

AMENDMENTS TO THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE

---

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT  
OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE THAT HAVE BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO 28 U.S.C. 2075; PUBLIC LAW 88-623, SEC. 1 (AS AMENDED BY PUBLIC LAW 103-394, SEC. 104(f)); (108 STAT. 4110)



AUGUST 7, 2020.—Referred to the Committee on the Judiciary and ordered to be printed

---

U.S. GOVERNMENT PUBLISHING OFFICE



SUPREME COURT OF THE UNITED STATES,  
*Washington, DC, April 27, 2020.*

Hon. NANCY PELOSI,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

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

Accompanying the amended rules are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 23, 2019; a redline version of the rules with committee notes; an excerpt from the September 2019 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 2019 report of the Advisory Committee on Bankruptcy Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,  
*Chief Justice.*

April 27, 2020

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Bankruptcy Procedure are amended to include amendments to Rules 2002, 2004, 8012, 8013, 8015, and 8021.

[*See infra* pp. \_\_\_ \_\_\_.]

2. The foregoing amendments to the Federal Rules of Bankruptcy Procedure shall take effect on December 1, 2020, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

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

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

**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee**

\* \* \* \* \*

(f) OTHER NOTICES. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

\* \* \* \* \*

(7) entry of an order confirming a chapter 9, 11, 12, or 13 plan;

\* \* \* \* \*

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED.

(1) *Voluntary Case.* In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days

## 2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

(2) *Involuntary Case.* In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

(3) *Insufficient Assets.* In a case where notice of insufficient assets to pay a dividend has been given to creditors under subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

\* \* \* \* \*

(k) NOTICES TO UNITED STATES TRUSTEE.

## 4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses.

\* \* \* \* \*

**Rule 2004. Examination**

\* \* \* \* \*

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or electronically stored information, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court.

\* \* \* \* \*

**Rule 8012. Disclosure Statement****(a) NONGOVERNMENTAL CORPORATIONS.**

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).

**(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.

**Rule 8013. Motions; Intervention**

(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.

\* \* \* \* \*

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

\* \* \* \* \*

(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;
- addendum containing statutes, rules, or regulations;
- certificates of counsel;
- signature block;
- proof of service; and

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

- any item specifically excluded by these rules  
or by local rule.

\* \* \* \* \*

**Rule 8021. Costs**

\* \* \* \* \*

(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.





JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

October 23, 2019

MEMORANDUM

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

From: James C. Duff *James C. Duff*

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

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court proposed amendments to Rules 2002, 2004, 8012, 8013, 8015, and 8021 of the Federal Rules of Bankruptcy Procedure, which were approved by the Judicial Conference at its September 2019 session. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a copy of the affected rules incorporating the proposed amendments and accompanying committee notes; (ii) a redline version of the same; (iii) an excerpt from the September 2019 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the May 2019 Report of the Advisory Committee on Bankruptcy Rules.

Attachments

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>**

1 **Rule 2002. Notices to Creditors, Equity Security**  
2 **Holders, Administrators in Foreign**  
3 **Proceedings, Persons Against Whom**  
4 **Provisional Relief Is Sought in Ancillary**  
5 **and Other Cross-Border Cases, United**  
6 **States, and United States Trustee**

7 \* \* \* \* \*

8 (f) OTHER NOTICES. Except as provided in  
9 subdivision (l) of this rule, the clerk, or some other person as  
10 the court may direct, shall give the debtor, all creditors, and  
11 indenture trustees notice by mail of:

12 \* \* \* \* \*

13 (7) entry of an order confirming a chapter 9, 11,  
14 ~~or 12,~~ or 13 plan;

15 \* \* \* \* \*

16 (h) NOTICES TO CREDITORS WHOSE CLAIMS  
17 ARE FILED. ~~In a chapter 7 case, after 90 days following~~

---

<sup>1</sup> New material is underlined; matter to be omitted is lined through.

## 2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 ~~the first date set for the meeting of creditors under § 341 of~~  
19 ~~the Code,~~

20 (1) *Voluntary Case.* In a voluntary chapter 7  
21 case, chapter 12 case, or chapter 13 case, after 70 days  
22 following the order for relief under that chapter or the  
23 date of the order converting the case to chapter 12 or  
24 chapter 13, the court may direct that all notices required  
25 by subdivision (a) of this rule be mailed only to:

- 26 • the debtor;
- 27 • the trustee;
- 28 • all indenture trustees;
- 29 • creditors that hold claims for which proofs of  
30 claim have been filed; and
- 31 • creditors, if any, that are still permitted to file  
32 claims because an extension was granted  
33 under Rule 3002(c)(1) or (c)(2).

