Agenda E-19 (Summary)
Rules
September 2026

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

1. Approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law ....p. 4

2. Approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, 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 .... pp. 5-8

3 a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, 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; and

   b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date .... pp. 9-10

4. Approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, 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.. pp. 13-15

5. Approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, 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... pp. 18-19

6. Approve the proposed amendments to Evidence Rule 609, as set forth in Appendix F, 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 ....p. 23

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

- E-Filing and Service by Self-Represented Litigants... pp. 2-3
- Privacy Rules for Taxpayer Information and Minors' Names...p. 3
- Federal Rules of Appellate Procedure .... pp. 8-9
- Federal Rules of Bankruptcy Procedure .... pp. 10-13
- Federal Rules of Civil Procedure... pp. 16-18
- Federal Rules of Criminal Procedure.. pp. 20-22
- Federal Rules of Evidence .... pp. 24-25

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 June 3-4, 2026. All members participated. Representing the advisory committees were Judge Allison H. Eid (10th Cir.), chair; and Professor Stephen Sachs, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly (Bankr. W.D. Va.), chair; Professor S. Elizabeth Gibson, Reporter; and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Sarah S. Vance (E.D. La.), chair; Professor Richard L. Marcus, Reporter; Professor Andrew Bradt, Associate Reporter; Judge Michael W. Mosman (D. Or.), chair; Professor Sara Sun Beale, Reporter; and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Jesse M. Furman (S.D.N.Y.), chair; and Professor Daniel Capra, Reporter, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Edward Hartnett, Standing Committee Reporter; Professor Catherine T. Struve, Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; Carolyn A. Dubay, Secretary to the Standing Committee; Sarah Sraders, Rules Committee Staff Counsel; Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center (FJC); and Elizabeth J.

Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice, on behalf of the Deputy Attorney General.

In addition to its general business and consideration of the Advisory Committee reports and recommended action items as discussed below, the Committee also received an update on the work of its subcommittee concerning uniform attorney admissions in the trial courts and concluded that no further action on the project is warranted. The Committee further authorized the Chair, working with the Secretary of the Committee, to respond to the request of the Judiciary Planning Coordinator, Chief Judge Michael A. Chagares (3d. Cir.), to identify any agenda items of the Rules Committees that align with the Executive Committee's priority strategies and goals in the *Strategic Plan for the Federal Judiciary*. The Committee's views were communicated to Chief Judge Michael A. Chagares, the judiciary planning coordinator, by letter dated June 11, 2026.

E-FILING AND SERVICE BY SELF-REPRESENTED LITIGANTS

The Standing Committee unanimously approved, with minor revisions to the committee notes to make them more uniform, the recommendations of the Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to electronic service and filing by self-represented litigants (SRLs). The proposed amendments (collectively, "proposed SRL rules") seek to: (1) increase SRL access to a court's electronic-filing system (or allow a form of electronic filing by alternative means) to file pleadings and other court documents; and (2) after a complaint is filed and served, allow SRLs to achieve service of subsequently filed documents in the electronic-filing system through the electronic notice of filing or through a court-based electronic noticing program. The proposed SRL rules relate to Appellate Rule 25; Bankruptcy Rules 5005, 8011, 9006, and 9036; Civil

Rules 5 and 6; and Criminal Rules 45 and 49. With minor differences,[1] these proposed amendments are uniform across the four sets of rules. Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

PRIVACY RULES FOR TAXPAYER INFORMATION AND MINORS' NAMES

The Standing Committee unanimously approved, with the addition of clarifying revisions in each of the committee notes, the recommendations of the Advisory Committees on Bankruptcy, Civil, and Criminal Rules to publish for public comment proposed amendments relating to the redaction of social security and individual taxpayer identification numbers and the use of pseudonyms to reference minors. The proposed amendments (collectively, the "proposed privacy amendments") seek to: (1) expand the redaction requirement of taxpayer identifying information in civil and criminal cases; (2) require the use of pseudonyms rather than initials when referencing minors in bankruptcy, civil, and criminal cases; and (3) clarify that these rules apply to exhibits and attachments to electronically filed court documents. The proposed privacy amendments relate to Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1.[2] Each of these proposed amendments is discussed in more detail in the summaries of actions by the Advisory Committees in this report.

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[1]For example, the Bankruptcy, Civil, and Appellate Rules proposals use the term "unrepresented," while the Criminal Rule uses "self-represented." (Many existing Bankruptcy, Civil, and Appellate Rules already use "unrepresented.") The Civil, Criminal, and Appellate Rules use the term "parties," while the Bankruptcy Rules use the term "individual." (In the Bankruptcy context, there is a concern that some small business entities might think that the use of "parties" would enable them to proceed without counsel, while in the other contexts the greater worry is that nonparties might think that they could file in any case they want.) Finally, the Civil, Criminal, and Appellate Rules refer to "the party's case," while the Bankruptcy Rules refer simply to "the case." (In the Bankruptcy context, "the party's case" might suggest that only the debtor is covered by the amendment.)

[2]Any amendments to these rules will apply on appeal through existing Appellate Rule 25, which incorporates them by reference. As set forth in the information items for the Appellate Rules Advisory Committee, there is ongoing consideration of potential privacy amendments relating to certain aspects of appeals.

PRIVACY REPORT TO CONGRESS 2026

Following the Standing Committee's approval of the proposed privacy amendments for publication and comment, the Committee also considered a draft 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002 (the "2026 Privacy Report to Congress"). Section 205(c)(3)(C) of the E-Government Act directs that, every two years, "the Judicial Conference shall submit to Congress a report on the adequacy of [the privacy rules] to protect privacy and security." The most recent prior report was submitted to Congress in 2024.

The 2026 Privacy Report to Congress covers the period from June 2024 to June 2026. Part I of the report describes the proposed privacy amendments, as well as the status of other privacy-related proposals to amend the Rules of Practice and Procedure. Part II of the report describes ongoing judiciary implementation efforts by the Committee on Court Administration and Case Management (CACM Committee), the Administrative Office of the U.S. Courts, and the FJC to protect privacy in court filings and opinions. Part III of the 2026 report discusses the FJC's recent studies relating to privacy concerns in court filings.

The CACM Committee at its May 2026 meeting reviewed the draft 2026 Privacy Report to Congress and endorsed a recommendation from the Standing Committee to the Judicial Conference to approve the report (see Report of the Committee on Court Administration and Case Management, at Agenda E-6). The Standing Committee then approved the report at its meeting, to include any necessary changes to address the revisions to the privacy amendments approved by the Standing Committee or other minor stylistic or technical changes.

> **Recommendation:** That the Judicial Conference approve the proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002, as set forth in Appendix A, and ask the Administrative Office Director to transmit it to Congress in accordance with the law.

FEDERAL RULES OF APPELLATE PROCEDURE

Amendments Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules recommended for final approval proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits. The Standing Committee unanimously approved the Advisory Committee's recommendations, with minor revisions correcting the placement of a sentence in the committee note to Rule 15 and correcting cross-references in Rules 29 and 32(g) and the Appendix of Length Limits.

Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention)

The proposed amendments to Rule 15 address issues that may arise when a petition for review or enforcement of an agency decision is filed prematurely. In circuits that apply the "incurably premature" doctrine, if a pending motion to reconsider an agency decision makes the decision unreviewable in the court of appeals, then a new petition to review that agency decision must be filed in the court of appeals once the agency decision becomes final. The proposed amendments to Rule 15 would eliminate the need to refile the petition by adding a subdivision providing that the original petition for review becomes effective upon the agency's disposition of the last reconsideration request. These changes would align Rule 15 with Rule 4(a)(4)(B)(i), which relates to the effectiveness of a notice of appeal filed after a judgment is entered or announced in the district court, but before the district court disposes of certain post-judgment motions authorized under the Federal Rules of Civil Procedure. The proposed amendment also makes clear that it applies only when the agency order is "otherwise reviewable."

Rule 29 (Brief of an Amicus Curiae)

At its September 2025 session, the Judicial Conference approved final amendments to Rule 29, together with conforming amendments to Rule 32 and the Appendix of Length Limits, and authorized their transmittal to the Supreme Court with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law (JCUS-SEP 2025, p. 20). The amendments addressed several issues with respect to the contents of amicus briefs, particularly as to required disclosures of relationships between the amicus and parties or nonparties. In particular, the amendments would have required disclosure of whether a party or its counsel has a majority ownership interest in or majority control of an amicus. In addition, whereas the current rule requires disclosure of whether any nonparty (other than the amicus, its members, or its counsel) contributed money intended to fund preparation or submission of the brief, the proposed amendments would have limited this disclosure requirement to instances in which the amount contributed or pledged to be contributed is greater than $100. The proposed amendments also would have added a broader disclosure concerning the background of the amicus—including its identity, history, experience, and interest. Finally, the proposed amendments would have imposed an express word limit of 6,500 words on amicus briefs at the initial merits stage rather than reference to "one half the maximum length authorized . . . for a party's principal brief."

After the amendments were transmitted to the Supreme Court, the Executive Committee of the Judicial Conference raised concerns about a provision in what was then proposed Rule 29(e) relating to disclosures as to new members of amicus organizations. That provision would have obligated amicus organizations to disclose brief-related contributions or pledges over $100 not only from nonmembers, as the current rules require, but also from relatively new members who joined the organization within the previous 12 months. The Executive Committee noted that this provision could interfere with the privacy of those organizations and of their members, who may be chilled from contributing to their organization's amicus briefs if they were required to announce their membership to the public. Additionally, after transmission to the Supreme Court, two other ambiguities or errors were separately identified in the proposed amendments:

first, a potential ambiguity in what was then proposed Rule 29(d) regarding what required disclosures a party or counsel must make when an amicus is required to disclose certain information but fails to do so; and second, an unrevised cross-reference in the Appendix of Length Limits. To address the Executive Committee's concerns and to make appropriate corrections, the Advisory Committee and the Standing Committee voted in March 2026 to withdraw the amendment package, and the proposed amendments were not forwarded to Congress.

After further consideration by the Advisory Committee and the Standing Committee, the revised proposed amendments to Rules 29 and 32 and the Appendix of Length Limits are presented for approval. Specifically, the Advisory Committee and Standing Committee removed the requirement of new-member contribution disclosure from the proposed amendments to Rule 29 and corrected the identified ambiguity by clarifying that the requirement that parties and counsel disclose information that an amicus must but has failed to disclose does not extend to information about nonmember contributions. The Advisory Committee further determined that republication of the amendments to Rule 29, with the conforming changes to Rule 32 and the Appendix of Length Limits, was not required given the extensive public comment on the issue of member disclosures and the technical nature of the additional revisions.

The remainder of the proposed amendments to Rule 29, as revised, are the same.

<u>Rule 32 (Form of Briefs, Appendices, and Other Papers) and Appendix of Length Limits</u>

The proposed amendment to Rule 32 conforms Rule 32(g)'s cross-references to the updated sections of amended Rule 29. Similarly, the proposed amendment to the Appendix of Length Limits conform the length limits for amicus briefs identified in the Appendix to the proposed amendment to Rule 29.

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 15, 29, and 32 and to the Appendix of Length Limits, as set forth in Appendix B, 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.

Rules Approved for Publication and Comment

Rule 25 (Filing and Service)

As part of the proposed SRL rules package, the Advisory Committee on Appellate Rules recommended that a proposed amendment to Rule 25 be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

The proposed amendments to Appellate Rule 25 provide that an unrepresented party is presumptively authorized to use the court's electronic-filing system to file documents in the case and receive notice of case filings. The proposed amendments further provide that a court may set reasonable conditions on an unrepresented party's access to the court's electronic-filing system, but a court may not bar all unrepresented parties from using a court's electronic-filing system unless the court either includes reasonable exceptions to the prohibition or permits unrepresented parties to use another electronic method for filing documents and for receiving notice of court filings and orders. Finally, the proposed amendment would eliminate the requirement for an unrepresented party (who files other than through the court's electronic-filing system) to make a separate (paper) service on a litigant who is registered to receive notice of case activity from the court's electronic-filing system. Service by the notice of case activity is not effective if the filer learns that the filing did not reach the person to be served. In addition, the proposed amendment provides that a court may require by local rule or court order a different method of service for filings under seal and/or filings that initiate a proceeding in the court of appeals under Rule 5, 6(c), 15, or 21.

Information Items

The Advisory Committee met on April 16, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continuing its consideration of possible amendments to Rule 25 (Filing and Service) to require complete redaction of taxpayer identifying information and the use of pseudonyms for minors, so that some of the exemptions from privacy requirements at the trial level (Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1) would not carry forward on appeal. The Advisory Committee also continues its consideration of potential amendments to Rule 4 (Appeal as of Right—When Taken) regarding reopening the time to appeal, Rule 8 (Stay or Injunction Pending Appeal) regarding limits on administrative stays, and a possible new Rule 12.2 regarding intervention on appeal, as well as the treatment of tribes in the Appellate Rules. Finally, the Advisory Committee considered several new issues including a possible amendment to Rule 28 (Briefs) regarding introductions in briefs.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Amendments Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules recommended for final approval amendments to Bankruptcy Rule 2002 and amendments to Official Forms 101 and 106C. The Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 2002 (Notices)

The proposed amendment to Rule 2002(o) would simplify the caption of most notices given under Rule 2002 by requiring that they include only the information required by Form 416B (the court's name, the debtor's name, the case number, the chapter under which the case was filed, and a brief description of the document's character) rather than the more extensive information required under Rule 1005. As noted in the 2026 Privacy Report to

Congress, this change would mean that most Rule 2002 notices would no longer be required to include the last 4 digits of the debtor's social-security or individual taxpayer-identification number.

Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy)

The proposed amendment to Official Form 101 relates to the prompt in Question 4 in Part 1 and clarifies that the question is attempting to elicit only the Employer Identification Number (EIN), if any, of the individual filing for bankruptcy and not the EIN of any other person (such as the debtor's employer). The modification will help debtors avoid the error of providing their employer's EIN. Because multiple debtors have the same employer, deterring such debtors from erroneously providing their employer's EIN will avoid triggering an erroneous automated report that the debtor has engaged in repeat filings.

Official Form 106C (Schedule C: The Property You Claim as Exempt)

The proposed amendment to Form 106C requires the debtor to add the total dollar value of the exemptions with a specific amount claimed under Column C in the form.

Recommendation: That the Judicial Conference:

a. Approve the proposed amendments to Bankruptcy Rule 2002, as set forth in Appendix C, 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.

b. Approve, effective December 1, 2026, the proposed amendments to Bankruptcy Official Forms 101 and 106C, as set forth in Appendix C, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

Rules Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Bankruptcy Rules 2003, 5005, 8011, 9006(f), 9036, and 9037 with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 2003 (Meeting of Creditors or Equity Security Holders)

The proposed amendments to Rule 2003 would allow more time to convene the meeting of creditors in chapter 12 and 13 cases, extending the deadline in chapter 12 cases from 35 to 60 days, and in chapter 13 cases, from 50 to 60 days, after the order for relief. The proposed amendments would also expressly authorize meetings of creditors to be "conducted in person or remotely" and would allow the U.S. trustee to designate in which manner a meeting would be conducted.

Rules 5005 (Filing Papers and Sending Copies to the United States Trustee), 8011 (Filing and Service; Signature), 9006(f) (Computing and Extending Time; Motions), and 9036 (Electronic Notice and Service)

As part of the SRL rules package, the proposed amendments to Rules 5005 and 8011 would provide that unrepresented individuals are presumptively authorized to use the court's electronic-filing system to file documents. The proposed amendments would permit courts to set reasonable conditions and restrictions on access by unrepresented individuals to the court's electronic-filing system. However, the proposed amendments would not permit a bar on all unrepresented individuals from using a court's electronic-filing system, unless the court also either includes reasonable exceptions to the prohibition, or permits unrepresented individuals to use another electronic method for filing documents and an alternative electronic means for receiving notice of court filings and orders.

In addition, the proposed amendments to Rule 8011 would make service via a court's electronic-filing system the primary means of service. The proposed amendments would eliminate the requirement of separate (paper) service (of papers filed other than through the court's electronic-filing system) on a litigant who is registered to receive a notice of case activity from the court's electronic-filing system. However, service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide an order or local rule that the document be served by other means.

The proposed amendments to Rule 9006 would change a cross-reference to conform the rule to match proposed amendments to Civil Rule 5.

The proposed amendments to Rule 9036 would address filings by unrepresented individuals, providing that because documents filed in paper form are uploaded by the court into the court's electronic-filing system, there is no need to require separate paper service by the filer on case participants who receive an electronic notice of the filing from the court's electronic-filing system. In addition, Rule 9036(d), like Rule 8011(c)(3), deals with the impact of delays between filing and uploading to the court's electronic-filing system.

Rule 9037 (Protecting Privacy for Filings)

As part of the package of proposed privacy amendments, the proposed amendments to Bankruptcy Rule 9037 share two features with the proposed amendments to Criminal Rule 49.1 and Civil Rule 5.2. First, the proposed amendments would make clear that the redaction requirement applies to attachments, exhibits, and all other documents in a court filing. Second, the proposed amendments would require the use of pseudonyms for minors. Because of the unique context of bankruptcy proceedings and practice, the proposed amendments do not adopt the complete redaction requirement for taxpayer identifying information or the extension of the redaction requirement to EINs that is proposed in the privacy amendments to the civil and criminal rules.

Information Items

The Advisory Committee on Bankruptcy Rules met on April 15, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several matters, including continued consideration of a suggestion to amend Rule 9031 (Using Masters Not Authorized) to permit the use of special masters in bankruptcy cases and new suggestions regarding possible amendments to Rule 4004 (Granting or Denying a Discharge) and possible amendments to Form 106C (Schedule C: The Property You Claim as Exempt (individuals)).

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules recommended for final approval proposed amendments to Civil Rules 7.1, 26, 41(a), 45(b), 45(c), and 81. After minor clarifying revisions to the proposed amendments to Rules 26 and 45(b), the Standing Committee unanimously approved the Advisory Committee's recommendations.

<u>Rule 7.1 (Disclosure Statement)</u>

The proposed amendment to the disclosures required under Rule 7.1(a)(1) requires any party or would-be intervenor that is a private business organization to disclose any publicly held business organization that "directly or indirectly" owns 10 percent or more of the party or intervenor. The proposal responds to concerns raised that the current rule, which requires disclosure only of "any parent corporation and any publicly held corporation owning 10 percent or more of its stock," may result in nondisclosure of a "grandparent" corporation. This change is intended to assist judges in evaluating if recusal is appropriate consistent with updated guidance in Committee on Codes of Conduct Advisory Opinion No. 57, which explains that corporate ownership of at least 10 percent of a party creates a rebuttable presumption of parental control and that a judge must recuse if they "conclude that a party is controlled by a corporation in which the judge owns stock." Another change substitutes the term "business organization" for the word "corporation" to clarify that the disclosure requirement applies to different forms of business entities.

