is not an Advisory Committee issue.

Third, the Panel notes that not all deposits of unclaimed funds include the names and last known addresses of entities, as required by Rule 3011. Enforcement of the requirements of Rule 3011 is an issue for the bankruptcy courts, not for the Advisory Committee.

Fourth, the Panel suggests including a statement or disclaimer on the Notice of Case and the Proof of Claim stating that address changes must be communicated to the court. Although the debtor is required to notify the court of any change in address under Rule 4002(a)(5), there is no requirement that a creditor communicate with the court or trustee in any way. If the creditor does file a proof of claim, Official Form 410 includes information about an address for notices and an address for payments. Rule 2002(g)(1) requires notices be mailed under Rule 2002 to a creditor at the address that the creditor has directed in its "last request filed in the particular case," which may be the proof of claim. The consequence of not filing a request for a change in address is that the creditor will not receive notices and distributions at the new address. There is no basis for requiring a creditor to inform the court of a change of address, and therefore neither the Notice of Case nor the Proof of Claim should so state.

Fifth, the Panel provided sample change-of-address forms for the debtor for local court adoption. No suggestion was made for adoption of an Official Form or Director's Form. This is not a matter for the Advisory Committee.

The Subcommittee recommends no action on these suggestions.

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

Rule 3002.1. Chapter 13—~~Notice Relating to~~ 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 either~~ requires the trustee or 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 related to that residence becomes effective ~~with respect to the residence that secures the claim~~.

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

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

(1) *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 of any change in the payment amount~~,~~—including any change ~~that results~~ resulting 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~~. 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.

(2) *Effect of an Untimely Notice.* If the claim holder does not timely file and serve the notice required by (b)(1), the effective date of the new payment is as follows:

34 (A) when the notice concerns a
35 payment increase, on the first payment due
36 date that is at least 21 days after the untimely
37 notice was filed and served, or
38 (B) when the notice concerns a
39 payment decrease, on the date stated in the
40 untimely notice.
41 (3) *Notice of a Change in a Home-Equity*
42 *Line of Credit.*
43 (A) *Deadline.* If the claim arises
44 from a home-equity line of credit, the notice
45 of a payment change shall be filed and served
46 within one year after the bankruptcy petition
47 was filed and then at least annually.
48 (B) *Contents of the Annual*
49 *Notice.* The annual notice shall:

50 (1) state the payment
51 amount due for the month when the
52 notice is filed; and
53 (2) include a
54 reconciliation amount to account for
55 any overpayment or underpayment
56 during the prior year.
57 (C) *Amount of the Next Payment.*
58 The first payment due after the effective date
59 of the annual notice shall be increased or
60 decreased by the reconciliation amount.
61 (D) *Effective Date.* The new
62 payment amount stated in the annual notice
63 (disregarding the reconciliation amount)
64 shall be effective on the first payment due
65 date that is at least 21 days after the annual
66 notice is filed and served and shall remain

67 effective until a new notice becomes
68 effective.
69 (E) *Payment Changes Greater*
70 *Than $10.* If the monthly payment increases
71 or decreases by more than $10 in any month,
72 the claim holder shall file and serve (in
73 addition to the annual notice) a notice under
74 (b)(1) for that month.
75 (~~2~~4) *Party in Interest's Objection*. A party
76 in interest who objects to ~~the~~ a payment change may
77 file a motion to determine whether the change is
78 required to maintain payments ~~in accordance with~~
79 under § 1322(b)(5) of the Code. ~~If~~ Unless the court
80 orders otherwise, if no motion is filed ~~by~~ before the
81 day the new ~~amount~~ payment is due, the change goes
82 into effect~~,~~ immediately ~~unless the court orders~~
83 ~~otherwise~~.