34 (2) *Involuntary Case.* In an involuntary chapter

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 3

35 7 case, after 90 days following the order for relief under  
36 that chapter, the court may direct that all notices  
37 required by subdivision (a) of this rule be mailed only  
38 to:

- 39 • the debtor;
- 40 • the trustee;
- 41 • all indenture trustees;
- 42 • creditors that hold claims for which proofs of  
43 claim have been filed; and
- 44 • creditors, if any, that are still permitted to file  
45 claims by reason of because an extension was  
46 granted pursuant to under Rule 3002(c)(1) or  
47 (c)(2).

48 (3) Insufficient Assets. In a case where notice of  
49 insufficient assets to pay a dividend has been given to  
50 creditors pursuant to under subdivision (e) of this rule,  
51 after 90 days following the mailing of a notice of the

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

52 time for filing claims ~~pursuant to~~ under  
53 Rule 3002(c)(5), the court may direct that notices be  
54 mailed only to the entities specified in the preceding  
55 sentence.

56 \* \* \* \* \*

57 (k) NOTICES TO UNITED STATES TRUSTEE.

58 Unless the case is a chapter 9 municipality case or unless the  
59 United States trustee requests otherwise, the clerk, or some  
60 other person as the court may direct, shall transmit to the  
61 United States trustee notice of the matters described in  
62 subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1),  
63 (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and  
64 notice of hearings on all applications for compensation or  
65 reimbursement of expenses.

66 \* \* \* \* \*

**Committee Note**

Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to paragraph (7).

Subdivision (h) is amended to add cases under chapters 12 and 13 of the Bankruptcy Code and to conform the time periods in the subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

Subdivision (k) is amended to add a reference to subdivision (a)(9) of this rule. This change corresponds to the relocation of the deadline for objecting to confirmation of a chapter 13 plan from subdivision (b) to subdivision (a)(9). The rule thereby continues to require transmittal of notice of that deadline to the United States trustee.

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 2004. Examination**

2

\* \* \* \* \*

3

(c) COMPELLING ATTENDANCE AND

4

PRODUCTION OF DOCUMENTS OR

5

ELECTRONICALLY STORED INFORMATION. The

6

attendance of an entity for examination and for the

7

production of documents or electronically stored

8

information, whether the examination is to be conducted

9

within or without the district in which the case is pending,

10

may be compelled as provided in Rule 9016 for the

11

attendance of a witness at a hearing or trial. As an officer of

12

the court, an attorney may issue and sign a subpoena on

13

behalf of the court ~~for the district in which the examination~~

14

~~is to be held~~ where the case is pending if the attorney is

15

admitted to practice in that court ~~or in the court in which the~~

16

~~case is pending.~~

17

\* \* \* \* \*

**Committee Note**

Subdivision (c) is amended in two respects. First, the provision now refers expressly to the production of electronically stored information, in addition to the production of documents. This change is an acknowledgment of the form in which information now commonly exists and the type of production that is frequently sought in connection with an examination under Rule 2004.

Second, subdivision (c) is amended to bring its subpoena provision into conformity with the current version of F.R.Civ.P. 45, which Rule 9016 makes applicable in bankruptcy cases. Under Rule 45, a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it. In light of this procedure, a subpoena for a Rule 2004 examination is now properly issued from the court where the bankruptcy case is pending and by an attorney authorized to practice in that court, even if the examination is to occur in another district.

## 8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8012. ~~Corporate~~ Disclosure Statement**

2 (a) ~~WHO MUST FILE~~ NONGOVERNMENTAL  
3 CORPORATIONS. Any nongovernmental ~~corporate party~~  
4 corporation that is a party to a proceeding appearing in the  
5 district court or BAP must file a statement that identifies any  
6 parent corporation and any publicly held corporation that  
7 owns 10% or more of its stock or states that there is no such  
8 corporation. The same requirement applies to a  
9 nongovernmental corporation that seeks to intervene.