Rule 26 (Duty to Disclose; General Provisions Governing Discovery)

The proposed amendment to Rule 26(a) relating to pretrial disclosures requires disclosure of the party's expectation as to whether each of its witnesses' testimony will be in person or remote. The Committee made a minor revision to the language in the proposed amendment to clarify that it relates only to the party's expectations as to whether testimony will be in person or remote at the time the disclosure is made.

Rule 41(a) (Dismissal of Actions)

The proposed amendments to Rule 41(a) clarify that a plaintiff may obtain a voluntary dismissal of one or more claims raised in a complaint without dismissing the entire action. This change responds to decisions in some courts interpreting the current language to mean that only an entire case, that is, all claims against all defendants, or only all claims against one or more defendants, could be dismissed under the rule. The proposed amendments also provide that a stipulation of dismissal need be signed only by parties who remain in the action at the time of the dismissal.

Rule 45(b) (Subpoena—Service)

The proposed amendment to Rule 45(b) clarifies how a subpoena for testimony may be served and whether the witness fee must be tendered simultaneously with service. The proposed amendment borrows two methods of service from Rule 4(e)(2)'s methods for serving a complaint on an individual—personal service or leaving a copy at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there. The proposed amendment also adds an additional method of service through the mail or commercial carrier if confirmation of actual receipt can be provided, and further authorizes the court to approve another means of service for good cause. The proposed amendment also includes two other changes: (1) relaxing the current requirement that witness fees be tendered at the time of service, and (2) providing a 14-day notice period (subject to shortening by the court for good cause) when the subpoena requires attendance at a trial, hearing, or deposition. The Committee made a minor revision to the language in the proposed amendment to move clarifying language in the committee note into the rule text relating to confirmation of actual receipt when a subpoena is served by mail or commercial carrier.

Rule 45(c) (Subpoena—Remote Testimony)

The proposed amendment to Rule 45(c) adds a new subsection (c)(2) to address subpoenas for remote trial testimony. The proposed new subsection clarifies that the "place of attendance for remote testimony is the location where the person is commanded to appear in person." Under new Rule 45(c)(2), the court's subpoena power for in-court remote testimony extends nationwide so long as the subpoena does not command the witness to travel farther than the distance authorized under Rule 45(c)(1). The proposed amendment does not affect the standards governing whether to permit in-court remote testimony.

Rule 81 (Jury Demand After Removal)

The proposed amendment to Rule 81(c) would provide that a jury demand must always be made after removal if no such demand was made before removal and a party desires a jury trial. It would also set the time limit to make the required demand.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Civil Rules 7.1, 26, 41, 45, and 81, as set forth in Appendix D, 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.

Rules Approved for Publication and Comment

The Advisory Committee on Civil Rules submitted proposed amendments to Civil Rule 5 with conforming amendments to Rule 6(d), and Civil Rule 5.2, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendation.

<u>Rules 5 (Serving and Filing Pleadings and Other Papers) and 6(d) (Computing and Extending Time; Time for Motion Papers)</u>

As part of the SRL rules package, the proposed amendments to Rule 5 are generally consistent with the proposed amendments to the Bankruptcy Rules and the Criminal Rules and would presumptively allow unrepresented parties in civil cases to use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or local rule provides otherwise. The courts would be expressly authorized to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice.

The proposed amendments to Rule 5 retain the existing authority to require electronic filing by a self-represented litigant by case-specific order or by local rule with reasonable exceptions. Additionally, Rule 5 would state that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. Finally, proposed amended Rule 5 would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the court's electronic-filing system, and deals with the impact of delays between filing and uploading to the court's electronic-filing system.

The proposed amendments to Rule 6 would conform cross-references to Rule 5.

Rule 5.2 (Privacy Protections for Filings Made with the Court)

As part of the package of proposed privacy amendments, the proposed amendments to Civil Rule 5.2 are generally consistent with the changes to Criminal Rule 49.1 and require complete redaction of social security numbers (SSNs) and individual taxpayer identification numbers (ITINs), as well as EINs and adoption taxpayer identification numbers in civil cases. The proposed amendments to Rule 5.2 would further require the use of pseudonyms when a filed document references a person who is a minor at the time of filing. Finally, the proposed amendments would clarify that the redaction requirements apply to all documents in the court filing, including exhibits and attachments. The proposed committee notes make clear, however, that existing exemptions to the redaction requirement, or additional redactions required pursuant to a protective order, are not altered by the proposed amendment.

Information Items

The Advisory Committee on Civil Rules met on April 14, 2026. In addition to the matters discussed above, the Advisory Committee continued to discuss proposals to require disclosures regarding third-party litigation funding and to amend Rule 43 (Taking Testimony) to relax the standards governing permission for remote testimony. The Advisory Committee also continues to study suggestions relating to Rule 23 (Class Actions), Rule 35 (Physical and Mental Examinations), and Rule 58's "Separate Document" requirement.

The Advisory Committee decided to remove from its agenda proposals concerning Fair Labor Standards Act collective actions, artificial intelligence "hallucinations," algorithmic spoliation of discoverable material, protective order templates, and mandatory assistance for self-represented litigants.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules recommended for final approval proposed amendments to Criminal Rule 17. The Standing Committee unanimously approved the Advisory Committee's recommendation after rephrasing proposed paragraph (c)(6), making a minor stylistic change to the rule, and clarifying the committee note (as described below).

Rule 17 (Subpoena)

The proposed amendments focus primarily on Rule 17(c), which governs subpoenas for production. The proposed amendments clarify that third-party subpoenas for production may be issued for proceedings in addition to trial. This includes proceedings where such subpoenas are most likely to be needed or are already used regularly in many districts, as well as proceedings for which there is statutory or rule authority for parties to present evidence (i.e., detention, revocation, suppression, and sentencing). With the court's permission, the rule also authorizes such subpoenas for other evidentiary hearings.

The proposed amendments also set forth a modified version of the test announced in *Nixon v. United States*, 418 U.S. 683 (1974), as the standard for the issuance of third-party subpoenas for production. The modified test as proposed is intended to provide both prosecution and defense with an adequate and more uniform opportunity across districts to obtain needed evidence from third parties.

Other proposed amendments to Rule 17 clarify when a party must file a motion requesting the court's permission to serve a subpoena for production of documents: when the subpoena requests personal or confidential information about a victim, when the subpoena is requested by a self-represented party, or when a local rule or court order requires a motion. When no motion is required, a party may serve a subpoena for production on an ex parte basis. When a motion is required, the proposed amendments provide that the court "must" allow a party to file it ex parte if good cause is shown. The proposed amendments further address ex parte subpoena practice by setting a default rule that a party need not disclose its subpoena to another party if no motion is required.

The proposed amendments also state the circumstances under which the recipient of the subpoena must produce the designated items to the court rather than directly to the requesting party. In addition, the amendments address the disclosure of material produced in response to a subpoena, disapproving the practice in some courts in which all produced items must be provided to the opposing party, regardless of whether the items would otherwise be subject to discovery. By providing that the rule does not require the disclosure of produced items to a party that did not request the subpoena, the proposed amendments seek to ensure that Rule 17 is not interpreted to disturb the law regulating disclosure between the parties found in Rule 16 and elsewhere. Finally, the proposed amendments clarify, as to each subdivision of Rule 17, whether it applies to subpoenas for testimony, subpoenas for production, or both.

The Standing Committee rephrased proposed paragraph (c)(6) to make clear that Rule 17 does not require disclosure of produced items to a party that did not request them and does not alter existing disclosure and discovery requirements. It revised the corresponding section of the committee note to clarify that the amendments to Rule 17 do not modify existing law regarding the timing of any disclosures.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rule 17, as set forth in Appendix E, 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.

Rules Approved for Publication and Comment

The Advisory Committee on Criminal Rules submitted proposed amendments to Rule 11 (with conforming amendments to Rule 32), Rule 49 (with conforming amendments to Rule 45(c)), and Rule 49.1, with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations, with revisions to clarify language in the text of the rule (as described below).

<u>Rule 11 (Pleas)</u>

Rule 11(b)(1)(M) requires the court to advise the defendant at the plea proceeding of "the court's obligation to . . . consider . . . possible departures under the Sentencing Guidelines." However, the 2025 amendments to the U.S. Sentencing Commission Guidelines Manual deleted most of the provisions in Chapter Five, Part K (Departures), and revised U.S.S.G. § 1B1.1(a) to eliminate the requirement that the court consider departures at step two of a three-step sentencing process. As revised, § 1B1.1 now provides for a two-step process, considering at step one "the kinds of sentence and the guideline range as set forth in the guidelines," and at step two, "other applicable factors in 18 U.S.C. § 3553(a)." The proposed amendment to Rule 11(b)(1)(M) would remove the reference to "possible departures under the Sentencing Guidelines," thus reflecting the current two-step sentencing process. The Standing Committee revised the proposed rule text to ensure that defendants would continue to be advised of the court's obligation to calculate and consider the sentencing-guideline range.

<u>Rule 32 (Sentencing and Judgment)</u>

Rule 32(h) requires the court to provide the parties with reasonable notice of a possible departure from the Sentencing Guidelines range on a ground not identified for departure in the presentence report or in a party's prehearing submission. Because the Sentencing Guidelines no longer employ the concept of departures, the proposed amendment to Rule 32 would eliminate subdivision (h). To avoid re-lettering the remainder of the rule, subdivision (h) would be reserved.

Rules 49 (Serving and Filing Papers) and 45(c) (Computing and Extending Time)

As part of the SRL rules package, the proposed amendments to Rule 49 and conforming amendments to Rule 45(c) are generally consistent with the proposed amendments to the Bankruptcy and Civil Rules regarding electronic filing and service by self-represented litigants. The proposed amendments to Rule 49 would allow self-represented parties to use the court's electronic-filing system to file papers and receive notice of activity in the case, unless a court order or local rule provides otherwise. They would expressly authorize courts to impose reasonable conditions and restrictions on electronic access. However, the proposed amendments would prevent a court from barring all self-represented litigants from using the court's electronic-filing system unless the prohibition either included reasonable exceptions or was paired with another electronic method for filing papers and receiving notice. Unlike the Bankruptcy and Civil Rules, and in accordance with the current Criminal Rule, proposed amended Rule 49 would not authorize a court to require self-represented litigants to file electronically.

The proposed Rule 49 amendments would eliminate the need for separate paper service of post-complaint filings on persons who will receive a notice of case activity through the court's electronic-filing system, although service by a court's electronic-filing system is not effective if a filer learns that it did not reach the person to be served. Further, the proposed amendments provide that if a document is filed under seal, a court may provide by order or local rule that the document be served by other means. The amendments also provide that no certificate of service is required when service occurs through the court's electronic-filing system under the amended provisions.

Criminal Rule 45(c) would be amended to conform cross-references to Rule 49.

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

As part of the package of proposed privacy amendments, the proposed amendments to Rule 49.1 addresses two privacy-related issues—redaction of taxpayer-identification information and the use of pseudonyms for minors—in criminal filings that are available to the public through the judiciary's electronic-filing system. These proposed amendments are consistent with the proposed amendments to the parallel privacy provisions in Civil Rule 5.2.

First, the proposed amendment requires complete redaction of taxpayer identifying information rather than redaction of all but the last four numbers. Second, the proposed amendments expand the covered taxpayer identifying information that must be redacted to include not only SSNs and ITINs, but also EINs. Third, the proposed amendment clarifies that the redaction requirement applies not only to pleadings and briefs, but also any attachments and exhibits. Fourth, the proposed amendment changes the requirement to provide initials for minors when they are referenced in filings and would now require the use of a pseudonym.

Information Items

The Advisory Committee on Criminal Rules met on April 29, 2026. In addition to the matters discussed above, the Advisory Committee continued its discussions regarding proposed amendments to Rule 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District). The Advisory Committee also formed a new subcommittee to consider proposed revisions to Rule 15, which governs depositions.

FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules recommended for final approval proposed amendments to Evidence Rule 609. The Standing Committee unanimously approved the Advisory Committee's recommendations.

Rule 609 (Impeachment by Evidence of a Criminal Conviction)

The proposed amendment to Rule 609(a)(1)(B) addresses the standard under which evidence of prior convictions not based on falsity may be introduced to attack a testifying criminal defendant's character for truthfulness. Under the proposed amendment, evidence of a non-falsity based prior conviction would not be admissible to impeach a criminal defendant unless its probative value "substantially" outweighs the risk of unfair prejudice to the defendant. The proposed amendment would result in the provision becoming more exclusionary, because many courts have erred in allowing broad impeachment with prior non-falsity based convictions, contrary to the original intent of the rule—a problem compounded by the fact that a ruling admitting convictions is not appealable unless the defendant takes the stand and gets impeached. With this amendment, the Advisory Committee aims to reduce the risk that Rule 609 will unduly deter criminal defendants from exercising their right to testify. In addition, the proposed amendment to Rule 609(b) would clarify that the 10-year time period for the rule's applicability is measured from the date of conviction or end of confinement, whichever is later, until the date of trial.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Evidence Rule 609, as set forth in Appendix F, 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.

Rules Approved for Publication and Comment

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 902 and 104 with a recommendation that they be published for public comment in August 2026. The Standing Committee unanimously approved the Advisory Committee's recommendations with a minor revision to Rule 104.

Rule 902 (Evidence That Is Self-Authenticating)

The proposed amendment to Rule 902 would add Indian Tribes and Nations to the list of entities in Rule 902(1)(A) whose public records are self-authenticating, as the Advisory Committee saw no reason to differentiate the Tribes and Nations from the many other government entities whose records are currently self-authenticating under the rule.

Rule 104 (Preliminary Questions)

The proposed amendment to Rule 104(a) would codify the holding in *Bourjaily v. United States*, 483 U.S. 171, 175 (1987), that preliminary questions of fact under Rule 104(a) are to be determined by a preponderance of the evidence. The proposed amendments to Rule 104(b) would eliminate the concept of "conditional" relevance and provide that the standard of proof for all questions of relevance is whether a jury could reasonably find that the evidence has a tendency to make a fact of consequence more or less probable than without the evidence. In addition, the proposed amendments would eliminate the phrase "proof sufficient to support a finding" from Rule 104(b); but the rule does not change the standard of proof established by the Supreme Court in *Huddleston v. United States*, 485 U.S. 681, 687 (1988), that the court must decide whether the "jury could reasonably find" that the evidence is relevant.

Information Items

The Advisory Committee met on May 7, 2026. In addition to the recommendations discussed above, the Advisory Committee discussed several other issues, including continued consideration of a possible New Rule 707 to address evidence that is the product of artificial intelligence and a possible new subsection (c) in Rule 901 (Authenticating or Identifying Evidence) to address deepfake evidence. Finally, the Advisory Committee considered the implications of *Smith v. Arizona* on Rule 703 (Bases of an Expert's Opinion Testimony).

Respectfully submitted,

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Appendix A – Proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002

Appendix B – Proposed Amendments to the Federal Rules of Appellate Procedure

Appendix C – Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Appendix D – Proposed Amendments to the Federal Rules of Civil Procedure

Appendix E – Proposed Amendments to the Federal Rules of Criminal Procedure

Appendix F – Proposed Amendments to the Federal Rules of Evidence

Proposed 2026 Report of the Judicial Conference of the United States on the Adequacy of Privacy Rules Prescribed Under the E-Government Act of 2002

PREPARED FOR THE
U.S. SENATE AND HOUSE OF REPRESENTATIVES

JUDICIAL CONFERENCE OF THE UNITED STATES

September 2026

PROPOSED 2026 REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ON THE ADEQUACY OF PRIVACY RULES PRESCRIBED UNDER THE E-GOVERNMENT ACT OF 2002

INTRODUCTION

The E-Government Act of 2002 directed the judiciary to promulgate rules, under the Rules Enabling Act, "to protect privacy and security concerns relating to electronic filing of documents and the public availability … of documents filed electronically." Pub. L. No. 107-347, 116 Stat. 2914, § 205(c)(3)(A)(i). Section 205(c)(3)(C) of the E-Government Act further directs that, every two years, "the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security." Pub. L. No. 107-347, 116 Stat. 2915, § 205(c)(3)(C). Pursuant to this directive, the Judicial Conference hereby submits this report for the period from July 1, 2024, to June 30, 2026. It proceeds in four sections:

- Part I discusses the status of suggested rule amendments identified in the 2024 Report and whether any privacy and security related suggestions for rules changes have been received since that time.

- Part II discusses ongoing implementation efforts by the Administrative Office of the United States Courts (the AO), the Federal Judicial Center (the FJC), and others to protect privacy in court filings and opinions.

- Part III discusses research undertaken by the FJC to assess adherence to the privacy rules.

- Part IV concludes with a summary and an overview of anticipated next steps.

PART I: POTENTIAL RULE AMENDMENTS RELATED TO PRIVACY AND SECURITY CONCERNS

This section addresses the status of suggested privacy-related rule amendments discussed in the 2024 Report and identifies any additional rules suggestions pertaining to privacy or security concerns relating to electronically filed documents received since that time. Part I.A. provides an overview of the current privacy rules. Part I.B. discusses proposed rule amendments relating to complete redaction of taxpayer identification numbers in public court filings. Part I.C. discusses proposed rule amendments to require the use of pseudonyms when reference is made to minors in public court filings. Part I.D. addresses the status of amendments identified in the 2024 Report relating to Appellate Form 4, which requires the disclosure of personal financial information in applications to proceed *in forma pauperis* in appeals. Part I.E. provides an update on other suggestions for rule changes identified in the 2024 Report. Part I.F. identifies any suggestions to amend the rules of practice and procedure since the 2024 Report insofar as they relate to privacy concerns in electronically filed documents.

A. Overview of the Privacy Rules

In accordance with the mandate of the E-Government Act of 2002 for the judiciary to promulgate rules of procedure to address privacy and security concerns regarding electronic access to court filings, the rules of practice and procedure were amended, effective December 1, 2007, to include the following rules (the privacy rules) – Civil Rule 5.2, Criminal Rule 49.1, Bankruptcy Rule 9037, and Appellate Rule 25(a)(5). In compliance with Section § 205(c)(3)(A)(ii) of the Act, which provides that "[s]uch rules shall provide to the extent practicable for uniform treatment of privacy and security issues," Pub. L. No. 107-347, 116 Stat. 2914, the privacy rules for trial-level proceedings (civil, criminal, and bankruptcy) follow a generally uniform approach. Subject to specified exemptions,[1] those rules require that unless otherwise ordered by the court, filers must redact from documents filed with the court:

(1) all but the last four digits of an individual's social-security number or taxpayer-identification number (SSNs and ITINs);

(2) the month and day of an individual's birth;

(3) all but the initial letters of a known minor's name;

(4) all but the last four digits of a financial account number; and

(5) in criminal cases, all but the city and state of an individual's home address.

With respect to appeals, Appellate Rule 25(a)(5) applies the redaction standard from the case below, either Civil Rule 5.2, Criminal Rule 49.1, or Bankruptcy Rule 9037. In other cases (for example, direct appeals from agencies), Civil Rule 5.2 generally applies. Bankruptcy Rule 8011, which governs filings in bankruptcy appeals from bankruptcy courts to district courts or bankruptcy appellate panels, does not currently have a privacy provision because Bankruptcy Rule 9037 applies to such appeals.