84 (c) ~~NOTICE OF~~ FEES, EXPENSES, AND
85 CHARGES INCURRED AFTER THE CASE WAS FILED;
86 NOTICE BY THE CLAIM HOLDER. The claim holder ~~of~~
87 ~~the claim~~ shall file ~~and serve on the debtor, debtor's counsel,~~
88 ~~and the trustee~~ a notice itemizing all fees, expenses, ~~or~~ and
89 charges ~~(1)~~ that ~~were~~ the claim holder has incurred ~~in~~
90 ~~connection with the claim~~ or imposed after the ~~bankruptcy~~
91 case was filed~~, and (2)~~ that the claim holder asserts are
92 recoverable against the debtor or ~~against~~ the debtor's
93 principal residence. ~~The notice shall be served within~~
94 Within 180 days after ~~the date on which~~ the fees, expenses,
95 or charges are incurred or imposed, the notice shall be served
96 on:
97 - the debtor;
98 - the debtor's attorney; and
99 - the trustee.
100 (d) ~~FORM AND CONTENT~~ FILING NOTICE
101 AS A SUPPLEMENT TO A PROOF OF CLAIM. A notice
102 ~~filed and served~~ under ~~subdivision~~ (b) or (c) ~~of this rule~~ shall

103 be ~~prepared as prescribed by the appropriate Official Form,~~
104 ~~and~~ filed as a supplement to ~~the holder's~~ a proof of claim and
105 be prepared using the appropriate Official Form. The notice
106 is not subject to Rule 3001(f).
107 (e) ~~DETERMINATION OF~~ DETERMINING
108 FEES, EXPENSES, OR CHARGES. On ~~motion of~~ a party
109 in ~~interest~~ interest's motion ~~filed within one year after~~
110 ~~service of a notice under subdivision (c) of this rule~~, the court
111 shall, after notice and a hearing, determine whether ~~payment~~
112 ~~of~~ paying any claimed fee, expense, or charge is required by
113 the underlying agreement and applicable nonbankruptcy law
114 to cure a default or maintain payments ~~in accordance with~~
115 under § 1322(b)(5) of the Code. The motion shall be filed
116 within one year after the notice under (c) was served, unless
117 the party has requested and the court orders a shorter period.
118 ~~(f) NOTICE OF FINAL CURE PAYMENT.~~
119 ~~Within 30 days after the debtor completes all payments~~
120 ~~under the plan, the trustee shall file and serve on 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.~~

(f) TRUSTEE'S MIDCASE NOTICE OF THE STATUS OF A MORTGAGE CLAIM.

(1) *Timing; Content and Service.* Between 18 and 24 months after the bankruptcy petition was filed, the trustee shall file a notice about the status of any mortgage claim. The notice shall be prepared using the appropriate Official Form and be served on:

- the debtor;

139 • the debtor's attorney; and

140 • the claim holder.

141 (2) *Response; Motion to Compel a*
142 *Response; Objection to the Response; Court*
143 *Determination.*

144 (A) *Deadline; Content and*
145 *Service.* The claim holder shall file a response
146 to the trustee's notice within 21 days after it is
147 served. The response shall be prepared using the
148 appropriate Official Form and be served on:

149 • the debtor;

150 • debtor's counsel; and

151 • the trustee.

152 (B) *Motion for an Order*
153 *Compelling a Response.* If the claim holder
154 does not timely file a response, a party in
155 interest may move for an order compelling one.

156 (C) *Objection.* A party in interest
157 may file an objection to the claim holder's
158 response.
159 (D) *Court Determination.* If a
160 party in interest objects to the response, the
161 court shall, after notice and a hearing, determine
162 the status of the mortgage claim and enter an
163 appropriate order.
164 ~~(g) RESPONSE TO NOTICE OF FINAL CURE~~
165 ~~PAYMENT. Within 21 days after service of the notice under~~
166 ~~subdivision (f) of this rule, the holder shall file and serve on~~
167 ~~the debtor, debtor's counsel, and the trustee a statement~~
168 ~~indicating (1) whether it agrees that the debtor has paid in~~
169 ~~full the amount required to cure the default on the claim, and~~
170 ~~(2) whether the debtor is otherwise current on all payments~~
171 ~~consistent with § 1322(b)(5) of the Code. The statement shall~~
172 ~~itemize the required cure or postpetition amounts, if any, that~~
173 ~~the holder contends remain unpaid as of the date of the~~

174 ~~statement. The statement shall be filed as a supplement to the~~

175 ~~holder's proof of claim and is not subject to Rule 3001(f).~~

176 (g) TRUSTEE'S END-OF-CASE MOTION TO

177 DETERMINE THE STATUS OF A MORTGAGE CLAIM.

178 (1) *Timing; Content and Service.* Within

179 45 days after the debtor completes all payments

180 under a chapter 13 plan, the trustee shall file a motion

181 to determine the status of a mortgage claim,

182 including whether any prepetition arrearage has been

183 cured. The motion shall be prepared using the

184 appropriate Official Form and be served on:

185 - the claim holder;

186 - the debtor; and

187 - debtor's counsel.