10 (b) DISCLOSURE ABOUT THE DEBTOR. The  
11 debtor, the trustee, or, if neither is a party, the appellant must  
12 file a statement that:

13 (1) identifies each debtor not named in the  
14 caption; and

15 (2) for each debtor that is a corporation,  
16 discloses the information required by Rule 8012(a).

17 ~~(b)(c)~~ TIME TO FILE; SUPPLEMENTAL

## FEDERAL RULES OF BANKRUPTCY PROCEDURE 9

18 FILING. ~~A party must file the~~ A Rule 8012 statement must:

19 (1) be filed with ~~its~~ the principal brief or upon  
20 filing a motion, response, petition, or answer in the  
21 district court or BAP, whichever occurs first, unless a  
22 local rule requires earlier filing.;

23 (2) Even if the statement has already been filed,  
24 the party's principal brief must be included ~~include a~~  
25 ~~statement~~ before the table of contents in the principal  
26 brief; and

27 (3) A party must supplement its statement be  
28 supplemented whenever the ~~required~~ information  
29 required by Rule 8012 changes.

**Committee Note**

The rule is amended to conform to recent amendments to F.R.App.P. 26.1. Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene on appeal.

New subdivision (b) requires disclosure of the name of all of the debtors in the bankruptcy case. The names of the debtors are not always included in the caption of

10 FEDERAL RULES OF BANKRUPTCY PROCEDURE

appeals. It also requires, for corporate debtors, disclosure of the same information required to be disclosed under subdivision (a).

Subdivision (c), previously subdivision (b), now applies to all the disclosure requirements in Rule 8012.

1 **Rule 8013. Motions; Intervention**

2 (a) CONTENTS OF A MOTION; RESPONSE;  
3 REPLY.

4 (1) *Request for Relief.* A request for an order or  
5 other relief is made by filing a motion with the  
6 district or BAP clerk, ~~with proof of service on the~~  
7 ~~other parties to the appeal.~~

8 \* \* \* \* \*

**Committee Note**

Subdivision (a)(1) is amended to delete the reference to proof of service. This change reflects the recent amendment to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system.

12 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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

3 \* \* \* \* \*

4 (g) ITEMS EXCLUDED FROM LENGTH. In  
5 computing any length limit, headings, footnotes, and  
6 quotations count toward the limit, but the following items do  
7 not:

- 8 • ~~the~~ cover page;
- 9 • ~~a corporate~~ disclosure statement under Rule  
10 8012;
- 11 • ~~a~~ table of contents;
- 12 • ~~a~~ table of citations;
- 13 • ~~a~~ statement regarding oral argument;
- 14 • ~~an~~ addendum containing statutes, rules, or  
15 regulations;
- 16 • certificates of counsel;
- 17 • ~~the~~ signature block;

- 18                   • ~~the~~ proof of service; and
- 19                   • any item specifically excluded by these rules
- 20                   or by local rule.

21                                   \* \* \* \* \*

#### **Committee Note**

The amendment to subdivision (g) is made to reflect recent amendments to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system. Because each item listed in Rule 8015(g) will not always be required, the initial article is deleted. The word "corporate" is deleted before "disclosure statement" to reflect a concurrent change in the title of Rule 8012.

14 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 8021. Costs**

2 \* \* \* \* \*

3 (d) BILL OF COSTS; OBJECTIONS. A party who  
4 wants costs taxed must, within 14 days after entry of  
5 judgment on appeal, file with the bankruptcy clerk, ~~with~~  
6 ~~proof of service, and serve~~ an itemized and verified bill of  
7 costs. Objections must be filed within 14 days after service  
8 of the bill of costs, unless the bankruptcy court extends the  
9 time.

**Committee Note**

Subdivision (d) is amended to delete the reference to proof of service. This change reflects the recent amendment to Rule 8011(d) that eliminated the requirement of proof of service when filing and service are completed using a court's electronic-filing system.

**REPORT OF THE JUDICIAL CONFERENCE**  
**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

\* \* \* \* \*

**FEDERAL RULES OF BANKRUPTCY PROCEDURE**

*Rules and Official Forms Recommended for Approval and Transmission*

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 2002, 2004, 8012, 8013, 8015, and 8021 \* \* \* with a recommendation that they be approved and transmitted to the Judicial Conference. Three of the rules were published for comment in August 2018 and are recommended for final approval after consideration of the comments. The proposed amendments to the remaining three rules \* \* \* are technical or conforming in nature and are recommended for final approval without publication.