To further protect private information in Social Security appeals and immigration cases, which include unredacted records from administrative and agency actions, the civil and criminal rules also limit remote electronic access to those case files to the parties and their attorneys. Members of the public who wish to view these files must access them at the courthouse. *See* Civil Rule 5.2(c); Criminal Rule 49.1.(c). Only the docket and any orders or decisions relating to disposition of these cases are available remotely.[2] Appellate Rule 25(a)(5) also limits remote

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[1] For example, in civil, criminal, and bankruptcy cases, the redaction requirement does not apply to the record of any administrative or agency proceeding, the official record of a state-court proceeding, filings made under seal, and financial account information related to real property subject to a forfeiture proceeding.

[2] As discussed *infra* in Part III of this report, in April 2024, the Federal Judicial Center (FJC) published a study on Redaction of Non-Government Party Names in Social Security and Immigration Case

access to records in Social Security and immigration cases as in Civil Rule 5.2(c), and takes the same approach with respect to petitions for review of a benefits decision of the Railroad Retirement Board under the Railroad Retirement Act.

As additional protection for private information, the privacy rules contain provisions relating to filing under seal without redaction and seeking protective orders to require redaction or limit a nonparty's remote electronic access to a court filing. *See* Civil Rule 5.2(d) & (e); Criminal Rule 49.1(d) & (e); Bankruptcy Rule 9037(c)-(e).

B. Potential Amendments Requiring Complete Redaction of Taxpayer Identification Numbers in Public Court Filings

As detailed in the 2024 Report, Senator Ron Wyden suggested in 2022 that the rules committees reconsider earlier proposals to require complete redaction of SSNs in court filings, rather than redaction of all but the last four numbers. In response to that suggestion, the Committee on the Rules of Practice and Procedure (the Standing Committee) formed a working group to assist with coordinated efforts by the advisory committees to evaluate this proposal. After evaluating the scope of potential amendments, the advisory committees focused on the following:

(1) Whether the goal of uniformity among all rule sets with regard to redaction of taxpayer identification numbers continues to be appropriate in light of the special considerations regarding the use of the debtor's SSN in bankruptcy cases;

(2) Whether other types of taxpayer identification numbers, such as Employer Identification Numbers (EINs) and Adoption Taxpayer Identification Numbers (ATINs),[3] should be completely redacted in addition to SSNs and ITINs; and

(3) Whether any other amendments are appropriate in light of the findings of the Federal Judicial Center's April 2024 study and November 2024 supplemental analysis on the incidence of unredacted SSNs found in public court records in PACER.[4]

Documents to evaluate the prevalence of unredacted non-government party names in judicial opinions in Social Security and immigration cases and to identify practices adopted by courts to redact this information. At the request of the Judicial Conference Committee on Court Administration and Case Management (CACM), the FJC conducted a supplemental study, published in November 2024.

[3] The privacy rules do not expressly address Employer Identification Numbers (EINs), which the IRS requires for individuals and entities that have employees and need to pay employment or other related taxes. EINs are also required to operate a business entity. An Adoption Taxpayer Identification Number (ATIN) is a temporary taxpayer identification number for a child in a domestic adoption if the adoptive parents do not have and/or are unable to obtain the child's SSN while the final adoption is pending.

[4] *See infra* Part III regarding the FJC's studies relating to privacy concerns in court filings.

These issues were raised and discussed at advisory committee meetings from the fall of 2024 through the spring of 2026. In their April 2026 meetings, the Civil Rules, Criminal Rules, and Bankruptcy Rules Advisory Committees voted to recommend that proposed amendments to the privacy rules be published for public comment in accordance with the Rules Enabling Act process. At its June 2026 meeting, the Standing Committee approved those recommendations, and the proposed privacy amendments are slated for publication for public comment in August 2026. These proposed amendments would do the following to address the three issues identified above:

(1) Require complete redaction of SSNs and ITINs in civil and criminal cases (Civil Rule 5.2 and Criminal Rule 49.1) but retain the existing rule (Bankruptcy Rule 9037) requiring redaction of all but the last four digits of an individual's SSN or taxpayer-identification number for proceedings in bankruptcy court in light of the unique needs of bankruptcy cases.[5]

(2) Provide that in civil and criminal cases (Civil Rule 5.2 and Criminal Rule 49.1), complete redaction applies not only to SSNs and ITINs, but also EINs and ATINs.[6]

(3) Clarify that the redaction requirements in civil, criminal and bankruptcy cases (Civil Rule 5.2, Criminal Rule 49.1, and Bankruptcy Rule 9037) apply to all documents in the court filing, including exhibits and attachments. This change responds to the FJC's finding that most unredacted SSNs in public filings appear in those documents. The proposed committee notes make clear, however, that existing exemptions to the redaction requirement under subsection (b) of these rules, or additional redactions required pursuant to a protective order, are not altered by the proposed amendment..

The Advisory Committee on Appellate Rules has been considering adding another layer of privacy protection on appeal, requiring redactions in appellate filings even of material that need not be redacted under the Civil, Criminal, and Bankruptcy Rules. It was poised to ask the Standing Committee to publish a proposal along these lines but, at its April 2026 meeting, new concerns were raised about the breadth and impact of that proposal. In particular, the U.S. Department of

[5] As noted in the 2024 Report, in connection with Senator Wyden's suggestion, the Bankruptcy Rules Committee, through its privacy subcommittee, worked with the FJC to survey debtor attorneys, chapter 7, 12, and 13 trustees, creditor attorneys, various tax authorities and representatives of the National Association of Attorneys General about whether bankruptcy forms that currently require inclusion of the debtor's redacted SSN must or should continue to do so. As set forth in the Bankruptcy Rules Advisory Committee Report to the Standing Committee in January 2026, the surveys undertaken by the FJC indicated that a significant number of bankruptcy specialists oppose the idea of removing the truncated SSN. *See* Agenda Book, Report of the Bankruptcy Rules Advisory Committee, Committee on the Rules of Practice and Procedure, January 2026, page 166, available at: https://www.uscourts.gov/forms-rules/records-rules-committees/agenda-books.

[6] This proposed change would not apply in bankruptcy. In bankruptcy cases, for example, disclosure of the full EIN is required on certain forms.

Justice raised concern (echoed by others) about the costs and difficulties involved in redacting the contents of an appendix or the excerpts of record. The possibility that a party might forfeit this additional layer of protection was also raised. Because any changes made to the Civil, Criminal, and Bankruptcy Rules will automatically flow through to the courts of appeals, the Advisory Committee decided to study these concerns further before seeking to impose another layer of protection, and it formed a subcommittee to do so. The Bankruptcy Rules Committee will follow the work of the Appellate Rules Advisory Committee on this issue to consider amendments to Bankruptcy Rule 8011.

The 2024 Report also identified suggestions that would remove the partially redacted SSNs and full EINs from some bankruptcy notices and forms. Specifically, as stated in the 2024 Report, Bankruptcy Rule 2002(n) (now Rule 2002(o)) requires that the caption of every notice given under that rule comply with Bankruptcy Rule 1005. That caption requires, among other things, the debtor's full EIN, the last four digits of the debtor's SSN or debtor's individual taxpayer-identification number, any other federal taxpayer identification number, and all other names used within eight years before filing the petition. The Bankruptcy Rules Advisory Committee considered this suggestion and proposed amendments to Rule 2002 to provide that most Rule 2002 notices may use the caption described in Official Form 416B, which requires only the court's name, the name of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Those proposed changes were published for public comment in August 2025. After receiving no comments, final amendments to Rule 2002 were approved by the Bankruptcy Rules Advisory Committee at its spring 2026 meeting and recommended by the Standing Committee at its June 2026 meeting for adoption by the Judicial Conference at its September 2026 session.

C. Potential Amendments Concerning Use of Pseudonyms for Minors

As indicated in the 2024 Report, in March 2024, the U.S. Department of Justice submitted a suggestion to the Criminal Rules Advisory Committee proposing an amendment to Criminal Rule 49.1 to require that all publicly available court filings refer to minors by pseudonyms rather than by their initials. Since the 2024 Report, the Criminal Rules Advisory Committee formed a subcommittee to study this suggestion with reference to amendments to Criminal Rule 49.1. This issue also was incorporated into the scope of the project of the Standing Committee to coordinate consideration of consistent privacy amendments in Civil Rule 5.2, Bankruptcy Rule 9037, and, if needed, Appellate Rule 25 and Bankruptcy Rule 8011. At the spring 2026 meetings of the advisory committees for Civil Rules, Criminal Rules, and Bankruptcy Rules, they reached consensus that the change to require pseudonyms instead of initials was appropriate and voted to recommend publication for public comment on this change to the privacy rules found in Civil Rule 5.2, Criminal Rule 49.1, and Bankruptcy Rule 9037.

As noted above, any changes made to these Rules will automatically flow through to the courts of appeals. The Appellate Rules Advisory Committee is considering extending an additional layer of protection for minors. At its April 2026 meeting, questions were raised about how extending such an additional layer of protection to the identity of minors might interact with the way in which minors were referred to in a state court record or even in the caption of the case.

Those concerns will be considered by the new subcommittee mentioned above. The Bankruptcy Rules Committee will follow the work of the Appellate Rules Advisory Committee on this issue to consider amendments to Bankruptcy Rule 8011.

At its June 2026 meeting, the Standing Committee approved the recommendations of the Civil, Criminal, and Bankruptcy Rules Advisory Committees, and the proposed privacy amendments to Civil Rule 5.2, Criminal Rule 49.1, and Bankruptcy Rule 9037 on this issue are slated for publication for public comment in August 2026.

D. Amendments Concerning Applications to Proceed *In Forma Pauperis* in Appellate Cases

The 2024 Report indicated that the Appellate Rules Advisory Committee was considering suggestions to revise Appellate Form 4, which is an affidavit a party files to accompanying a motion to proceed in an appeal *in forma pauperis* (IFP). The proposed amendments were intended to substantially simplify the form while still providing the courts of appeals with enough financial information and other details to decide whether to grant IFP status. The 2024 Report further noted that at its April 2024 meeting, the Appellate Rules Advisory Committee recommended that these proposed amendments be published for public comment. Since the 2024 Report, the proposed amendments to Form 4 were published for public comment, and the amendments to Form 4 were then approved by the Standing Committee in June 2025, the Judicial Conference of the United States in September 2025, and the Supreme Court in April 2026. Amended Form 4 was submitted to Congress on April 8, 2026. Absent action by Congress, amended Form 4 will go into effect on December 1, 2026.

E. Status of Other Proposals Identified in the 2024 Report

As set forth in the 2024 Report, the Civil Rules Advisory Committee was considering suggestions relating to the interaction between motions for protective orders filed in response to discovery requests under Civil Rule 26 and motions to file documents under seal. Specifically, the 2024 Report identified a September 2023 suggestion from the Lawyers for Civil Justice (LCJ) for the comprehensive examination of the Civil Rules and to implement a framework for the court and parties to protect privacy rights and prevent cybersecurity problems at various stages of civil litigation, including discovery. Subsequently, LCJ narrowed its proposal in 2025 and suggested amendments only to Civil Rules 26, 34, and 45 relating to documents produced in response to discovery requests or subpoenas. These proposed amendments do not relate to the electronic filing of court documents subject to the E-Government Act of 2002. The Civil Rules Advisory Committee discussed that revised suggestion at its fall 2025 meeting and decided to monitor developments in the area.

F. New Suggestions for Rules Amendments Related to Privacy Concerns

Since the 2024 Report, the Standing Committee has not received any additional suggestions for rules amendments related to privacy or security of information contained in electronically filed public documents.

PART II. ONGOING IMPLEMENTATION EFFORTS TO PROTECT PRIVACY IN COURT FILINGS AND OPINIONS

As mentioned above, the privacy rules require that the filer redact certain personal identifiers from court filings. Additionally, due to the pervasive presence of sensitive personal information in Social Security and immigration cases, the rules exempt filings in those matters from the redaction requirement but also limit remote electronic access to those filings. The judicial opinions in these cases, however, are widely available to the public through the U.S. Government Publishing Office (GPO) United States Courts Opinions document repository on GovInfo and often appear in internet search engine results. In 2020, the Judicial Conference Court Administration and Case Management (CACM) Committee asked the AO to address this privacy concern by developing a way for courts to suppress case name and party names in Social Security and immigration opinions that are transferred to the GPO for inclusion on GovInfo. In response, the AO developed a software tool called EasyFix. When implemented in the case management system, EasyFix automatically replaces the case and party name metadata in Social Security and immigration opinions with the word "Unavailable."

Additionally, in memoranda sent to judges and clerks of court in 2018 and 2023, the CACM Committee recommended that courts consider adopting a practice to protect personal identifiers in Social Security and immigration opinions by using only the first name and last initial of non-government parties.[7] Following the release of the CACM Committee's suggested practice, some judges redact party names in their opinions and specifically cite the CACM Committee's guidance as support for this practice, particularly in Social Security cases. On the other hand, as discussed in Section III, a recent FJC study has concluded that a large number of judicial opinions and related documents do not redact party names, and only a small percentage of documents that redact party names follow the CACM Committee's suggested practice. Additionally, another FJC study has revealed that a relatively small percentage of courts have redaction policies in place for Social Security and immigration opinions.

The CACM Committee is currently reassessing whether it should provide additional or alternative guidance to assist the courts with protecting personal identifiers in Social Security and immigration opinions. As part of this analysis, the CACM Committee has requested that the AO conduct a legal analysis to ensure that its current guidance is consistent with case law regarding public access to court proceedings. The Committee will then determine whether to take additional

[7] The memoranda also urged the courts to continue or to consider initiating outreach efforts to litigants and members of the bar to ensure they are aware of redaction requirements for court filings.

steps, including providing guidance to the courts or referring the issue to the appropriate Rules Committees.

Beyond reassessing its suggested practice in Social Security and immigration opinions, the CACM Committee has also requested that the AO and FJC explore other ways to increase awareness about ways to protect privacy in court filings and opinions. As noted in the 2024 Report, the AO recently updated several sections of the judiciary's internal and public websites to include updated information regarding privacy rule requirements and suggested practices. Furthermore, since the 2024 Report, the FJC has included information describing these requirements and practices in its orientation materials for new chief judges, new court unit executives, and law clerks.

Additionally, in the current case management system before a filer electronically submits a document to the court, the system presents a prominent reminder asking "have you redacted?" Finally, as noted in the 2024 Report, the CACM Committee has urged the AO to implement features in the modernized case management system to automate and facilitate a litigant's review of court filings for compliance with the redaction requirements in the Appellate, Bankruptcy, Civil, and Criminal Rules.

PART III. FEDERAL JUDICIAL CENTER RESEARCH ON UNREDACTED PERSONAL INFORMATION

As noted in prior reports on the adequacy of the privacy rules, between 2010 and 2024, the FJC conducted several studies of compliance with the requirement to redact all but the last four digits of an individual's SSN.[8] Over the past two years, the FJC has conducted numerous additional studies of unredacted personally identifiable information in court documents. These FJC studies will inform the judiciary's understanding of how best to protect sensitive information in court filings and opinions.

In November 2024, the FJC completed supplementary analyses of the 22,391 unredacted SSNs identified in its April 2024 study to determine whether unredacted SSNs were more common in particular types of court filings and proceedings.[9] Unredacted SSNs appeared more often in certain types of cases. In the district courts, 88% of the SSNs appeared in cases on the civil docket.

[8] *See* Memorandum from George Cort & Joe Cecil, Research Division, FJC, to the Privacy Subcommittee of the Judicial Conference Committee on Rules of Practice and Procedure, Social Security Numbers in Federal Court Documents (April 5, 2010); Joe S. Cecil et al., Unredacted Social Security Numbers in Federal Court PACER Documents (October 2015) (finding less than .14 percent of sampled documents included on or more unredacted SSNs); See Kristin A. Garri, et al., Unredacted Social Security Numbers in Federal Court PACER Documents (April 2024); (finding that .10% of sampled documents contained unredacted SSNs, that 22% of the unredacted SSNs appeared to be exempt from redaction requirements and an additional 6% belonged to pro se parties who waived the privacy protections, and that a large percentage of the unredacted SSNs occurred in a relatively small number of documents).

[9] *See* Kristin A. Garri, et al., Supplemental Analysis of Unredacted Social Security Numbers in Federal Court PACER Documents (November 2024).

Nearly a third of civil cases with unredacted SSNs were habeas corpus prisoner petitions and a quarter were civil rights cases. A third of the criminal cases with unredacted SSNs were drug offenses and slightly less than a quarter were property offenses, primarily fraud cases. These same types of cases contained the most unredacted SSNs in civil and criminal appeals. Unredacted SSNs in the bankruptcy case documents appeared most often in Chapter 7 and Chapter 13 filings, and three-quarters of the SSNs in proof of claim registers appeared in Chapter 13 filings. Across all court types, about a third of cases with documents containing unredacted SSNs involved at least one pro se party. However, SSNs found within cases with pro se parties were much more likely to be exempt from the redaction requirement or categorized as protections waived[10] compared to the SSNs found within cases with represented parties. Unredacted SSNs largely appeared within supporting materials that originate outside of the legal process and naturally contain sensitive personal information. Supplementary financial documents, such as tax records, financial records, bank statements, payroll records, and credit checks, accounted for about half of the documents across all courts that contained unredacted SSNs.

In November 2024, the FJC also completed a study on the prevalence of personally identifiable information in Social Security and immigration opinions.[11] The FJC found, based on a survey of district and circuit clerks and a review of court websites, that 27 district courts and one circuit court have redaction policies for Social Security cases, and nine district courts and one circuit court have redaction policies for immigration cases. To assess courts' implementation of the CACM Committee's suggested practice of using only the first name and last initial of any non-government parties, the FJC also analyzed a sample of 17,397 dispositive documents, i.e., opinions, orders, judgments, memoranda, and mandates in Social Security cases and 7,456 documents in immigration cases. For district court Social Security cases, over two-thirds of sampled documents included completely unredacted non-government party names. In the court of appeals, over 95 percent of the sampled documents filed in Social Security cases included completely unredacted non-government party names. For district court civil immigration cases, over 90 percent of the documents included completely unredacted non-government party names. In the court of appeals, over 95 percent of the documents in civil, criminal, and agency-appealed immigration cases included completely unredacted non-government party names.

In March 2025, the FJC completed a report summarizing the local court rules of the district and appellate courts to identify rules requiring redaction of specified private information from court filings.[12] It also developed a report summarizing the local rules of bankruptcy courts that

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[10]The privacy rules provide for exemptions from the redaction requirements in certain circumstances, which vary somewhat across the rule sets. *Cf.* Fed. R. Civ. P. 5.2(b); Fed. R. Crim. P. 49.1(b); Fed. R. Bankr. P. 9037(b). In addition, a person may waive the protection of the privacy rules with respect to their own information by filing it without redaction. *See, e.g.,* Fed. R. Civ. P. 5.2(h).

[11] See Jana Laks, et al., Redaction of Non-Government Party Names in Social Security and Immigration Case Documents (November 2024).