188 (2) *Response; Motion to Compel a*

189 *Response; Objection to the Response.*

190 (A) *Deadline; Content and*

191 *Service.* The claim holder shall file a

192 response to the motion within 28 days after
193 service of the motion. The response shall be
194 prepared using the appropriate Official Form
195 and be served on:
196 • the debtor;
197 • debtor's counsel; and
198 • the trustee.
199 (B) *Motion for an Order*
200 *Compelling a Response.* If the claim holder
201 does not timely file a response, a party in
202 interest may move for an order compelling
203 one.
204 (C) *Objection.* Within 14 days
205 after service of a response, a party in interest
206 may file an objection to the response.
207 ~~(h) DETERMINATION OF FINAL CURE~~
208 ~~AND PAYMENT. On motion of the debtor or trustee filed~~
209 ~~within 21 days after service of the statement under~~

210 ~~subdivision (g) of this rule, the court shall, after notice and~~
211 ~~hearing, determine whether the debtor has cured the default~~
212 ~~and paid all required postpetition amounts.~~
213 (h) ORDER DETERMINING THE STATUS
214 OF A MORTGAGE CLAIM.
215 (1) *No Response.* If the claim holder fails
216 to comply with an order under (g)(2)(B) to respond
217 to the trustee's motion, the court may enter an order
218 determining that:
219 (A) as of the date of the motion,
220 the debtor is current on all payments that the
221 plan requires to be paid to the claim
222 holder—including all escrow amounts; and
223 (B) all postpetition legal fees,
224 expenses, and charges incurred or imposed
225 by the claim holder have been satisfied in
226 full.

227 (2) *No Objection.* If the claim holder
228 timely responds and no objection is filed, the court
229 may, by order, determine that the amounts stated in
230 the claim holder's response reflect the status of the
231 claim as of the date the response was filed.
232 (3) *Contested Motion.* If an objection is
233 filed, the court shall, after notice and a hearing,
234 determine the status of the mortgage claim and issue
235 an appropriate order.
236 (4) *Contents of the Order.*
237 (A) *Issued Under (h)(2) or (h)(3).*
238 An order issued under (h)(2) or (h)(3) shall
239 include the following information, current as
240 of the date of the claim holder's response or
241 such other date that the court may determine:
242 (i) the principal balance
243 owed;

244 (ii) the date that the
245 debtor's next payment is due;
246 (iii) the amount of the next
247 payment—separately identifying the
248 amount due for principal, interest,
249 mortgage insurance, taxes, and other
250 escrow amounts, as applicable;
251 (iv) the amounts held in
252 any escrow, suspense, unapplied-
253 funds, or similar account; and
254 (v) the amount of any
255 fees, expenses or charges properly
256 noticed under (c) that remain unpaid.
257 (B) *Issued Under (h)(1).* An order
258 issued under (h)(1) may include any of the
259 information described in (A) and may
260 address the treatment of any payment that

261 becomes delinquent before the court grants
262 the debtor a discharge.
263 (i) CLAIM HOLDER'S FAILURE TO
264 ~~NOTIFY~~ GIVE NOTICE OR RESPOND. If the ~~holder of a~~
265 claim holder fails to provide any information ~~as~~ required by
266 ~~subdivision (b), (c), or (g) of~~ this rule, the court may, after
267 notice and a hearing, ~~take either or both~~ do one or more of
268 the following ~~actions~~:
269 (1) preclude the holder from presenting
270 the omitted information~~,~~ in any form~~,~~ as evidence in
271 any contested matter or adversary proceeding in the
272 case~~,~~—unless the court determines that the failure
273 was substantially justified or is harmless; ~~or~~
274 (2) award other appropriate relief,
275 including reasonable expenses and attorney's fees
276 caused by the failure; and
277 (3) take any other action authorized by
278 this rule.

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 overpayment 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.

Subdivision (f) is new. It provides 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, 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 (g), 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. 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 (h)). 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 (h)(4) specifies the contents of the order.

Subdivision (*i*) 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.