Rule 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee)

The published amendment to Rule 2002: (1) requires giving notice of the entry of an order confirming a chapter 13 plan; (2) limits the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases; and (3) adds a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

Six comments were submitted. Four of the comments included brief statements of support for the amendment. Another comment suggested extending the clerk's noticing duties 30 days beyond the creditor proof of claim deadline because a case trustee or the debtor can still

file a claim on behalf of a creditor for 30 days after the deadline. Because the creditor would receive notice of the claim filed on its behalf, the Advisory Committee saw no need for further amendment to the rule. The comment also argued that certain notices should be sent to creditors irrespective of whether they file a proof of claim, but the Advisory Committee disagreed with carving out certain notices. Another comment opposed the change that would require notice of entry of the confirmation order because some courts already have a local practice of sending the confirmation order itself to creditors. The Advisory Committee rejected this suggestion because not all courts send out confirmation orders.

After considering the comments, the Advisory Committee voted unanimously to approve the amendment to Rule 2002 as published.

#### Rule 2004 (Examination)

Rule 2004 provides for the examination of debtors and other entities regarding a broad range of issues relevant to a bankruptcy case. Under subdivision (c), the attendance of a witness and the production of documents may be compelled by means of a subpoena. The proposed amendment would add explicit authorization to compel production of electronically stored information (ESI). The proposed amendment further provides that a subpoena for a Rule 2004 examination is properly issued from the court where the bankruptcy case is pending by an attorney authorized to practice in that court, even if the examination is to occur in another district.

Three comments were submitted. Two of the comments were generally supportive of the proposed amendments as published, while one comment from the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan urged that the rule should state that the bankruptcy judge has discretion to consider proportionality in ruling on a request

for production of documents and ESI. Prior to publishing proposed Rule 2004, the Advisory Committee carefully considered whether to reference proportionality explicitly in the rule and declined to do so, in part because debtor examinations under Rule 2004 are intended to be broad-ranging. It instead proposed an amendment that would refer specifically to ESI and would harmonize Rule 2004(c)'s subpoena provisions with the subpoena provisions of Civil Rule 45. After consideration of the comments, the Advisory Committee unanimously approved the amendment to Rule 2004(c) as published.

Rule 8012 (Corporate Disclosure Statement)

Rule 8012 requires a nongovernmental corporate party to a bankruptcy appeal in the district court or bankruptcy appellate panel to file a statement identifying any parent corporation and any publicly held corporation that owns 10 percent or more of the party's stock (or file a statement that there is no such corporation). It is modeled on Appellate Rule 26.1 (adopted by the Supreme Court and transmitted to Congress on April 25, 2019).

At its spring 2018 meeting, the Advisory Committee considered and approved for publication an amendment to Rule 8012 to track the pending amendment to Appellate Rule 26.1 that was adopted by the Supreme Court and transmitted to Congress on April 25, 2019. The amendment to Rule 8012(a) adds a disclosure requirement for nongovernmental corporate intervenors. New Rule 8012(b) requires disclosure of debtors' names and requires disclosures by nongovernmental corporate debtors. Three comments were submitted, all of which were supportive. The amendment was approved as published.

Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs; Form of Appendices and Other Papers), and 8021 (Costs)

An amendment to Appellate Rule 25(d) that was adopted by the Supreme Court and transmitted to Congress on April 25, 2019, will eliminate the requirement of proof of service for documents served through the court's electronic-filing system. Corresponding amendments to Appellate Rules 5, 21, 26, 32, and 39 will reflect this change by either eliminating or qualifying references to "proof of service" so as not to suggest that such a document is always required. Because the provisions in Part VIII of the Bankruptcy Rules in large part track the language of their Appellate Rules counterparts, the Advisory Committee recommended conforming technical changes to Bankruptcy Rules 8013(a)(1), 8015(g), and 8021(d). The recommendation was approved.