[12] See Marie Leary, Review of Local District and Appellate Rules Governing Redaction of Private Information in Federal Court Filings (March 2025).

require redaction of private information from court filings.[13] In January 2026, the FJC finalized studies of unredacted minor names in court documents,[14] unredacted home addresses in criminal filings in court documents,[15] and redaction of party names in reports and recommendations filed in Social Security and immigration cases.[16]

For its analysis of unredacted minor names in federal court documents available on PACER, the FJC searched a subset of the 4.7 million PACER documents used in its earlier studies of unredacted SSNs. It determined that at least 0.13% of civil documents and 0.09% of appeals documents contain the unredacted name of a person identified as a minor in some fashion. Additionally, it found that about half of instances with an unredacted name appear to be noncompliant with the privacy rules and about half appear to be exempt.

For its analysis of the prevalence of unredacted home addresses in criminal and appellate filings, the FJC randomly selected 10,000 documents from its collection of 41,326 criminal appeals court PACER documents and 10,000 documents from its collection of 484,203 criminal district court PACER documents to search for home addresses. In those data sets, it found unredacted home addresses in 2.7% of the district court documents and 2.8% of the appeals court documents. Looking at the small percentage of documents that contained an unredacted home address, the FJC found that 63% of the unredacted home addresses in the district court documents and 78% of the unredacted home addresses in the appeals court documents appeared to be noncompliant with the privacy rules. Of the 32% of unredacted addresses (in district-court filings) that qualified as exempt from the redaction requirement, almost all appeared in charging documents and affidavits, arrest and search warrants, and criminal investigations or other documents prepared prior to filing of a criminal charge. Of the 14% of unredacted addresses (in appellate filings) that were exempt from the redaction requirement, about a third appeared in state court documents and the remainder appeared in charging documents, affidavits, warrants, and investigations.

Finally, for its study of redaction of party names in reports and recommendations (R&R's) in Social Security and immigration cases, the FJC analyzed the 955 publicly available R&Rs in the 8,170 Social Security and 6,244 civil immigration cases which terminated in the district courts between June 1, 2023, and December 31, 2023. It found that approximately two-thirds (65%, 587) of the 908 R&Rs filed in Social Security cases contained the full non-government party name. Of

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[13] See Carly Giffin, Review of Local Bankruptcy Rules, Orders, and Procedures Governing Redaction of Private Information in Federal Court Filings (March 2025).

[14] See Roy Germano, et al., Exploratory Analysis of Unredacted Minors' Names in Federal Court PACER Documents (January 2026).

[15] See Roy Germano, et al., Exploratory Analysis of Unredacted Home Addresses in Federal Court PACER Criminal Proceedings Documents (January 2026).

[16] See Kristin A. Garri, et al., Redaction of Non-Government Party Names in Reports and Recommendations Filed in Social Security and Immigration Cases (January 2026).

the 35% that were redacted, nearly all (304, about 95%) included only the first name and last initial of the non-government party, mirroring the CACM Committee's suggested practice. Additionally, over 80% (38) of the R&Rs filed in civil immigration cases contained the full non-government party name. Five of the eight redacted R&Rs (10.6%) were redacted using initials and the other three were redacted to the first name and last initial (6.4%).

PART IV: CONCLUSION

In the two years since the Judicial Conference's 2024 Report to Congress on the adequacy of the privacy rules, the rules committees have considered several proposed rule changes that include privacy-related issues. The Civil and Criminal Rules Advisory Committees are proceeding through the Rules Enabling Act process with proposed amendments to require complete redaction of SSNs, ITINs and other taxpayer identification numbers in criminal and civil case filings. The Civil, Criminal, and Bankruptcy Rules Committees are also proceeding with proposed amendments to require reference to minors by pseudonyms rather than initials. These proposed amendments to the privacy rules will be published for public comment in August 2026. Additionally, proposed final amendments to Bankruptcy Rule 2002 were also approved at the June 2026 Standing Committee meeting to eliminate reference to debtor SSNs and ITINs in notices provided under this rule. These proposed final amendments will be considered by the Judicial Conference at its September 2026 session.

Regarding additional measures to protect privacy in public court filings, the CACM Committee is currently reassessing whether it should provide additional or alternative guidance to assist the courts with protecting personal identifiers in Social Security and immigration opinions. The CACM Committee has also requested that the AO and FJC explore other ways to increase awareness about ways to protect privacy in court filings and opinions, and the FJC has included information describing these requirements and practices in its orientation materials for new chief judges, new court unit executives, and law clerks.

Finally, the FJC has engaged in numerous studies since the 2024 Report to identify the incident of unredacted SSNs in court filings and opinions, including Social Security and immigration cases, the incidence of unredacted names of minors; and the different approaches in local rules to redaction. The FJC has also conducted a survey in support of the Bankruptcy Rules Committees' consideration of the use of SSNs in bankruptcy filings. These results of these efforts have supported and informed the rule-making process and the work of the CACM Committee to continue to find ways to improve the protection of private information in electronic court filings.

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

Rule 15. Review or Enforcement of an Agency Order— How Obtained; Intervention

* * * * *

(f) Premature Petition or Application. This subdivision (f) applies if a party files a petition for review or an application to enforce after an agency announces or enters an otherwise reviewable order— but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party. The premature petition or application becomes effective to seek review or enforcement of the order when the agency disposes of the last such petition for rehearing, reopening, or reconsideration. If a party intends to challenge the disposition of a petition for

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

rehearing, reopening, or reconsideration, the party must file a new or amended petition for review or application to enforce in compliance with this Rule 15.

Committee Note

Subdivision (f). Subdivision (f) is new. It is designed to eliminate a procedural trap. Some circuits hold that petitions for review of agency orders that have been rendered nonreviewable by the filing of a petition for rehearing (or similar petition) are "incurably premature," meaning that they do not ripen or become valid after the agency disposes of the rehearing petition. *See, e.g., Nat'l Ass'n of Immigration Judges v. Fed. Labor Relations Auth.*, 77 F.4th 1132, 1139 (D.C. Cir. 2023); *Aeromar, C. Por A. v. Dept. of Transp.*, 767 F.2d 1491, 1493 (11th Cir. 1985) (relying on the pre-1993 treatment of notices of appeal and applying the "same principle" to review of agency action). In these circuits, if a party aggrieved by an agency action does not file a second timely petition for review after the petition for rehearing is denied by the agency, that party will find itself out of time: Its first petition for review will be dismissed as premature, and the deadline for filing a second petition for review will have passed. Subdivision (f) removes this trap.

It is modeled after Rule 4(a)(4)(B)(i), as amended in 1993, and is intended to align the treatment of premature petitions for review of agency orders with the treatment of premature notices of appeal. Recognizing that while review of district court orders is generally case based, *see* Fed. R. Civ. P. 54, review of administrative orders is generally party based, subdivision (f) refers to an order that is made "nonreviewable as to that party" by a petition for rehearing, reopening, or reconsideration.

Subdivision (f) does not address whether or when the filing of a petition for rehearing, reopening, or reconsideration renders an agency order nonreviewable as to a party. That is left to the wide variety of statutes, regulations, and judicial decisions that govern agencies and appeals from agency decisions. Nor does it encompass circumstances when an agency order may be nonreviewable, or a petition for review may be premature, for any reason other than the pendency of a petition for rehearing, reopening, or reconsideration—for example, when the agency's proceedings have not yet culminated in a judicially reviewable order. *See, e.g.*, *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1366 (11th Cir. 2002). Rather, subdivision (f) provides that when, under governing law, an agency order is nonreviewable as to a particular party because of the filing of a petition for rehearing, reopening, or reconsideration, a premature petition for review or application to enforce that order will be held in abeyance and become effective when the agency disposes of the last such petition—that is, the last petition that renders the order nonreviewable as to that party.

As with appeals in civil cases, *see* Rule 4(a)(4)(B)(ii), the premature petition becomes effective to review the original decision, but a party intending to challenge the disposition of a petition for rehearing, reopening, or reconsideration must file a new or amended petition for review or application to enforce.

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

Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability**. This Rule 29(a) governs amicus curiae filings during a court's initial consideration of a case on the merits.

(2) **Purpose; When Permitted.** An amicus brief that brings to the court's attention relevant matter not already brought to its attention by the parties may help the court. An amicus brief that does not serve this purpose burdens the court, and its filing is disfavored. The United States ~~or~~, its officer or agency, or a state may file an amicus brief without the

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

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 court of appeals~~. The court may prohibit ~~the filing of~~ or ~~may~~ strike an amicus brief that would result in a judge's disqualification.

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

(A) the movant's interest; and

(B) the reason ~~why an amicus~~ the brief ~~is desirable and why~~ serves the purpose set forth in Rule 29(a)(2) ~~the matters asserted are relevant to the disposition of the case~~.

(4) **Contents and Form**. An amicus brief must comply with Rule 32. ~~In addition to the~~

~~requirements of Rule 32,~~ T~~t~~he cover must ~~identify~~ name the party or parties supported and indicate whether the brief supports affirmance or reversal. ~~An amicus~~ The brief need not comply with Rule 28, but it must include the following:

(A) if the amicus ~~curiae~~ is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) unless the amicus is the United States, its officer or agency, or a state, the disclosure statement required by Rules 29(b) and (d);

~~(B)~~(C) a table of contents, with page references;

~~(C)~~(D) a table of authorities—cases (alphabetically arranged), statutes, and other authorities, ~~with~~

~~references to~~ together with the pages ~~of the brief~~ where they are cited;

~~(D)~~(E) a concise ~~statement~~ description of the identity, history, experience, and interests of the amicus ~~curiae~~, ~~its interest in the case, and the source of its authority to file~~ together with an explanation of how the brief and the perspective of the amicus will help the court;

(F) if an amicus has existed for less than 12 months, the date the amicus was created;

~~(E) unless the amicus is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:~~

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

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

~~(iii) a person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;~~

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

~~(G)~~(H) a certificate of compliance under Rule 32(g)(1)~~, if length is computed using a word or line limit~~.

(5) **Length**. Except ~~by~~ with the court’s permission, an amicus brief must not exceed 6,500 words ~~may be no more than one-half the maximum length authorized by these rules for a party’s principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief~~.

(6) **Time for Filing**. An amicus ~~curiae~~ must file its brief~~, accompanied by a motion for filing when necessary,~~ no later than 7 days after the principal brief 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 or petitioner’s principal brief is filed. The ~~A~~ court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) **Reply Brief**. An amicus may not file a reply brief except with the court's permission. ~~Except by the court's permission, an amicus curiae may not file a reply brief.~~

(8) **Oral Argument**. An amicus ~~curiae~~ may participate in oral argument only with the court's permission.

(b) Disclosing a Relationship Between an Amicus and a Party. An amicus brief must:

(1) disclose whether:

(A) a party or its counsel authored the brief in whole or in part;

(B) a party or its counsel contributed or pledged to contribute money intended to pay for preparing, drafting, or submitting the brief; and

(C) a party, its counsel, or any combination of parties, their counsel, or both has a majority ownership interest in or majority control of a legal entity submitting the brief; and

(2) if so, name the party or counsel.

(c) Disclosure by the Party or Counsel. If the party or counsel knows that an amicus has failed to make the Rule 29(b) disclosure, the party or counsel must do so.

(d) Disclosing a Relationship Between an Amicus and a Nonparty. An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must name each such person. But disclosure is not required if the person is:

- the amicus;
- its counsel; or
- a member of the amicus.

~~(b)~~(e) During Consideration of Whether to Grant Rehearing.

(1) **Applicability**. ~~This Rule 29(b)~~ Rules 29(a)-(d) govern~~s~~ amicus ~~filings~~ briefs filed during a court's consideration of whether to grant panel rehearing or rehearing en banc, except as provided in this Rule 29(e), and 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. The motion for leave must comply with Rule 29(a)(3).

(3) ~~**Motion for Leave to File.** Rule 29(a)(3) applies to a motion for leave.~~

~~(4)~~ **~~Contents, Form, and~~ Length**. ~~Rule 29(a)(4) applies to the amicus brief.~~ An amicus ~~The~~ brief must not exceed 2,600 words.

~~(5)~~(4) **Time for Filing**. An amicus ~~curiae~~ supporting ~~the~~ a petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus ~~curiae~~ opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for ~~the~~ a response.

Committee Note

The amendments to Rule 29 make changes to the procedure for filing amicus briefs, including to the disclosure requirements.

The amendments seek primarily to provide the courts and the public with more information about an amicus curiae. Throughout its consideration of possible amendments, the Advisory Committee has carefully considered the relevant First Amendment interests.

Some have suggested that information about an amicus is unnecessary because the only thing that matters about an amicus brief is the merits of the legal arguments in that brief. At times, however, courts do consider the identity and perspective of an amicus to be relevant. For that reason, the Committee thinks that some disclosures about an amicus are important to promote the integrity of court processes and rules.

Careful attention to the various interests and the need to avoid unjustified burdens is reflected throughout these amendments. For example, the amendment treats disclosures about the relationship between a party and an amicus differently than disclosures about the relationship between a nonparty and an amicus. While the public interest in knowing about an amicus—in order to evaluate its arguments and a court's consideration of those arguments—is relevant in both situations, there is an additional interest in disclosing the relationship between a party and an amicus: the court's interest in evaluating whether an amicus is serving as a mouthpiece for a party, thereby evading limits imposed on parties in our adversary system and misleading the court about the independence of an amicus. Moreover, the burden on an amicus of disclosing a relationship with a party is much lower than having to disclose a relationship with nonparties. Disclosing a relationship with a party requires an amicus to check its records (and perhaps make a disclosure) regarding only the limited number of persons who are parties to the case. Disclosing a relationship with a nonparty would, by contrast, require an amicus to check its records (and perhaps make a disclosure) regarding the much larger universe of all persons who are not parties to the case.

To take another example, the amendment treats contributions by a nonparty that are earmarked for a particular brief differently than general contributions by a nonparty to an amicus. People may make contributions to organizations for a host of reasons, including reasons that have nothing to do with filing amicus briefs. Requiring the disclosure of non-earmarked contributions provides less useful information for those who seek to evaluate a brief and imposes far greater burdens on contributors.

Subdivision (a). The amendment to Rule 29(a)(2) adds a statement of the purpose of an amicus brief: to bring to the court's attention relevant matter not already brought to its attention by the parties that may help the court. By contrast, if an amicus curiae brief adds nothing to the parties' briefs, it is a burden rather than a help. Where feasible, avoiding redundancy among amicus briefs can also be helpful.

The amendment to Rule 29(a)(4) expands the required statement regarding the identity of an amicus and its interest in the case and requires "a concise description of the identity, history, experience, and interests of the amicus, together with an explanation of how the brief and the perspective of the amicus will help the court." The amendment calls for this broader disclosure to help the court and the public evaluate the likely reliability and helpfulness of an amicus, particularly those with anodyne or potentially misleading names. It also requires that the amicus explain how the brief and the perspective of the amicus will further the goal of helping the court. Rule 29(a)(4)(F) is new. It requires an amicus that has existed for less than 12 months to state the date of its creation, helping identify amici that may have been created for the purpose of this litigation. Subsequent provisions are re-lettered.

Existing disclosure requirements about the relationship between the amicus and both parties and nonparties are removed from subdivision (a) and placed in separate subdivisions, one dealing with parties (subdivision (b)) and one dealing with nonparties (subdivision (d)).

Rule 29(a)(5) is amended to directly impose a word limit on amicus briefs, replacing the provision that establishes length limits for amicus briefs as a fraction of the length limits for parties. This results in removing the option to rely on a page count rather than a word count. This change enables Rule 29(a)(4)(H) (formerly 29(a)(4)(G)) to be simplified and require a certification of compliance under Rule 32(g)(1) in all amicus briefs.

Subdivision (b). Subdivision (b) dealing with disclosure of the relationship between the amicus and a party is new, but it draws on existing Rule 29(a)(4)(E). Because of the important interest in knowing whether a party has significant influence or control of an amicus, these disclosures are more far reaching than those involving nonparties, which are addressed in (d).

Rule 29(b)(1)(A) carries forward the existing requirement that authorship of an amicus brief by a party or its counsel must be disclosed.

Rule 29(b)(1)(B) carries forward the existing requirement that money contributed by a party or party's counsel that was intended to fund the preparation or submission of the brief must be disclosed. But in an effort to counteract the possibility of an amicus interpreting the existing rule narrowly, the amendment explicitly refers to "preparing, drafting, or submitting the brief," thereby making clear that it applies to every stage of the process.

Subdivision (b)(1)(C) is new. It requires disclosure of whether a party, its counsel, or any combination of parties or counsel either has a majority ownership interest in or majority control of an amicus. If a party has such control over an amicus, it is in a position to control the content of an amicus brief. If undisclosed, the court and the public may be misled about the independence of an amicus from a party, and a party may be able to effectively exceed the limitations otherwise imposed on parties.

Subdivision (b)(2) requires that any disclosure required by subdivision (b)(1) name the party or counsel. This builds upon the requirement in current Rule 29(a)(4)(E)(iii) that certain persons who make earmarked contributions be identified.

Subdivision (c). Subdivision (c) is new. It operates as a backstop to the disclosure requirements of (b): If the amicus fails to make a required disclosure, and the party or counsel knows it, the party or counsel must make the disclosure.

Subdivision (d). Subdivision (d) focuses on the relationship between the amicus and a nonparty. It makes several changes to the existing Rule 29(a)(4)(E)(iii), which currently requires the disclosure of any contribution earmarked for a brief, no matter how small, by anyone other than the amicus itself, its members, or its counsel. Earmarked contributions run the risk that the amicus is being used as a paid mouthpiece by the contributor. Knowing about earmarked contributions helps courts and the public evaluate the arguments and information in the amicus brief by providing information about possible reasons for the filing other than those explained by the amicus itself.

The Committee considered requiring the disclosure of nonparties who make any significant contributions to an amicus, whether earmarked or not. But it decided against doing so because of the burdens it could impose on amici and their contributors, even when the reason for the contribution had nothing to do with the brief. Instead, it retained the focus of the existing rule on earmarked contributions.

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to “pass the hat” when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

Rather than eliminate the member exception for organizations, the amendment protects members from disclosure. But Rule 29(a)(4)(F) requires an amicus that has existed for less than 12 months to disclose the date of its creation. This requirement works in conjunction with the expanded disclosure requirement of Rule 29(a)(4)(E) to reveal an amicus that may have been created for purposes of particular litigation or is less established and broadly-based than its name might suggest. Unless adequately explained, a court and the public might choose to discount the views of such an amicus.

The amendment also provides a $100 threshold for the disclosure requirement. Under the existing rule, a non-member of an amicus who contributes any amount, no matter how small, that is earmarked for a particular brief must be disclosed. This can hamper crowdfunding of amicus briefs while providing little useful information to the courts or the public. Contributions of $100 or less are unlikely to run the risk that an amicus is being used as a mouthpiece for others.

Subdivision (e). Subdivision (e) retains most of the content of existing subdivision (b) and governs amicus briefs at the rehearing stage. It is revised to largely incorporate by reference the provision applicable to amicus briefs at the initial consideration of the case. Rule 29(e)(1) makes Rule 29(a) through (d) applicable, except as provided in the rest of Rule 29(e) or if a local rule or order in a particular case provides otherwise. As a result, duplicative provisions are eliminated.

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

Rule 32. Form of Briefs, Appendices, and Other Papers

* * * * *

(g) Certificate of Compliance.

(1) **Briefs and Papers That Require a Certificate.** A brief submitted under Rule~~s~~ 28.1(e)(2), 29(a)(5), 29(e)(3) ~~29(b)(4)~~, or 32(a)(7)(B)—and a paper submitted under Rule~~s~~ 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), or 40(d)(3)(A)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely

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

on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

Committee Note

Rule 32(g) is amended for style and to conform to amendments to Rule 29.

Appendix:
Length Limits Stated in the
Federal Rules of Appellate Procedure[1]

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

* * * * *

- For the limits in Rules 28.1~~, 29(a)(5),~~ and 32:

  - You may use the word limit or page limit, regardless of how you produce the document; or

  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

	Rule	**Document type**	**Word limit**	**Page limit**	**Line limit**

* * * * *

Amicus briefs	29(a)(5)	o Amicus brief during initial consideration ~~of case~~ on merits	~~One-half the length set by the Appellate Rules for a party's principal brief~~ 6,500	~~One-half the length set by the Appellate Rules for a party's principal brief~~ Not applicable	~~One-half the length set by the Appellate Rules for a party's principal brief~~ Not applicable
	29~~(b)(4)~~(e)(3)	o Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable

* * * * *

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

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

MEMORANDUM*

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Allison H. Eid, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules

DATE: May 11, 2026

I. Introduction

The Advisory Committee on Appellate Rules met on Thursday, April 16, 2026, in Charlotte, North Carolina. * * *

The Advisory Committee has several action items for the June 2026 meeting.

It seeks final approval (per Part II of this report) of:

* A copy of the full committee report can be found in the June 2026 Standing Committee agenda book publicly available on www.uscourts.gov.

- amendments to Rule 29 concerning amicus briefs, along with conforming amendments to Rule 32 and the Appendix of Length Limits; and
- amendments to Rule 15, concerning premature petitions for review or enforcement of agency orders.

* * * * *

II. Items for Final Approval

A. Amicus Briefs—Rules 29 and 32 and Appendix of Length Limits (21-AP-C)

For several years the Advisory Committee has been considering revisions to Rule 29's amicus disclosure requirements.

In September 2025, the Judicial Conference sent to the Supreme Court a package of proposed amendments to Rule 29, together with conforming amendments to Rule 32 and the Appendix of Length Limits. In response to concerns raised by the Executive Committee of the Judicial Conference, as well as two other ambiguities or errors identified in the proposed amendments, the Advisory Committee and the Standing Committee voted to withdraw the amendment package, following the course pursued in addressing a similar issue in 2018. *See* Agenda Book 166 (Apr. 2026), *reprinting* Letter from Judge James C. Dever III & Judge Allison H. Eid to Scott S. Harris, Clerk of Court, Supreme Court of the United States (Mar. 10, 2026).

The Court chose not to forward to Congress this spring the relevant portions of the amendment package. The Advisory Committee discussed the proposals again at its April meeting, concentrating on three substantive issues and one issue of procedure.

1. New-Member Disclosures

The Executive Committee's concerns focused on a requirement that an organizational amicus disclose certain members who have contributed to funding its amicus brief. Under the current Rule 29, an amicus must disclose whether "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, must "identif[y] each such person" (emphasis added). The previously proposed amendments would have recodified this requirement in Rule 29(e)(1), limited it to contributions or pledges over $100, and exempted only "the amicus," "its counsel," or "a member of the amicus who first became a member at least 12 months earlier": in other words, requiring that over-$100 contributions or pledges from members of less than one year's standing be disclosed. Another provision, Rule 29(e)(2), would have required that "[i]f an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members but must disclose the date the amicus was created." (This date-of-creation disclosure would also be required by the proposed Rule 29(a)(4)(F), which states that an amicus brief must include, "if an amicus has existed for less than 12 months, the date the amicus was created.")

The proposed Committee Note had described the provision as an anti-evasion rule, treating new members of an amicus as if they were nonmembers. The cost of such an anti-evasion rule, however, is that an organizational amicus would have to disclose the identities of its contributing new members, which might dissuade either the organization or its new members from participating in filing the brief in the first place. *See NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958) (describing the potential chilling effect of membership disclosures); *Ams. for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 606 (2021) (same); *see also First Choice Women's Res. Ctrs.* v. *Davenport*, — U.S. —, 2026 WL 1153029, at *8 (Apr. 29, 2026) (same).

At its April meeting, the Advisory Committee again considered the new-member disclosure issue, which had previously been the subject of very extensive discussion and public comment. Its consideration included discussion of the extent of the negative reaction to the proposal from the Executive Committee and the public, as well as the unclear extent of the problem it sought to fix. The Advisory Committee voted 5-1, with one abstention, to remove the requirement of new-member contribution disclosure from the proposal, as shown:

> ~~(1)~~ An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must identify each such person. But disclosure is not required if the person is:
>
> - the amicus;
> - its counsel; or
> - a member of the amicus ~~who first became a member at least 12 months earlier~~.
>
> (~~2) If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members but must disclose the date the amicus was created.~~

(A complete copy of the proposed amendments to Rule 29 is attached to this report.)

2. Backup Disclosure Requirements

After the amendment package was submitted to the Court, a potential source of ambiguity was identified with regard to certain backup disclosure requirements. The proposed amendments would have required that an amicus disclose certain types of involvement by a party or its counsel; that "[a]ny such disclosure must name the party or counsel"; and that, "[i]f the party or counsel knows that an amicus has failed to make the required disclosure, the party or counsel must do so."

While the proposed Committee Note anticipated that these references to "such disclosure" or "the required disclosure" only concerned disclosures of a party or counsel's involvement, they might also be thought to be ambiguous. Arguably if a party or counsel knows that an amicus has failed to make a *different* "required disclosure," such as a disclosure of nonmember contributions discussed above, the rule might be read to require the party or counsel to disclose that fact to the court.

After discussing the issue, the Advisory Committee concluded that the narrower interpretation already presupposed by the Committee Note was to be preferred. After considering the advice of the style consultants, the Committee voted without dissent to avoid any ambiguity in "such" by merging the proposed subdivisions (b) and (c) of Rule 29, as well as to avoid any ambiguity in "the required disclosure" by referring more specifically to "the Rule 29(b) disclosure," as shown:

(b) Disclosing a Relationship Between an Amicus and a Party. An amicus brief must:

(1) disclose whether:

~~(1)~~(A) a party or its counsel authored the brief in whole or in part;

~~(2)~~(B) a party or its counsel contributed or pledged to contribute money intended to pay for preparing, drafting, or submitting the brief; and

~~(3)~~(C) a party, its counsel, or any combination of parties, their counsel, or both has a majority ownership interest in or majority control of a legal entity submitting the brief; and

(2) if so, name the party or counsel.

~~**(c) Naming the Party or Counsel.** Any such disclosure must name the party or counsel.~~

~~**(d)**~~**(c) Disclosure by the Party or Counsel.** If the party or counsel knows that an amicus has failed to make the ~~required~~ Rule 29(b) disclosure, the party or counsel must do so.

(Again, a complete copy of the proposal is attached to this report.)

3. Appendix of Length Limits

An erroneous cross-reference to Rule 29(a)(5) had not been removed from the proposed Appendix of Length Limits before the amendment package was submitted to the Court. The Advisory Committee voted without dissent to adopt a new version of the Appendix that removed this erroneous cross-reference, along with an unnecessary ellipsis that had been inserted as well. (These changes are not further detailed here but can be seen in the attachment to this report.)

4. Republication

The Advisory Committee also considered whether to submit these revisions for an additional round of public comment. While two of the issues above are stylistic or technical in nature, the first is not. However, the issue of new-member disclosure had been exhaustively discussed by the Advisory Committee and had already been the subject of many public comments.

After considering the issue, the Advisory Committee voted without dissent to recommend that the Standing Committee give final approval without republication to revised versions of the proposed amendments to Rule 29, Rule 32, and the Appendix of Length Limits.

(In preparing the revised versions for the Standing Committee's review, three additional style corrections were made on the advice of the style consultants. First, a previously proposed alteration of the phrase "by leave of court" to "with leave of court" in the proposed Rule 29(a)(2) was reversed: "by leave of court" is the more common phrase and is also used in the proposed Rule 29(e)(2). Second, the requirement to "identify" contributors in the proposed Rule 29(d) was changed to a requirement to "name" contributors, consistently with the proposed Rule 29(a)(4). Third, two erroneous instances of the word "Rules" in Rule 32(g) were corrected to "Rule." Corrected versions of the proposed amendments accompany this report.)

B. Premature Petitions (24-AP-G)

In June 2025, the Standing Committee approved publication of a proposed amendment to remove a potential trap for the unwary in Rule 15.

The "incurably premature" doctrine holds that if a petition to rehear or reconsider an agency decision makes that decision nonreviewable in a court of appeals, then a petition to review or to enforce that agency decision must be dismissed, and a new petition for review must be filed after the agency disposes of the rehearing petition. Rule 4, concerning appeals from district court judgments, used to operate in a similar way with respect to various postjudgment motions. But in 1993, Rule 4 was amended to provide that such a premature notice of appeal becomes effective when the postjudgment motion is decided. The proposal is to do for Rule 15 what was done for Rule 4.

Three public comments were received, all of them broadly supportive of the changes and conveying no specific concerns.

The Advisory Committee made two changes after publication. First, it renumbered the subdivision created by the proposed amendment from 15(d) to 15(f), in the hopes of avoiding confusion among courts and litigants regarding the proposed rule and the current Rule 15(d), often discussed by courts with regard to intervention in agency review proceedings. Second, to avoid attempts to obtain review of orders that are nonfinal for other reasons (unrelated to any pending petition for rehearing or reconsideration), the Advisory Committee added language reaffirming that the order in question must be "otherwise reviewable," as shown:

> **~~(d)~~(f) Premature Petition or Application.** This subdivision ~~(d)~~(f) applies if a party files a petition for review or an application to enforce after an agency announces or enters ~~its~~ an otherwise reviewable order—but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party. The premature petition or application be-comes effective to seek review or enforcement of the order when the agency disposes of the last such petition for rehearing, reopening, or reconsideration. If a party intends to challenge the disposition of a petition for rehearing, reopening, or reconsideration, the party must file a new or amended petition for review or application to enforce in compliance with this Rule 15.

The Advisory Committee voted without dissent to recommend that the Standing Committee give final approval to the revised version of the proposed amendment to Rule 15 that accompanies this report.

* * * * *

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

Rule 2002. Notices

* * * * *

(o) Caption. The caption of a notice given under this Rule 2002 must ~~conform to Rule 1005~~ <u>include the information that Form 416B requires</u>. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.

* * * * *

Committee Note

The amendment to Rule 2002(o) eliminates the requirement that all notices given under Rule 2002 include the caption required for the bankruptcy petition under Rule 1005. That caption requires, among other things, the debtor's employer-identification number, last four digits of the debtor's social security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. Instead, most Rule 2002 notices may use the caption described in Official Form 416B, which requires only the court's name, the name

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

of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Rule 2002 notices sent by the debtor must also include the information that § 342(c) of the Code requires. The notice of the meeting of creditors, Rule 2002(a)(1), will continue to include all information required by Official Forms 309(A-I).

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

12/26

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. **EIN (Employer Identification Number) issued to you, if any.** Do NOT list the EIN of any separate legal entity, such as your employer, a corporation, a partnership, or an LLC, that is not filing this petition.	__ __ – __ __ __ __ __ __ __ 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 Signature of Debtor 2

Executed on ______________ Executed on ______________
MM / DD / YYYY MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

✘ ______________________________ Date ______________
Signature of Attorney for Debtor MM / DD / YYYY

____
Printed name

____
Firm name

____
Number Street

____

______________________________ __________ ______________
City State ZIP Code

Contact phone ______________________ Email address ______________________

______________________________ __________
Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- ❑ No
- ❑ Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- ❑ No
- ❑ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- ❑ No
- ❑ Yes. Name of Person____.
  Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

✘ ________________________________	✘ ________________________________
Signature of Debtor 1	Signature of Debtor 2
Date ________________ MM / DD / YYYY	Date ________________ MM / DD / YYYY
Contact phone ______________________	Contact phone ______________________
Cell phone ______________________	Cell phone ______________________
Email address ______________________	Email address ______________________

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition. Stylistic changes were made to Question 2.

Fill in this information to identify your case:

Debtor 1 ______________________________
First Name Middle Name Last Name

Debtor 2 ______________________________
(Spouse, if filing) First Name Middle Name Last Name

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

Case number ______________________________
(If known)

❑ Check if this is an amended filing

Official Form 106C

Schedule C: The Property You Claim as Exempt

12/26

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. **Which set of exemptions are you claiming?** *Check one only, even if your spouse is filing with you.*
   - ❑ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
   - ❑ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

A. Brief description of the property and line on *Schedule A/B* that lists this property	**B.** Current value of the portion you own Copy the value from *Schedule A/B*	**C.** Amount of the exemption you claim *Check only one box for each exemption.*	**D.** Specific laws that allow exemption
Brief description: ________ Line from *Schedule A/B:* ______	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ______	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________

2.1 **Add the dollar value of all entries with a specific amount from Column C, including any entries for pages you have attached.** $________

3. **Are you claiming a homestead exemption of more than $214,000?**
   (Subject to adjustment on 4/01/28 and every 3 years after that for cases filed on or after the date of adjustment.)
   - ❑ No
   - ❑ Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
     - ❑ No
     - ❑ Yes

Part 2: Additional Page

A. Brief description of the property and line on Schedule A/B that lists this property	B. Current value of the portion you own Copy the value from *Schedule A/B*	C. Amount of the exemption you claim *Check only one box for each exemption*	D. Specific laws that allow exemption
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________
Brief description: ________ Line from *Schedule A/B:* ____	$________	❑ $ ________ ❑ 100% of fair market value, up to any applicable statutory limit	________

Committee Note

Part 1 of Official Form 106C is amended to add space for providing the total amount of column C—amount of the exemption claimed. In adding up the exemption amounts, the debtor should include only those exemptions claimed in specific dollar amounts.

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

MEMORANDUM[*]

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Rebecca B. Connelly, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 7, 2026

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Charlotte, N.C., on April 15, 2026.
* * *

At the meeting, the Advisory Committee voted to recommend final approval of amendments to Bankruptcy Rule 2002 (Notices), Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy), and Official Form 106C (Schedule C: The Property You Claim as Exempt).

[*] A copy of the full committee report can be found in the June 2026 Standing Committee agenda book publicly available on www.uscourts.gov.

Excerpt from the May 7, 2026 Report of the Advisory Committee on Bankruptcy Rules

* * * * *

Part II of this report presents those action items. They are organized as follows:

A. Items for Final Approval

Rules and Forms published for comment in August 2025—

- Rule 2002;
- Official Form 101; and
- Official Form 106C

* * * * *

II. Action Items

A. Items for Final Approval

The Advisory Committee recommends that the following rule and form amendments be given final approval. Bankruptcy Tab 16 includes the rules and forms that are in this group.

<u>Action Item 1</u>**. Rule 2002 (Notices).** The Advisory Committee received a suggestion from the Clerk of Court for the Bankruptcy Court for the District of Minnesota—joined by eight other bankruptcy clerks from the Eighth Circuit—that Rule 2002(n) (now Rule 2002(o)) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the original one.

Upon the recommendation of the Advisory Committee, the Standing Committee at its meeting in January 2025 approved for publication an amendment to Rule 2002(o) to remove the requirement that notices given under Rule 2002 conform to Rule 1005 and to instead require that such notices "include the information that Form 416B requires." This change would reduce the length, and therefore cost, of a Rule 2002 notice, as well as reducing the number of documents containing the last four digits of the debtor's social security number.

There were no comments on the suggested amendment. The Advisory Committee recommended final approval of the amendment.

<u>Action Item 2</u>**. Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy).**

Amendments to the prompt to Question 4 of the form to add a new paragraph regarding employer identification numbers ("EINs") were published last August. The amendment is intended to minimize the likelihood that a debtor may provide the EIN of the debtor's employer, rather than the debtor's own number if he or she has one. Because multiple debtors who have the same employer may file and list that employer's EIN, the CM/ECF monitoring for repeat filings triggers a report erroneously suggesting that the debtor is not eligible because of prior filings.

There were no comments in response to the publication of the proposed amendment. The Advisory Committee recommended final approval of the amendment with minor changes to both Question 4 and Question 2 suggested by the style consultants.

Action Item 3. Official Form 106C (Schedule C: The Property You Claim as Exempt)

The Advisory Committee received a suggestion from a chapter 12/chapter 13 trustee to amend Official Form 106C to include a total value of claimed exemptions. Section 589b(d)(3) of title 28 requires the uniform final report submitted by trustees to total the "assets exempted." Without the amount totaled on the form, trustees must manually add up the amounts on each form to prepare the required final report.

Complicating the decision of how to respond to the suggestion was the fact that Form 106C—in response to a statement by the Supreme Court in *Schwab v. Reilly*, 560 U.S. 770 (2010)—provides two options for claiming an exemption. The debtor can either list a specific dollar amount or can claim as exempt "100% of fair market value, up to any applicable statutory limit." If the latter option is chosen, there is no dollar amount that can be added.

The Advisory Committee resolved this problem by proposing an amendment to Form 106C to require the debtor to "[a]dd the dollar value of all entries [in Column C] with a specific amount." It also approved for publication the addition of a space on the form for the total value of the debtor's interest in property for which exemptions are claimed (in Column B).

The form was published last August, and one comment was filed in response. The National Association of Consumer Bankruptcy Attorneys ("NACBA") expressed concern about the wording of the directive to add the total value of the debtor's interest in property for which exemptions are claimed. NACBA urged the Advisory Committee to revise the form to "add the language 'with a specific amount' to the section calling for the total for Column B." (NACBA also suggested revisiting the approach taken on the form in response to *Schwab v. Reilly*.)

The suggestion that prompted the proposed amendments to Form 106C only sought a total value of the claimed exemptions and not a total of the property values. The addition to the form of space for the latter was really an afterthought—for the sake of symmetry. The Consumer Subcommittee considered whether there is a need for a total of Column B. It decided that there is not because trustees do not include that total in their final report and that figure has no significance in the bankruptcy case. The subcommittee therefore recommended that item 2.1 be deleted from the form as published and that, with that deletion and the renumbering of item 2.2, the amendment to Official Form 106C be given final approval.

The Advisory Committee recommended final approval of the amendments to Form 106C with the deletion of item 2.1 and the renumbering of item 2.2 and agreed with the subcommittee not to revisit *Schwab*.

* * * * *

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

Rule 7.1. Disclosure Statement

(a) Who Must File; Contents.