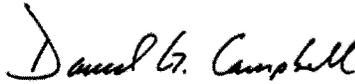
\* \* \* \* \*

**Recommendation:** That the Judicial Conference:

- a. Approve the proposed amendments to Bankruptcy Rules 2002, 2004, 8012, 8013, 8015, and 8021 \* \* \* and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

\* \* \* \* \*

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Peter D. Keisler
Daniel C. Girard	William K. Kelley
Robert J. Giuffra Jr.	Carolyn B. Kuhl
Susan P. Graber	Jeffrey A. Rosen
Frank M. Hull	Srikanth Srinivasan
William J. Kayatta Jr.	Amy J. St. Eve

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

DAVID G. CAMPBELL  
CHAIR  
REBECCA A. WOMELDORF  
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

MICHAEL A. CHAGARES  
APPELLATE RULES

DENNIS R. DOW  
BANKRUPTCY RULES

JOHN D. BATES  
CIVIL RULES

DONALD W. MOLLOY  
CRIMINAL RULES

DEBRA ANN LIVINGSTON  
EVIDENCE RULES

MEMORANDUM

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

**FROM:** Honorable Dennis R. Dow, Chair  
Advisory Committee on Bankruptcy Rules

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**DATE:** May 30, 2019

---

1 **I. Introduction**

2 The Advisory Committee on Bankruptcy Rules met in San Antonio, Texas, on April 4,  
3 2019.

\* \* \* \* \*

4 At the meeting the Advisory Committee gave its final approval to the amendments to three  
5 rules that were published for comment last August. The amendments are to Rules 2002 (Notices),  
6 2004 (Examination), and 8012 (Corporate Disclosure Statement). The Advisory Committee also  
7 approved without publication technical amendments to \* \* \* Official Form 122A-1 (Chapter 7  
8 Statement of Your Current Monthly Income).

\* \* \* \* \*

9 Part II of this report presents those action items along with two others that the Advisory  
 10 Committee voted on at its fall 2018 meeting. At that earlier meeting, the Advisory Committee  
 11 voted to seek final approval without publication of conforming, technical amendments to Rules  
 12 8012, 8013, and 8015 to remove or qualify references to “proof of service” \* \* \*.

13 The action items are organized as follows:

14 A. Items for Final Approval

15 (A1) Rules published for comment in August 2018—

- 16 • Rule 2002;
- 17 • Rule 2004; and
- 18 • Rule 8012.

19 (A2) Approval without publication—

- 20 • \* \* \* \* \*;
- 21 • Rules 8013, 8015, and 8021; and
- 22 • \* \* \* \* \*.

\* \* \* \* \*

23 **II. Action Items**

24 **A. Items for Final Approval**

25 *(A1) Rules published for comment in August 2018.*

26 **The Advisory Committee recommends that the Standing Committee approve and**  
 27 **transmit to the Judicial Conference the proposed rule amendments that were published for**  
 28 **public comment in August 2018 and are discussed below.** Bankruptcy Appendix A includes  
 29 the rules that are in this group.

30 **Action Item 1. Rule 2002 (Notices).** A package of amendments to Rule 2002 was  
 31 published that would (i) require giving notice of the entry of an order confirming a chapter 13 plan,  
 32 (ii) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter  
 33 12 and chapter 13 cases, and (iii) add a cross-reference in response to the relocation of the provision  
 34 specifying the deadline for objecting to confirmation of a chapter 13 plan.

35 Three different subdivisions of the rule are affected.

- 36 • *Rule 2002(f)(7)* currently requires the clerk, or someone else designated by the clerk, to  
 37 give notice to the debtor, all creditors, and indenture trustees of the “entry of an order  
 38 confirming a chapter 9, 11, or 12 plan.” The amendment would include chapter 13 plans  
 39 within this provision.
- 40 • *Rule 2002(h)* provides an exception to the general noticing requirements set forth in Rule  
 41 2002(a). Rule 2002(a) generally requires the clerk (or some other party as directed by the

42 court) to give “the debtor, the trustee, all creditors and indenture trustees” at least 21 days’  
 43 notice of certain matters in bankruptcy cases. But Rule 2002(h) eliminates that requirement  
 44 in chapter 7 cases with respect to creditors that fail to file a timely proof of claim. The  
 45 amendment would make this exception also applicable to chapter 12 and 13 cases and  
 46 would change the time provisions in the subdivision to conform to recent amendments to  
 47 Rule 3002 setting deadlines for filing proofs of claim.

48 • *Rule 2002(k)* provides for transmitting notices under specified parts of Rule 2002 to the  
 49 U.S. trustee, including notices under subdivision (b). Because the deadline for giving  
 50 notice of the time for filing objections to confirmation of chapter 13 plans was recently  
 51 moved from subdivision (b) to subdivision (a)(9), which currently is not specified in  
 52 subdivision (k), the provision would be amended to include a reference to (a)(9) to ensure  
 53 that the U.S. trustee continues to receive notice of this deadline.