(1) ***Nongovernmental ~~Corporations~~ Business Organizations.*** A nongovernmental ~~corporate~~ business organization that is a party or ~~a nongovernmental corporation~~ that seeks to intervene must file a statement that:

(A) identifies any parent ~~corporation~~ business organization and any publicly held ~~corporation~~ business organization ~~owning~~ that directly or indirectly owns 10% or more of ~~its stock~~ it; or

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

(B) states that there is no such ~~corporation~~ business organization.

* * * * *

Committee Note

Rule 7.1(a)(1) is amended in two ways intended to better assist judges in complying with their statutory and ethical duty to recuse in cases in which they or relevant family members have "a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4); Code of Conduct for United States Judges Canon 3C(1)(c).

First, the amended rule substitutes "business organization" in place of references to "corporation" to cover entities not organized as "corporations," defined narrowly. "Business organizations" is a more capacious term intended to flexibly adapt to the ever-changing variety of commercial entities, and the term is generally accepted and well understood. *See*, *e.g.*, Uniform Business Organizations Code (2015).

Second, the rule is amended to require disclosure of business organizations that "directly or indirectly own 10% or more of" a party, whether or not that ownership interest is formally denominated as stock. Such a direct or indirect owner is presumed to hold a sufficient interest in a party to raise a rebuttable presumption that a judge's financial interest in the owner extends to the party, warranting recusal. *See* U.S. Judicial Conference, Guide to Judiciary Policy § 220, Committee on Codes of Conduct, Advisory Opinion No. 57: Disqualification Based on a Parent-Subsidiary

Relationship (Feb. 2024). Under the amended rule, a party must disclose not only a parent business organization but also any publicly held business organization that is a grandparent, great-grandparent, or other corporate relative that owns 10% or more of a party, whether directly or through another business organization. The requirement to disclose "indirect" owners of 10% or more of a party is a pragmatic effort to better inform judges of circumstances when their financial interests may be affected by a litigation or when further inquiry into the ownership interests in a party is appropriate.

As before, this rule does not capture every scenario that might require a judge to recuse. As reflected in the Committee on Codes of Conduct Advisory Opinion No. 57, a judge may need to seek additional information about a party's business affiliations when deciding whether to recuse. And, as before, districts may promulgate local rules requiring additional disclosures.

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

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

* * * * *

(3) ***Pretrial Disclosures.***

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and~~,~~ (if not previously provided)~~,~~ the address and telephone number

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

of each witness—separately identifying those the party expects to present and those it may call if the need arises, and whether it expects the testimony to be in person or remote;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

* * * * *

Committee Note

Under Rule 43, the court may permit remote testimony at trial. Because Rule 26 requires disclosure of witnesses a party "expects to present," it should be understood to include witnesses who will testify remotely upon court approval. This amendment clarifies that the disclosure requirement applies whether or not the witness is testifying in person or remotely and alerts the parties and the court that a party proposes to present one or more witnesses remotely.

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

Rule 41. Dismissal of Actions or Claims

(a) Voluntary Dismissal.

(1) ***By ~~the~~ a Plaintiff.***

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, ~~the~~ a plaintiff may dismiss ~~an~~ its action or one or more of its claims without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have

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

appeared and remain in the action.

* * * * *

(2) ***By Court Order; Effect.*** Except as provided in Rule 41(a)(1), an action or one or more claims may be dismissed at ~~the~~ a plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action, claim, or claims may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

* * * * *

Committee Note

Rule 41 is amended in two ways. First, Rule 41(a) has been amended to add language clarifying that a plaintiff may voluntarily dismiss "one or more of its claims" in a multi-claim case. A plaintiff may accomplish dismissal of either its action or one or more of its claims unilaterally prior to an answer or motion for summary judgment by a party opposing that claim, or by stipulation or court order. Some courts interpreted the previous language to mean that only an entire case, *i.e.* all claims against all defendants, or only all claims against one or more defendants, could be dismissed under this rule. The language suggesting that voluntary dismissal could only be of an entire case has remained unchanged since the 1938 promulgation of the rule. In the intervening years, multi-claim and multi-party cases have become more typical, and courts are now encouraged to both simplify and facilitate settlement of cases. The amended rule is therefore more consistent with widespread practice and the general policy of narrowing the issues during pretrial proceedings. This amendment to Rule 41(a), permitting voluntary dismissal of a claim or claims, does not affect the operation of Rule 41(d), whose applicability is limited to situations when the plaintiff has previously dismissed an entire action.

Second, Rule 41(a)(1)(A)(ii) is amended to clarify that a stipulation of dismissal need be signed only by all parties who have appeared and remain in the action. Some courts had interpreted the prior language to require all parties who had ever appeared in a case to sign a stipulation of dismissal, including those who have dismissed all claims, or had all claims against them dismissed. Such a requirement can be overly burdensome and an unnecessary obstacle to narrowing the scope of a case; signatures of the parties currently litigating claims at the time of the stipulation provide both sufficient notice to those actively involved in the case and better facilitate formulating and simplifying the issues and eliminating claims that the parties agree to resolve.

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

Rule 45. Subpoena

* * * * *

(b) Service.

(1) ~~***By Whom and How; Tendering***~~ ***Means; Notice Period; Fees.***

(A) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires:

(i) delivering a copy to the named person personally;

(ii) leaving a copy at the person's dwelling or usual place of abode with someone of

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

suitable age and discretion who resides there;

(iii) sending a copy to the person's last known address by a method of United States mail or commercial-carrier delivery, if the selected method provides confirmation of actual receipt by a person identified in (i) or (ii); or

(iv) using another means that is authorized by the court for good cause and is reasonably calculated to give notice.

(B) *Time to Serve if Attendance Is Required; Tendering Fees.* ~~and, i~~If the subpoena requires that the named person~~'s~~ attend~~ance,~~ a trial, hearing, or deposition, unless the court orders otherwise, the subpoena must be served at least 14 days before the date on which the person is commanded to attend. In addition, the party serving the subpoena must tender~~ing~~ the fees for 1 day's attendance and the mileage allowed by law at the time of service, or at the time and place the person is commanded to appear. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

Committee Note

Rule 45(b)(1) is amended to clarify the means of serving a subpoena. Courts have disagreed about whether the rule requires hand delivery. Though service of a subpoena usually does not present problems—particularly with regard to deposition subpoenas—uncertainty about what the rule requires has on occasion caused delays and imposed costs.

The amendment removes that ambiguity by providing that methods authorized under Rule 4(e)(2)(A) and (B) for service of a summons and complaint constitute effective service of a subpoena. Though the issues involved with service of a summons are not identical with service of a subpoena, the basic goal is to give notice and the authorized methods should assure notice. In place of the current rule's use of "delivering," these methods of service also are familiar methods that ought easily adapt to the subpoena context.

The amendment also adds another option—service by United States mail or commercial carrier to the person's last known address, if the selected method provides confirmation of actual receipt by a person identified in Rule 45(b)(1)(A)(i) or (ii). The rule does not prescribe the exact means of confirmation, but courts should be alert to ensuring that there is reliable confirmation of actual receipt. Experience has shown that this method regularly works and is reliable.

The amended rule also authorizes a court order permitting an additional method of serving a subpoena so long as that method is reasonably calculated to give notice. A party seeking such an order must establish good cause, which ordinarily would require at least first resort to the authorized methods of service. The application should also demonstrate that the proposed method is reasonably calculated to give notice.

The amendment adds a requirement that the person served be given at least 14 days' notice if the subpoena commands attendance at a trial, hearing, or deposition. Rule 45(a)(4) requires the party serving the subpoena to give notice to the other parties before serving it, but the rule does not presently require any advance notice to the person commanded to appear. Compliance may be difficult without reasonable notice. Providing 14-day notice is a method of avoiding possible burdens on the person served. In addition, emergency motions for relief from a subpoena can burden courts. For good cause, the court may shorten the notice period on application by the serving party.

The amendment also simplifies the task of serving the subpoena by removing the requirement that the witness fee under 28 U.S.C. § 1821 be tendered at the time of service as a prerequisite to effective service. Though tender at the time of service should be done whenever practicable, the amendment permits tender to occur instead at the time and place the subpoena commands the person to appear. The requirement to tender fees at the time of service has in some cases further complicated the process of serving a subpoena, and this alternative should simplify the task.

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

Rule 45. Subpoena

* * * * *

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

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

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Remote Testimony.*** Under Rule 45(c)(1), the place of attendance for remote testimony is the location where the person is commanded to appear in person.

(3~~2~~) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

* * * * *

Committee Note

In 2013, Rule 45(a)(2) was amended to provide that a subpoena must issue from the court where the action is pending, and Rule 45(b)(2) now provides that such a subpoena can be served at any place within the United States.

Since the 2013 amendments, however, some courts have concluded that they are without authority to command witnesses to provide remote trial testimony because the witnesses are not within the "subpoena power" of the presiding court. *See, e.g., In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023) (holding that a subpoena can compel remote trial testimony from a witness only if the witness resides or transacts business in person within 100 miles of the court or within the state in which the court sits). Questions have also been raised about whether a subpoena can compel a nonparty to provide discovery if the nonparty witness is located outside the geographical scope of the subpoena power to command the witness to appear in court. *See, e.g., York Holding, Inc. v. Waid*, 345 F.R.D. 626 (D. Nev. 2024) (rejecting the argument that a Nevada district court subpoena could not command production of documents within 100 miles of the nonparty's place of business in New Hampshire).

This amendment clarifies that the court's subpoena power for in-court testimony or to provide discovery extends nationwide so long as a subpoena does not command the witness to travel farther than the distance authorized under Rule 45(c)(1), which provides protections against undue burdens on persons subject to subpoenas. It specifies that, for purposes of Rule 45(c)(1), the witness "attends" at the place where the person must appear to provide the remote testimony. For purposes of Rule 43 and Rule 77(b), such remote testimony occurs in the court where the trial or hearing is conducted.

The amendment does not alter the standards for deciding whether to permit in-court remote trial testimony. Instead, it applies to any subpoena for witness testimony. Rule 43(a) authorizes remote trial testimony but depends on court permission for such testimony.

When a subpoena commands a witness to provide remote testimony, it is the responsibility of the serving party to ensure that the necessary technology is available at the remote location for such testimony.

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

Rule 81. Applicability of the Rules in General; Removed Actions

* * * * *

(c) Removed Actions.

(1) ***Applicability***. These rules apply to a civil action after it is removed from a state court.

* * * * *

(3) ***Demand for a Jury Trial.***

(A) *Before Removal* ~~*As Affected by State Law*~~. A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal.

(B) *After Removal.* If no demand has been made before removal, Rule 38(b)

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

governs a demand for a jury trial. If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38(b) must be given one if the party serves a demand within 14 days after: ~~If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.~~

~~**(B)** ***Under Rule 38.*** If all necessary pleadings have been served at the~~

~~time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:~~

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

* * * * *

Committee Note

Rule 81(c) is amended to remove uncertainty about when and whether a party to a removed action must demand a jury trial. Prior to 2007, the rule said no demand was necessary if the state court "does" not require a jury demand to obtain a jury trial. State practice on jury demands varies, and it appears that in at least some state courts no demand need be made, although it is uncertain whether those states actually guarantee a jury trial unless the parties affirmatively waive jury trial. In other state courts, a jury demand is required, but only later in the case than the deadline in Rule 38 for demanding a jury trial. A number of states have rules similar to Rule 38, but time limits for making a jury demand differ from the time limit in Rule 38.

This amendment is designed to remove uncertainty about whether and when a jury demand must be made after removal. It explicitly preserves the right to jury trial of a party that expressly demanded a jury trial before removal. But otherwise it makes clear that Rule 38 applies to removed cases. If all pleadings have been served at the time of removal, the demand must be made by the removing party within 14 days of the date on which it filed its notice of removal, and by any other party within 14 days of the date on which it was served with a notice of removal. If further pleadings are required, Rule 38(b)(1) applies to the removed case.

When no demand has been made either before removal or in compliance with Rule 38(b), the court has discretion under Rule 39(b), on motion, to order a jury trial on any issue for which a jury trial might have been demanded.

The amendment removes the prior exemption from the jury demand requirement in cases removed from state courts in which an express demand for a jury trial is not required. Courts no longer have to order parties to cases removed from such state courts to make a jury demand; the rule so requires.

Excerpt from the May 6, 2026 Report of the Advisory Committee on Civil Rules

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

MEMORANDUM*

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sarah S. Vance, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: May 6, 2026

Introduction

The Civil Rules Advisory Committee met in Charlotte, N.C., on April 14, 2026. Members of the public attended in person, and public online attendance was also provided. * * * For the convenience of Standing Committee members, the entire agenda book for that Advisory Committee meeting may be accessed via the link below. This report will on occasion refer to parts of that agenda book as a source of additional information.

Civil Rules Committee Agenda Book (April 2026)

* A copy of the full committee report can be found in the June 2026 Standing Committee agenda book publicly available on www.uscourts.gov.

As authorized by the Standing Committee, proposed amendments to Civil Rules 7.1, 26, 41, 45(b), 45(c), and 81 were published for public comment in August 2025, and a public hearing was held on January 27, 2026. The above link provides access to the summaries of public comments and testimony about the various amendments, and the report below identifies the pages of the Advisory Committee agenda book on which those summaries can be found.

Part I of this agenda book presents the six action items the Advisory Committee is bringing forward—the six rule changes listed above. The Advisory Committee unanimously voted to recommend that all rule changes listed above should be approved for final adoption. Small clarifying changes were made in the Committee Notes for two of the rule changes.

* * * * *

I. ACTION ITEMS

(a) Rule 7.1—Disclosure Statement

The Rule 7.1 Subcommittee, chaired by Justice Jane Bland of the Supreme Court of Texas, was created in spring 2023 to address concerns that district judges were not being adequately informed of potential financial interests in a proceeding that would require them to recuse. In particular, there was a concern that the current rule's requirement that a party disclose "any parent corporation and any publicly held corporation owning 10% or more of its stock" obscured the identity of a "grandparent" or "great-grandparent" of a party in which a judge might hold a financial interest.

The proposed amendment, which was published in August 2025, changes the rule in two ways: (1) it replaces references to "a corporate party" with the broader term "business organizations"; and (2) it requires disclosure of both "a parent business organization" and "any publicly held business organization that directly or indirectly owns 10% or more" of a party. These changes track guidance issued to federal judges by the Codes of Conduct Committee in February 2024 and language in the committee note of the analogous Federal Rule of Appellate Procedure requiring a similar disclosure, Rule 26.1, which for decades has covered grandparents and great-grandparents.

The public-comment period yielded relatively little reaction: four witnesses at the hearing and eight written submissions, summarized at pages 96-97 of the Advisory Committee's April 2026 agenda book. Although one witness expressed concerns that the definitions of "business organizations" and "indirectly owns" might be confusing, all other comments were supportive and expressed confidence that these amendments are not onerous and will make it easier for judges to determine whether they have any financial interest in the outcome of the litigation that requires them to recuse. The subcommittee reviewed all of the testimony and written comments and unanimously recommended final approval of the rule with no changes to the rule or the note. At its April meeting, the Advisory Committee agreed, unanimously voting to recommend final adoption of the amended rule and note with no changes.

(b) Rule 41(a)—Dismissal Without Prejudice

The Rule 41(a) Subcommittee, chaired by Judge Cathy Bissoon (W.D. Pa.), was created at the March 2022 Advisory Committee meeting to address varying interpretations of the rule permitting voluntary dismissal of "actions." Despite the language of the rule, many courts allow parties to use it to dismiss less than an entire action—for instance, all claims against one of several parties or even one of several claims against an individual party. The reason for this divergence between the language of the rule and its use became clear: in a world where multiparty, multiclaim litigation is far more typical than 1938 (when the current language was drafted) it enhances efficiency to allow the court and parties to narrow the issues involved in a litigation by dismissing individual claims.

After extensive research and outreach, the subcommittee proposed two amendments to the rule for publication: (1) replace references to an "action" to "one or more claims"; and (2) require that only parties who "remain in the action" sign a stipulation of dismissal to solve a different problem involving challenges created by the inability to obtain a signature from a party who has long departed the litigation.

These proposed amendments were published for comment in August 2025. During the public comment period, three witnesses testified, and the Advisory Committee received 28 written comments. All testimony and feedback were in favor of the amendments and are summarized at pages 106-110 of the April 2026 agenda book. Themes emerging from the public comments include praise for the amendments' resolution of the varying interpretations across the circuits of the word "action" and confidence that the amendments will increase efficiency and reduce confusion. There were three suggested minor tweaks to the language of the rule that the subcommittee discussed via email and concluded were unwarranted. The subcommittee therefore recommended final adoption of the amended rule and note at the April Advisory Committee meeting, and the Advisory Committee agreed. It unanimously recommended final approval of the published draft without changes.

(c) Rule 45(c)—Subpoena for Remote Trial Testimony

The preliminary draft of the Rule 45(c) amendment was published for public comment in August 2025, with comment closing in February 2026. On March 11, the Rule 43/45 Subcommittee met to discuss the public comments. Except for a modification of one paragraph of the committee note, the subcommittee saw no need to make other changes. Notes of that meeting are at pages 124-25 of the April 2026 agenda book via the link above.

The principal goal of this Rule 45(c) amendment proposal was to change the outcome in the Ninth Circuit's *In re Kirkland* panel decision, which held that current Rule 45 would not permit a subpoena to require a witness to provide remote trial testimony even though the court had found that the requirements of Rule 43(a) were satisfied in the case. *See In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023). The Ninth Circuit panel held that the rule did not, as written, authorize a subpoena for such remote trial testimony, but it also recognized that a rule change would solve the problem and undo the panel's interpretation.

Though at least some witnesses opposed that change on the merits (including the lawyer who persuaded the Ninth Circuit panel to adopt its interpretation of the current rule), many more favored the change. The subcommittee saw no reason to reconsider the rule change, and noted that there is considerable urgency about responding to the Ninth Circuit decision.

The subcommittee's discussion during its March 11 meeting indicated that only one change was needed in the published preliminary draft—refinement of the next-to-last paragraph of the note. There was concern that the wording of the published draft of the note suggests that the Rule 43(a) standard for remote testimony at trial also applies to motion hearings or other proceedings. So the Subcommittee recommended that the next to last paragraph of the committee note be clarified as follows:

> The amendment does not alter the standards for deciding whether to permit in-court remote trial testimony. Instead, it applies to any subpoena for witness testimony. ~~Ordinarily, court approval is required for remote testimony in court.~~ Rule 43(a)~~, for example,~~ authorizes remote trial testimony ~~in trials and hearings~~ but depends on court permission for such testimony. ~~Rule 26(a)(3)(A)(i) requires that the parties disclose the identities of witnesses whose testimony will be presented, without distinguishing between in-person and remote testimony.~~[1] ~~Even remote deposition testimony is authorized only by stipulation or court order. See Rule 30(b)(4).~~

Without this clarification, the published draft note might be read to limit the court's present latitude to hold remote proceedings that are not trials. The basic point of the paragraph is that remote trial testimony—the only thing regulated by Rule 43(a)—requires court approval. Other remote activities—court proceedings or depositions—are not affected by this amendment and referring to them might create confusion. This clarification avoids that potential confusion.