54 Six sets of comments were submitted on one or more of these proposed amendments. Four  
 55 of the comments (submitted by Danielle Young, Nancy Whaley, Ellie Bertwell of Aderant  
 56 CompuLaw, and the National Association of Bankruptcy Trustees) included brief statements of  
 57 support for the amendments.

58 Ryan Johnson, the clerk of the Bankruptcy Court for the Northern District of West Virginia,  
 59 was generally supportive of the amendments, but he raised two additional points about Rule  
 60 2002(h). First, he said that in a chapter 13 case, the clerk’s noticing responsibilities should extend  
 61 beyond the 70-day proof-of-claim deadline as stated in Rule 3002(c). The applicable deadline, he  
 62 said, should include the additional 30 days afforded to a debtor or trustee to file a claim on behalf  
 63 of a creditor under Rule 3004. He also stated that with respect to notices required by Rule  
 64 2002(a)(2) and (a)(3), Rule 2002(h) should require notice to creditors that were entitled to service  
 65 of the noticed motion even if those entitled to service did not file a proof of claim.

66 The Bankruptcy Section of the Federal Bar Association, while supporting the other Rule  
 67 2002 amendments, questioned the need for including the entry of an order confirming a chapter 13  
 68 plan within the notice requirement of Rule 2002(f)(7). It noted that in the Bankruptcy Court for  
 69 the Western District of Texas, the clerk already is responsible for “publishing the order confirming  
 70 the plan through its Bankruptcy Noticing Center . . . [, and] [s]ervice is accomplished by first class  
 71 mail and, where applicable, electronic mail.” As a result, the Section argued, “there appears to be  
 72 little benefit requiring a notice of an order confirming plan that has already been served on parties  
 73 in interest.”

74 After carefully considering the comments, the Advisory Committee voted unanimously to  
 75 approve the amendments to Rule 2002 as published.

76 **Action Item 2. Rule 2004 (Examination).** Rule 2004 provides for the examination of  
 77 debtors and other entities regarding a broad range of issues relevant to a bankruptcy case. Under  
 78 subdivision (c) of the rule, the attendance of a witness and the production of documents may be  
 79 compelled by means of a subpoena. The Business Law Section of the American Bar Association,  
 80 on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process, submitted a  
 81 suggestion that Rule 2004(c) be amended to specifically impose a proportionality limitation on the  
 82 scope of the production of documents and electronically stored information (“ESI”). The Advisory  
 83 Committee discussed the suggestion at the fall 2017 and spring 2018 meetings. By a close vote,

84 the Committee decided not to add a proportionality requirement to the rule, but it decided  
85 unanimously to propose amendments to Rule 2004(c) to refer specifically to electronically stored  
86 information and to harmonize its subpoena provisions with the current provisions of Civil Rule 45,  
87 which is made applicable in bankruptcy cases by Bankruptcy Rule 9016.

88 Three sets of comments were submitted in response to publication. The Debtor/Creditor  
89 Rights Committee of the Business Law Section of the State Bar of Michigan commented that  
90 proportionality should be a factor that a bankruptcy judge has the discretion to consider in ruling  
91 on a request for production of documents and ESI in connection with a Bankruptcy Rule 2004  
92 examination. It argued that in the bankruptcy context, where resources are already limited in many  
93 cases, the impact of having to produce all ESI, without consideration of proportionality, could  
94 significantly impact the likely success of a case.

95 The other two comments were supportive of the amendments as proposed. The National  
96 Association of Bankruptcy Trustees supported the inclusion of electronic records within the rule  
97 and the updating to conform to Rule 45 as promoting clarity of scope. The Federal Bar  
98 Association's Bankruptcy Section supported the published changes to Rule 2004(c) and urged  
99 caution before imposing a proportionality requirement. It expressed concern that doing so would  
100 likely increase litigation.

101 The Advisory Committee unanimously approved the amendments to Rule 2004(c) as  
102 published. It saw no reason to revisit the question of proportionality since that issue had recently  
103 been carefully considered and rejected by the Advisory Committee.

104 **Action Item 3. Rule 8012 (Corporate Disclosure Statement).** Rule 8012 requires a  
105 nongovernmental corporate party to a bankruptcy appeal in the district court or bankruptcy  
106 appellate panel to file a statement identifying any parent corporation and any publicly held  
107 corporation that owns 10% or more of the party's stock (or file a statement that there is no such  
108 corporation). It is modeled on FRAP 26.1. The Appellate Rules Committee proposed amendments  
109 to FRAP 26.1 that have been approved by Supreme Court, including one that is specific to  
110 bankruptcy appeals.

111 At the spring 2018 meeting, the Advisory Committee considered and approved for  
112 publication amendments to Rule 8012 that track the relevant amendments to FRAP 26.1. These  
113 amendments would add a new subdivision (b) to Rule 8012, addressing disclosure about the  
114 debtor. This subdivision would require the disclosure of the names of any debtors in the underlying  
115 bankruptcy case that are not revealed by the caption of an appeal and, for any corporate debtors in  
116 the underlying bankruptcy case, the disclosure of the information required of corporations under  
117 subdivision (a) of the rule. Other amendments tracking FRAP 26.1 would add a provision to  
118 subdivision (a) requiring disclosure by corporations seeking to intervene in a bankruptcy appeal  
119 and would make stylistic changes to what would become subdivision (c), regarding supplemental  
120 disclosure statements.

121 Three comments were submitted in response to publication. All were supportive.

122 In light of the conforming nature of the amendments and the lack of any negative comment  
123 on them, the Advisory Committee gave them final approval. One member of the Advisory  
124 Committee expressed the need for additional amendments to the disclosure statement rules to

125 extend the requirements to a broader range of entities. The Advisory Committee, however,  
 126 concluded that any such expansion should be undertaken in coordination with the other advisory  
 127 committees and should not hold up amendments that are designed to conform to amendments to  
 128 FRAP 26.1 that are expected to go into effect on December 1 of this year.

129 *(A2) Conforming or technical amendments proposed for approval without publication.*

130 **The Advisory Committee recommends that the Standing Committee approve and**  
 131 **transmit to the Judicial Conference the proposed rule and form amendments that are**  
 132 **discussed below.** The rules and form as proposed for amendment are in Bankruptcy Appendix A.

\* \* \* \* \*

133 **Action Item 5. Rules 8013 (Motions; Intervention), 8015 (Form and Length of Briefs;**  
 134 **Form of Appendices and Other Papers), and 8021 (Costs).** The Supreme Court has approved  
 135 amendments to several Federal Rules of Appellate Procedure that are expected to go into effect in  
 136 December of this year. The amendment to FRAP 25(d) would eliminate the requirement of proof  
 137 of service for documents served through the court's electronic-filing system. This amendment  
 138 parallels the amendment to Bankruptcy Rule 8011(d) that went into effect last December. The  
 139 other FRAP amendments—to FRAP 5, 21, 26, 32, and 39—would reflect this change by either  
 140 eliminating or qualifying references to “proof of service” so as not to suggest that such a document  
 141 is always required. Because the Part VIII Bankruptcy Rules in large part track the language of  
 142 FRAP counterparts, the Advisory Committee voted to seek approval without publication of  
 143 conforming changes to three bankruptcy appellate rules.

144 Rule 8015(g) (Items Excluded from Length), paralleling the amendments to FRAP 32(f),  
 145 would be amended to eliminate the articles “a” and “the” before the items in a brief excluded in  
 146 calculating a brief's length. It would also be amended to delete “corporate” before “disclosure  
 147 statement” to reflect the pending amendment to the title of Rule 8012.

148 Rule 8021(d) (Bill of Costs; Objections) would be amended to delete the reference to proof  
 149 of service in order to maintain consistency with FRAP 39(d).

150 Rule 8013(a)(1) also refers to “proof of service.” It states that “[a] request for an order or  
 151 other relief is made by filing a motion with the district or BAP clerk, with proof of service on the  
 152 other parties to the appeal.” The corresponding FRAP provision (FRAP 27(a)) does not include  
 153 the last phrase, so no amendment has been proposed to that rule. To take account of situations in  
 154 which proof of service is not required, Rule 8013(a)(1) would be amended by ending the provision  
 155 with “clerk,” thereby omitting the reference to proof of service. The circumstances under which  
 156 proof of service would be required would then be governed by Rule 8011(d)(1) (only required for  
 157 documents served other than through the court's electronic-filing system).

\* \* \* \* \*