The subcommittee and later the full Advisory Committee considered various other proposed wording changes made by some who commented on the rule amendment. The summary of public comments and testimony about this rule appear at pages 126-33 of the Advisory Committee agenda book. Notes of the subcommittee's March 22, 2026, meeting appear at pages 124-25 of the agenda book.

Some who commented did not oppose the Rule 45(c) change, but thought it should not be made until the question of possibly amending Rule 43(a) on remote trial testimony was resolved. But the Ninth Circuit decision has already been invoked to resist subpoenas for pretrial discovery, and there is no necessary link to the ongoing consideration of amending Rule 43(a). There were also some wording changes proposed that are identified at pages 113-15 of the Advisory Committee agenda book accessible via the link above.

[1] After the Advisory Committee's meeting, this sentence (which was not removed when other deletions were made to this paragraph of the committee note during that meeting) was overstricken. It is not about the interpretation of Rule 45(c), and the Rule 26(a)(3) amendment speaks for itself. Removing this sentence shortens the note and avoids any possible confusion including this sentence might cause.

After discussion, the Advisory Committee unanimously voted to recommend final adoption of the published rule change with the change noted above to one paragraph of the committee note.

(d) Rule 26(a)(3)(A) Amendment—Disclosure of Intention to Offer Remote Trial Testimony

The Rule 26(a)(3) amendment directs the parties not only to identify the witnesses they intend to call or will call if needed at trial, but also to indicate whether any of these witnesses will offer remote testimony.

The proposed amendment attracted little comment. The summary of the comments appears at pages 141-42 of the Advisory Committee's agenda book for its April 2026 meeting. The clarification amendment makes clear that disclosure of the witnesses a party "expects to present" at trial or that it "may call if the need arises" must specify whether the witness is expected to provide remote testimony. Given the requirement of court approval for remote trial testimony under Rule 43(a), this revision may often ensure notice to the court and the other parties of the need to address that question of court permission for remote testimony.

The Advisory Committee voted unanimously to recommend final adoption of the proposed amendment as published.

(e) Rule 45(b)(1)—Manner of Service of Subpoena

The proposed amendment sought to clarify what is required to satisfy the current rule's provision that serving a subpoena calls for "delivering a copy to the named person." The current rule has engendered uncertainty about what suffices to serve a subpoena. The proposed amendment borrows service methods authorized for service of the summons and complaint under Rule 4(e)(2)(A) and (B) and adds another authorized method—service by U.S. mail or a commercial-carrier service that provides confirmation of actual receipt. The amendment also explicitly empowers the court to authorize additional methods of service in given cases.

In addition, the amendment provides a 14-day notice period for subpoenas that require the person to appear for a deposition or a trial (absent a court order shortening the period). It also removes the requirement that the witness fee be tendered at the same time the subpoena is served, providing that delivery of the witness fee "at the time and place the person is commanded to appear" would suffice.

This amendment received numerous comments during the public comment period, many from professional process servers who opposed the amendment. A summary of the comments and testimony appears at pages 160-83 of the Advisory Committee's April 2026 agenda book, accessible via the link at the beginning of this report.

After the public comment period closed, the Discovery Subcommittee met and decided that the issues raised during the public comment period did not warrant changes in the published draft. Notes of this meeting appear at pages 154-59 of the Advisory Committee's agenda book.

During the Advisory Committee's April meeting, a number of questions were raised about the amendment. One was about the proposed language of Rule 45(b)(1)(A)(i)—"delivering a copy to the named person personally." Rule 5(b)(2)(A) says "handing it to the person." But Rule 4(e)(2)(A), on which this amendment is based, calls for delivering the summons and complaint "to the individual personally," which the amendment parallels.

Other concerns were raised about the added methods of service added in proposed 45(b)(1)(A)(iii)—by U.S. Mail or commercial carrier. The rule calls for "confirmation of actual receipt." It was pointed out that the committee note mentioned Rule 45(b)(4) regarding proof of service, which calls for a "statement . . . certified by the server." That might prove difficult with U.S. mail or a commercial carrier. An additional concern was raised by Advisory Committee discussion—assuming confirmation of receipt, who must receive the subpoena? The committee note does not clearly answer that question.

The Discovery Subcommittee caucused during the lunch break at the April 14 Advisory Committee meeting and after lunch proposed changes to the third paragraph of the committee note as follows:

> The amendment also adds another option—service by United States mail or commercial carrier to the person's last known address, if the selected method provides confirmation of actual receipt by a person identified in Rule 45(b)(1)(A)(i) or (ii). The rule does not prescribe the exact means of confirmation, but courts should be alert to ensuring that there is reliable confirmation of actual receipt. ~~*Cf.* Rule 45(b)(4) (proving service of subpoena).~~ Experience has shown that this method regularly works and is reliable.

These changes clarify that the person who receives the subpoena is one of those on whom service would be authorized, and also removed the possibly confusing cf. citation to Rule 45(b)(4).

The subcommittee also decided that, given the parallelism between the new provisions in Rule 45(b)(1) and the service provisions from Rule 4(e), the published rule language "delivering a copy to the person personally" was clear.

The Advisory Committee unanimously voted to recommend final adoption of the Rule 45(b)(1) amendment as published for public comment, with the sole revision quoted above to the committee note.

(f) Rule 81(c)(3)—Demand for Jury Trial After Removal

The proposed amendment to Rule 81(c)(3) clarifies the timing of demands for jury trial in removed cases. If a demand has been made before removal, no further demand need be made. But if no demand has been made before removal, the amendment specifies when a demand under Rule 38 must be made within the time limits in that rule.

The amendment eliminates the uncertainty caused by the provision in the current rule that excuses a jury demand if "state law did not require an express demand for jury trial."

Excerpt from the May 6, 2026 Report of the Advisory Committee on Civil Rules

The proposed amendment received only a few comments, all positive. *See* Agenda Book for Advisory Committee on Civil Rules, April 14, 2026, at 192. It might be noted that one of the comments supporting the rule change came from the presidents of the Trial Lawyers Associations of 48 states and said the proposed rule changes added clarity to the rule by replacing the current rule, which creates confusion.

The Advisory Committee unanimously voted to recommend final adoption of the Rule 81(c) amendment as published for public comment.

* * * * *

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

Rule 17. Subpoena

(a) **~~Content~~In General.** A subpoena must state the court's name and the proceeding's title~~ of the proceeding~~, include the court's seal~~ of the court~~, and ~~command ~~require that the ~~witness ~~recipient~~ to attend and testify~~—at ~~the ~~a specified time and place—attend and testify, produce designated items, or do both~~ the subpoena specifies~~. The clerk must issue a blank subpoena—signed and sealed—to the ~~party~~ requesting ~~it, and that ~~party, who must fill in the blanks before the subpoena is served.

(b) **Subpoena to Testify—Defendant Unable to Pay Costs and Witness Fees.** Upon a defendant's ex parte application, the court must order that a

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

subpoena be issued for a named witness if the defendant shows ~~an inability to pay the witness's fees and~~ the necessity of the witness's presence for an adequate defense~~. If the court orders a subpoena to be issued, the~~ and an inability to pay the witness's fees. The process costs and witness fees will then be paid ~~in the same manner~~ as ~~those paid~~ they are for witnesses ~~the~~ responding to government subpoenas.

(c) ~~Producing Documents and~~ Subpoena to Produce Data, Objects, or Other Items.

(1) ***In General—Items Obtainable.*** A subpoena may ~~order~~ require the ~~witness~~ recipient to produce any ~~books, papers, documents,~~ item, including any data or information or any book, paper, document, or other ~~objects the subpoena designates~~ object. ~~The court may direct the witness to produce the designated items in court before trial or before they are~~

~~to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.~~

(2) ~~***Quashing or Modifying the Subpoena*****.** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.~~ ***Non-Grand-Jury Subpoena—When Available; Required Content and Limitations; Issuance; Disclosure.***

(A) *When Available.* A non-grand-jury subpoena is available for a trial; for a hearing on detention, suppression, sentencing, or revocation; or—with the court's permission in an individual case—for any additional evidentiary hearing.

(B) *Required Content and Limitations.* The subpoena must describe each designated item with reasonable particularity and require production of only items that:

(i) are likely to be possessed by the subpoena's recipient;

(ii) are not reasonably available to the party from another source; and

(iii) are, or contain information that is, likely to be admissible as evidence in the designated proceeding.

(C) *Motion and Order Not Ordinarily Required.* A motion and order are not required before service of a non-grand-jury subpoena unless (c)(3) or

(4), a local rule, or a court order requires them.

(D) *Necessary Showing In a Required Motion.* The movant must:

(i) describe each designated item with reasonable particularity; and

(ii) state facts showing that each item satisfies (2)(B) (i)-(iii).

(E) *Ex-Parte Motion.* The court must, for good cause, permit the party to file the motion ex parte.

(F) *Disclosure When No Motion Is Required.* When no motion is required, a party need not disclose to any other party that it is seeking or has served the subpoena, unless a local rule or court order provides otherwise.

(3) ***Non-Grand-Jury Subpoena for Personal or Confidential Information About a Victim.***

(A) *Motion and Order Required.* After a complaint, indictment, or information is filed, a non-grand-jury subpoena requiring the production of personal or confidential information about a victim may be served on a third party, including a victim, only by court order upon motion.

(B) *Notice to a Victim.* ~~Before entering the order and u~~Unless there are exceptional circumstances, the court must, before entering the order, require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(4) ***Subpoena by a Self-Represented Party.*** A subpoena is available to a self-represented party only after the party:

(A) files a motion;

(B) makes the showing described in (2)(D); and

(C) obtains an order.

(5) ***Non-Grand-Jury Subpoena—Place to Produce the Designated Items.*** Unless the court orders otherwise, a non-grand-jury subpoena:

(A) must require the recipient to produce the designated items to the court if the subpoena:

(i) is requested by a self-represented party; or

(ii) requires the production of personal or confidential information about a victim; and

(B) may require the recipient to produce the designated items to the requesting party's counsel if the subpoena:

(i) is requested by a represented party; and

(ii) does not require the production of personal or confidential information about a victim.

(6) ***Disclosing to Other Parties the Items Produced.*** This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule.

(7) ***Quashing or Modifying the Subpoena*.** On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive. A party responding to a motion to quash a non-grand-jury subpoena must make the showing described in (2)(D).

(d) **Service.** A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy ~~of the subpoena~~ to the witness or to the subpoena's recipient and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. But t~~T~~he server need not tender the attendance fee or mileage allowance ~~when~~ if the

United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) ***In the United States***. A subpoena requiring a witness to attend a hearing or trial—or requiring a recipient to produce designated items—may be served at any place within the United States.

(2) ***In a Foreign Country.*** If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(f) ~~Issuing~~ Subpoena for a Deposition ~~Subpoena~~.

(1) ***Issuance.*** A court order to take a deposition authorizes the clerk in the district where the deposition is to be taken to issue a subpoena for any witness named or described in the order.

(2) ***Place.*** After considering the convenience of the witness and the parties, the court may order—and the subpoena may require—the witness to appear anywhere the court designates.

(g) **Contempt Order for Disobeying a Subpoena.** The court (other than a magistrate judge) may hold in contempt a witness or subpoena recipient who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. ~~A~~ Under 28 U.S.C. § 636(e), a magistrate judge may hold in contempt a witness or subpoena recipient who, without adequate excuse, disobeys a subpoena issued by that magistrate judge ~~as provided in 28 U.S.C. § 636(e)~~.

(h) **Information Not Subject to a Subpoena.** No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

Committee Note

The amendments to Rule 17 respond to gaps and ambiguities in its text that have contributed to conflicting interpretations in the courts and difficulties in application. The changes include revisions that clarify the procedures for subpoenas to produce data, objects, or other items and the availability of such subpoenas for proceedings other than trial, as well as revisions that delineate which provisions apply to certain types of subpoenas. The amendments also include stylistic revisions to text and headings.

Rule 17(a). In addition to stylistic changes, the text in (a)(1) has been revised to clarify that it applies to subpoenas for producing items as well as those for testimony.

Rule 17(b) formerly headed "Defendant Unable to Pay," has been retitled to clarify that it applies only to subpoenas for testimony. Changes to the text are stylistic only.

Rule 17(c), covering subpoenas to produce data, objects, or other items, has been revised to address multiple issues with the prior language that had contributed to conflicting interpretations in the courts. Formerly it had three subsections, now it has seven. The changes are intended to promote clarity about what the Rule requires, while safeguarding the discretion of courts to tailor subpoena practice to the circumstances of a district or case. The section's heading —"Subpoena to Produce Information, Objects, or Other Items"—has been revised to more accurately describe the amended language in (c)(1).

Rule 17(c)(1) continues to describe what a subpoena may obtain, but it has been revised to refer to "items" that include not only data, but also any "information" or objects.

This recognizes that parties use subpoenas to obtain electronically stored information and other intangible items in addition to “data,” “documents” or other objects.

Perceived ambiguities in the language of the last two sentences of former (c)(1) contributed to several conflicts in case law, including when a subpoena may be sought ex parte, and the rules for production and disclosure. The revised rule replaces these two sentences with separate provisions containing explicit direction about each of these issues.

Rule 17(c)(2) is new. The language formerly in (c)(2) about motions to quash is now (c)(7). **Subparagraph (2)(A)** clarifies that non-grand-jury subpoenas are available to produce items for trial as well as proceedings where subpoenas are most likely to be needed, presently used regularly in many districts, or for which there is statutory or rule authority for parties to present evidence: detention hearings under the Bail Reform Act, sentencing hearings under Rule 32, pre-trial suppression hearings, and revocations. There is no other mechanism available to compel evidence from third parties at these proceedings, even though both parties may need to do so. Some decisions have interpreted the prior text of the Rule to bar the use of Rule 17 subpoenas to produce items at any hearing other than grand jury proceedings and trial. This change to the Rule’s text expressly authorizes the use of a non-grand-jury subpoena to obtain evidence for introduction at the listed hearings.

The ending clause explicitly recognizes the discretion of the court in an individual case to permit a Rule 17 subpoena to produce items in other evidentiary hearings not listed in the Rule in which a party may be allowed to present witnesses or evidence. Examples include preliminary hearings and new trial hearings. The present use of Rule 17 subpoenas for items in such proceedings is not as common, in part because of the difficulties, costs, and delays that may arise when subpoena practice is imported into these less formal or more expedited proceedings.

Rule 17's provisions are not applicable to hearings under § 2254, where a court may apply subpoena provisions in the Federal Rules of Civil Procedure. *See* Rule 12 of the Rules Governing § 2254 Proceedings. Rule 12 of the Rules Governing § 2255 Proceedings allows application of either the Civil or Criminal Rules in § 2255 proceedings.

Subparagraph (c)(2)(B), along with the requirements in **(c)(2)(D),** articulates a modified version of the test announced by the Supreme Court in *Nixon v. United States,* 418 U.S. 683 (1974), which interpreted the previous text of Rule 17. Applying *Nixon,* all but a handful of lower courts have read Rule 17 as limiting non-grand-jury subpoenas to produce documents or other items to those that met specificity, relevance, and admissibility requirements. Many courts added one or more of the additional following criteria: that the items sought were not otherwise obtainable by due diligence, that advance inspection was needed to properly prepare and avoid delay, and that the subpoena was not a "fishing expedition."

The Committee agreed that the basic character of Rule 17 subpoenas as seeking evidence for a particular proceeding should remain unchanged, and that the rule should continue to prohibit the use of subpoenas for general discovery from third parties. But it also determined that the admissibility requirement, as well as other aspects of the prevailing interpretation of the prior language, was being applied inconsistently, resulting in harmful uncertainty and unnecessarily restricted access to evidence needed from third parties for trial and other proceedings.

The new text now codifies a modified version of the *Nixon* standard intended to provide an adequate and more predictable opportunity for both the prosecution and defense to obtain from third parties the evidence they need for the proceeding designated in the subpoena. The new text imposes upon a party the duty to ensure that every subpoena to produce items meets this standard, including those obtained and served without motion.

As to specificity and the prevention of "fishing expeditions," **(c)(2)(B)** first requires that the subpoena "describe each designated item with reasonable particularity." This requirement serves at least two functions. First, it informs the recipient what is being requested so that the recipient can decide how to comply and whether to file a motion to quash. Second, it prevents parties from using such subpoenas for discovery and "fishing expeditions," which can create unacceptable burdens for recipients, courts, and those individuals and entities whose information the recipient is ordered to produce. The requirements in **(c)(2)(B)(i)** and **(ii)** advance this same goal by limiting the subpoena to items "likely to be possessed by the subpoena's recipient," and "not reasonably available to the party from another source."

The text of **(c)(2)(B)(iii)** requires that each item either be, or contain information that is, "likely to be admissible as evidence in the designated proceeding." In using "*likely* to be admissible," the Committee deliberately rejected stricter formulations applied by some courts. In some circumstances, it will be impossible to be certain *before* a proceeding begins that a precisely identified item will be admissible. Such circumstances include when an item's admissibility depends on whether the opposing party first presents other evidence. For example, impeachment evidence should be available to a party by subpoena for use at trial when a party knows that a witness will or is likely to testify. That evidence should not be unavailable simply because admissibility cannot be determined definitively until after the witness has actually testified. The "likely to be admissible" standard is already used by some courts applying Rule 17 and more accurately describes the appropriate inquiry. There is no separate reference to "relevance" in **(c)(2)(B)** because information would not be admissible unless it were relevant.

If a court is concerned that without judicial oversight some categories of subpoenas—such as those seeking particular types of information, or seeking information for a particular type of proceeding—pose a special risk of noncompliance with the requirements in (c)(2)(B), the court has discretion to require that those subpoenas be authorized by court order upon motion (*see* (c)(2)(C)) and/or to order that the recipient produce the items to the court instead of directly to the requesting party's counsel (*see* (c)(5)).

The provisions in **Subparagraphs (c)(2)(C)-(F)** resolve several disputed issues about obtaining subpoenas to produce items that arose under the prior language of the Rule**.**

Rule 17(c)(2)(C) defines when a motion and court order are required before a party may serve a non-grand-jury subpoena to produce items. Courts have disagreed about if or when the former language in (c)(1)—which stated "the court may direct the witness to produce the designated items in court before trial or before they are offered in evidence"—required a court to first approve a subpoena under 17(c). The resulting practice has differed greatly from court to court (and in some cases judge to judge), with some courts requiring motions for every subpoena to produce items, others permitting parties to obtain and serve such subpoenas without judicial involvement (unless the subpoena sought victim information under (c)(3)), and still others insisting on prior approval in certain circumstances but not others.

The Committee concluded that mandating a motion and court order for every subpoena to produce items—or for every subpoena that seeks production before trial, as some courts had interpreted the former language in (a)—places unnecessary burdens on courts and parties alike and is contrary to existing practice in many districts. Other requirements stated in the Rule or otherwise available to the court, such as protective orders, are adequate to control potential abuse of the subpoena process by the parties. Districts that have required, under the prior language of the rule, a motion and court order whenever a subpoena seeks production prior to trial may continue that practice by local rule or court order. That level of judicial oversight before service, however, is no longer required by the revised text of the Rule.

The amended rule clearly specifies the circumstances that will always require prior court approval via motion, and it preserves the discretion of judges to require motions in other situations. It provides that a motion and order are not required before service of a non-grand-jury subpoena to produce items "unless (c)(3) or (4), a local rule, or a court order requires them."

Rule 17(c)(2)(D). When a motion is required for a non-grand-jury subpoena, new (c)(2)(D) states exactly what a party must do in the motion to prove that the proposed subpoena does indeed comply with (c)(2)(B)'s requirements. Rule 17(c)(2)(D)(i) requires the party to demonstrate to the court that the subpoena describes each designated item with reasonable particularity. And (c)(2)(D)(ii) requires the party to "state facts," showing each item is "likely to be possessed by the subpoena's recipient," "not reasonably available to the party from another source," and "likely to be admissible as evidence in the designated proceeding." Requiring a factual basis is intended to prevent the use of Rule 17 subpoenas based upon unsubstantiated guesses or mere speculation.

Rule 17(c)(2)(E) ensures that a court must, for good cause, allow a party to file a motion for a subpoena to produce items ex parte. Whether a party may seek a subpoena ex parte has been another contested question under the prior language of Rule 17(c). Although some courts have read the Rule to preclude ex parte subpoena practice, most allow it, some by local rule. Proceeding ex parte is important when disclosure to another party of what the subpoena requests, the identity of the recipient, or the explanation why the subpoena complies with (c)(2)(B) could lead to damage to or loss of the items that the party is attempting to obtain, or divulge trial strategy, witness lists, or attorney work-product. Without the ex parte option, defense counsel may face the impossible choice of either not seeking a subpoena and violating the ethical duty to prepare a plausible defense, or seeking the subpoena and disclosing their trial strategy, work-product, and other confidential information to the government and co-defendants (who may have adverse interests).

Rule 17(c)(2)(F) clarifies that unless required by a local rule or court order, a party has no duty to inform the other parties about a subpoena when no motion is required.

Rule 17(c)(3) retains the requirement in former (c)(3) of a motion and court order for a subpoena seeking personal and confidential information about a victim, now in subparagraph (A), as well as the requirement of prior notice to a victim absent exceptional circumstances, now in subparagraph (B). Both requirements were added to the Rule in 2008 to implement the Crime Victim's Rights Act and are unchanged, except for the addition of style revisions, including adding the term "non-grand-jury" to (A).

The amendments also add a provision permitting ex parte applications for good cause, but it is important to distinguish that good cause requirement from the "exceptional circumstances" concept in (c)(3). Exceptional circumstances under (c)(3) would include a showing that evidence might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy. It will be uncommon that a notice to a victim will meaningfully implicate the concern about disclosing defense strategy because, unlike subpoena applications under this Rule, a notice merely informs the victim of the request, not the reasons why the subpoena is sought. In contrast, the showing of "good cause" to file a motion ex parte would require an explanation of the reason.

The amendment also responds to a few decisions that had interpreted the rule as applicable only to subpoenas for personal or confidential information served on third parties other than a victim. The amendment adds the words "including a victim" to clarify that the requirement of a motion and court order before a subpoena seeking personal or confidential information about a victim may be served on a third party applies when that third party is a victim.

Rule 17(c)(4). This new provision extends the motion requirement to a subpoena requested by a self-represented party. Two reasons underlie this decision. First, self-represented parties are not bound by ethical rules that deter an attorney's misuse of the court's compulsory authority, raising the risk that the subpoena would not comply with (c)(2)(B). Second, requiring judicial oversight of this very small subset of subpoenas would not significantly add to the courts' burden, even in districts where there is relatively little motion practice under Rule 17.

Rule 17(c)(5) is also new. It clarifies when a subpoena must order the recipient to produce designated items to the court, and when it need not do so. Again, the text in former (c)(1) stating that the "court may direct the witness to produce the designated items in court before trial or before they are to be offered into evidence" produced conflicting decisions on this point. Some courts read the rule as always requiring returns to the court, others that it required returns to the court whenever a subpoena ordered production before trial, and still others that it permitted returns directly to the requesting party unless the court ordered items produced to it. The Committee concluded that judges should have discretion to determine where (and how) production should take place. To the extent the prior text of the rule was leading to unnecessary limits on the discretion of the court to allow returns to the requesting party, it created needless burdens for courts and required revision.

Accordingly, subsection (c)(5) sets three defaults, each subject to departure by court order.

First, (5)(A)(i) provides that a subpoena requested by a self-represented party must require the recipient to produce the designated items to the court. Judicial oversight at both the issuance and production stages is added assurance that parties without legal training or ethical responsibilities will not deliberately or unintentionally access inappropriate or non-compliant information that a judge would be able to intercept if the recipient were required to provide the items to the court.

The second default in (5) is for non-grand-jury subpoenas that require the production of personal or confidential information about a victim. Paragraph (5)(A)(ii) provides that unless the court orders otherwise, such subpoenas must require the recipient of such subpoenas to produce the designated items to the court, not directly to counsel. Production to the court provides an opportunity for the court, before the information produced is disclosed to the requesting party, to review the information produced in camera, require redactions, restrict access, regulate retention, add other protective orders, or take other actions to protect the victim's dignity and privacy.

The third default, in (5)(B), is that unless the court orders otherwise, a subpoena that is requested by a represented party and that does not require the production of personal or confidential information about a victim may require the recipient to produce the designated items to the requesting party's counsel. This default reflects present practice in many districts.

The rule places no restrictions on the court's discretion to vary from these default rules. For example, when a subpoena is likely to produce private or privileged information, it is common practice for courts to order in camera review before disclosure to anyone. And to provide greater judicial oversight—for example, for subpoenas requiring the production of personal or confidential information—the rule permits a court, by local rule or court order, to require the return of such information to chambers before disclosure to the requesting party.

New **Rule 17(c)(6)** states, "This rule does not require the disclosure of produced items to a party that did not request the subpoena. Disclosure and discovery requirements are not altered by this rule." This provision resolves another dispute about the meaning of the Rule's prior text, which some courts read as requiring that each party have access to any item that a subpoena recipient produces to another party. That position undermines the careful calibration of discovery and disclosure in Rule 16 and other discovery rules. For example, even if every item produced by a subpoena is admissible, it does not follow that the requesting party will decide to use all of those items in its "case-in-chief at trial." And a defense subpoena may produce inculpatory evidence the government did not know about, as well as evidence the defense hopes to use at the designated proceeding. The new text recognizes that the regulation and timing regarding disclosure of information and other items between parties, including information and items the party may obtain by subpoena, are governed by the Constitution, Rule 16, and other discovery rules. Rule 17 does not modify that carefully developed law.

Rule 17(c)(7) contains the text about motions to quash previously in (c)(2). A second sentence has been added clarifying that the showing described in new (c)(2)(D) must be made by the party responding to a motion to quash a non-grand-jury subpoena to produce items.

The second sentence of **Rule 17(d)** now includes the words "or to the subpoena's recipient" after "witness" to clarify that it applies to both subpoenas for testimony and subpoenas to produce items. The last sentence has been restyled, adding "But" at the beginning and replacing "when" with "if."

Rule 17(e)(1) contains an addition similar to that in (d) to clarify its application to subpoenas to produce items as well as subpoenas for testimony.

The heading of **Rule 17(f)** has been restyled.

Rule 17(g) includes three changes: (1) the heading has been revised to better describe its content; (2) "or subpoena recipient" has been added to clarify its application to both subpoenas for testimony and subpoenas to produce items; and (3) the reference to 28 U.S.C. § 636 has been restyled.

Excerpt from the May 8, 2026 Report of the Advisory Committee on Criminal Rules

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

MEMORANDUM[*]

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Michael W. Mosman, Chair
Advisory Committee on Criminal Rules

RE: Report of the Advisory Committee on Criminal Rules

DATE: May 8, 2026

I. INTRODUCTION

The Advisory Committee on Criminal Rules met in Washington, D.C. on April 29, 2026. * * *

This report presents several action items. The Advisory Committee unanimously recommends final approval of amendments to Rule 17, which governs subpoenas. * * *

* * * * *

[*] A copy of the full committee report can be found in the June 2026 Standing Committee agenda book publicly available on www.uscourts.gov.

II. ITEM FOR FINAL APPROVAL

A. Subpoena Authority (Rule 17) (22-CR-A; 24-CR-J; 25-CR-G)

The Advisory Committee unanimously recommends final approval of the amendments to Rule 17 with three changes to the text as published and several revisions to the committee note.

1. The Major Elements of the Published Amendments

The goal of the published amendments is to respond to the wide disparity in the interpretation and application of Rule 17, and particularly to the problems encountered by counsel in some districts where the courts interpret the rule so narrowly that subpoena practice is almost nonexistent. The amendments make incremental changes and set default rules, while also allowing districts and individual judges substantial discretion to adopt local rules or orders refining the procedures. Although minor adjustments were made to other portions of the rule, these are the amendments' most significant changes to the existing rule.

- *Proceedings Other Than Trial*

Some courts had interpreted the existing language in (c)(1), which refers only to "trial," as barring subpoenas for all proceedings other than trial. This interpretation leaves the defense with no mechanism to obtain evidence from third parties for proceedings other than trial, and drastically limits the government's options to do so.[1] To fix this, new (c)(2)(A) expressly authorizes the use of subpoenas at sentencing and suppression hearings (where subpoenas are already used regularly in many districts) as well as detention and revocation hearings, where there is statutory or rule authority for parties to present evidence and the need for third party evidence arises on occasion.

The amendment also provides flexibility to the court to allow the use of subpoenas for other evidentiary hearings in an individual case.

- *Codifying a Somewhat Loosened* Nixon *Standard*

Rather than substituting an entirely different standard for non-grand-jury subpoenas seeking the production of documents or other items, the amendment makes an incremental change, codifying in (c)(2)(B) an interpretation of the *Nixon*[2] standard that is slightly looser than what some courts have demanded. Some courts have required the requesting party to prove with certainty that the information sought by the subpoena would be admitted, thus barring, for example, subpoenas for impeachment evidence until after the other party had presented its witnesses. The Advisory Committee was persuaded these decisions had applied the admissibility requirement in *Nixon*'s interpretation of prior text too rigidly. In other districts, judges have found the "admissibility" requirement of *Nixon* can be satisfied by a showing of likely admissibility, and defense and government practitioners in such districts reported no problems. Retaining some

[1] The government may obtain evidence from third parties for non-trial proceedings with a search warrant, or, under limited circumstances, with a grand jury subpoena.

[2] *United States v. Nixon*, 418 U.S. 683 (1974).

relationship to admissibility narrowed the scope of what can be sought by tying that information to the designated proceeding and further preventing "fishing expeditions."

The Advisory Committee adopted the "likely admissible" language to indicate that somewhat more flexibility is intended. In doing so, it rejected an alternative formulation— "likely to lead to" admissible evidence—that would have nudged the amendments even closer to the standards supported by the City Bar Committee, the National Association of Criminal Defense Lawyers (NACDL), and many of the defense practitioners who spoke with the Advisory Committee. The note also observes that if a court is concerned that some categories of subpoenas—such as those seeking particular types of information, or seeking information for a particular type of proceeding—pose a special risk of noncompliance with these requirements, the court has discretion to require that those subpoenas be authorized by court order upon motion and/or to order that the recipient produce the items to the court instead of directly to the requesting party's counsel.

- *When Motion and Order Required*

New (c)(2)(C) provides a clear rule explaining when a party must obtain the court's permission by motion before serving a subpoena and when the party may serve a subpoena without motion. Courts continue to differ on when a motion is required based in part on the ambiguity of the language in (c)(1), and the *Nixon* Court's interpretation of this provision as requiring court authorization for a subpoena seeking production in advance of trial. In many districts, motions before issuance are not routinely required. Practitioners and judges expressed significant concerns about the burdens that a motion requirement for all or most 17(c) subpoenas would create in their districts, for both counsel and courts.

The added text ensures court supervision when needed most, while providing flexibility to courts to add or continue a motion requirement for particular types of subpoenas or cases. It retains the motion requirement in (c)(3)—the existing provision regulating subpoenas seeking personal or confidential information about a victim—and adds new (c)(4) requiring a motion before a self-represented party may serve a subpoena to produce items. Otherwise, the new provision allows a represented party to serve a subpoena without a motion, unless a motion is required by local rule or court order. The committee note explains that protective orders and other requirements can be adequate to control potential abuse of the subpoena process by the parties, but that individual courts may choose to adopt or continue broader motion requirements by local rule or court order.

- *Proceeding Ex Parte*

New (c)(2)(E) and (F) respond to concerns raised by some courts' decisions that the existing text of the rule mandates disclosure of every motion and subpoena to all parties. The Advisory Committee concluded that both the defense and the government had advanced persuasive reasons for proceeding ex parte under Rule 17(c), and that permitting ex parte motions and production had been working well in many districts.

New (E) provides that upon a showing of good cause a court must permit a party to file ex parte a motion for a subpoena. The proposed amendment uses mandatory language to avoid any possibility that an individual judge, or a district by local rule, could prohibit ex parte motions. New (c)(2)(F) also states that a party has no duty to inform the other parties about a subpoena when no motion is required, absent an order to do so.

- *Place of Production*

New (c)(5) clarifies the circumstances that require a subpoena recipient to produce the designated items to the court rather than to the requesting party. This is yet another issue that has divided courts interpreting the rule's existing text in (c)(1). Some courts read the current rule as requiring recipients of all subpoenas to produce the designated items to the court. Others regularly permit returns directly to the party seeking the items. The revised text again adopts a default rule, mandating returns to the court, unless the court orders otherwise, if the requesting party is self-represented. For other subpoenas, the new text makes returns to a party's counsel discretionary, allowing courts to determine when they wish to receive and review subpoenaed materials before receipt by counsel.

- *Preserving Disclosure Policies in Rule 16*

New (c)(6) resolves another dispute about the meaning of the rule's existing text, which some courts read as requiring that each party have access to any items that a subpoena recipient produces to another party, regardless of whether they would be subject to discovery under Rule 16. By providing that disclosure to an opposing party is required only if the item is discoverable under the rules, the amendment avoids undermining the careful calibration of discovery and disclosure in Rule 16 and other discovery rules.

- *Clarifying Which Provisions Apply to Different Proceedings*

To improve clarity and avoid confusion, the amendments clearly indicate what types of subpoenas are governed by each provision.

  - Subdivision (a) applies to all subpoenas: those to testify and those to produce material, and to grand jury and non-grand-jury subpoenas.
  - Subdivision (b) applies only to subpoenas to testify.
  - Subdivision (c) applies only to subpoenas to produce designated items. Within (c), paragraphs (2) through (6) apply only to non-grand-jury subpoenas.
  - Subdivisions (d) and (e) regarding service apply to both subpoenas for testimony and subpoenas to produce designated items.

In sum, the published amendments, endorsed unanimously by all of the judicial, prosecution, and defense members of the Advisory Committee and unanimously approved for publication by the Standing Committee, reflect a series of compromises on major issues:

- Scope of proceedings: NACDL argued subpoenas should be available for any evidentiary hearing, while victims' advocates wanted subpoenas to be limited to trials. The published rule took a middle position, listing certain hearings in (c)(2)(A) and requiring judicial permission for others.

• Evidentiary standard: Defense advocates called for the "relevant and material" standard, but victims' advocates sought retention of the *Nixon* standard or stronger protections. The published standard of "likely to be admissible" was chosen as middle ground.

• Motion and order. An early subcommittee draft required a motion and order for any subpoena seeking personal or confidential information about anyone, but that requirement was strongly opposed by judges and practitioners alike during the November 2024 Advisory Committee meeting. As a compromise, the published amendment added to the motion and order requirement for victim information a motion requirement for all subpoenas sought by self-represented defendants and restrictions for other subpoenas (e.g., the requirement of advance judicial authorization to proceed ex parte).

• Ex parte procedures: Defense advocates strongly supported the availability of ex parte applications to protect trial strategy, work product, and client confidences, while victims' advocates argued ex parte proceedings violate the Crime Victims' Rights Act (CVRA) right to consult with the prosecution and would enable abuse. The published amendment's middle position permitted ex parte applications but allowed a local rule or court order to require disclosure that one party is seeking or has served the subpoena.

• Direct production to counsel: Defense advocates argued judges should not have the option of ordering returns to the court, while victims' advocates strongly opposed direct returns to defense counsel, citing the potential harm to victims. The published amendment provided a default of production to the court for self-represented defendants, and allowed direct production to counsel unless otherwise ordered by the court or by local rule.

2. The Public Comments

The public comments included renewed advocacy for stronger positions on several of these contested issues. The thirteen comments[3] on Rule 17 reveal a division between supporters of clarifying and expanding Rule 17 subpoenas, and victims' rights advocates who strongly oppose expansion. Eight commenters—including individuals, defense organizations, the Federal Magistrate Judges Association, and the Judicial Conference Committee on Criminal Law—supported the amendments with varying degrees of enthusiasm and a variety of suggested modifications. Several urge modifications to the proposed amendments that would provide greater access to information in the hands of third parties. Three commenters—Professor Cassell, Professor Garvin, and Volare's representative Ms. Eliason—strongly opposed the changes, based on victims' rights concerns. They urged rejection of the published modifications that would further restrict access to third-party information. Finally, two comments took no position on the amendment as a whole but raised particular questions or issues. A brief summary of each comment appears at the end of this memorandum.

[3] This count includes Professor Garvin's testimony, but not Comment USC-RULES-CR-2025-0003-001 by International Attestations, LLC, which mentions Rule 17 only in a footnote listing all of the published rules and merely states "they are worthy of comment as well." It took no position on Rule 17 and made no other comments or suggestions concerning it.

3. The Advisory Committee's Recommendations

The Advisory Committee concluded that the compromises reflected in the published amendments largely struck the right balance between the competing positions and considerations. It declined to revise the fundamental elements of the published amendment, endorsing these features of the published rule:

- the expansion of the scope of proceedings for which subpoenas may be sought including hearings on detention, suppression, sentencing, and revocation and, with the court's permission, other evidentiary hearings,

- the relaxation of the *Nixon* standard, including the evidentiary standard of "likely to be admissible," and

- the explicit authorization of ex parte applications upon a showing of good cause.

The Advisory Committee also reaffirmed its support for allowing direct production of material produced to counsel. However, as noted below, it recommends adding to the text a presumption of production to the court when a subpoena seeks personal or confidential information about a victim.

The discussion below begins with the Advisory Committee's recommended changes to the published text, then its recommended changes to the note, and ends with issues raised by the commenters that the Advisory Committee concluded raised no changes.

a. Recommended changes in the text

The Advisory Committee recommends the following revisions to the published text, none of which in its view require republication.

- **17(a)** – technical correction making explicit that a subpoena can require testimony, production, or both testimony and production

- **17(c)(3)(A)** – clarifying that a motion and order for a subpoena seeking personal or confidential information about a victim from a third party is required when the third party receiving the subpoena is a victim

- **17(c)(5)** – addition of presumptive requirement of return to the court for subpoenas requiring the production of personal and confidential information about a victim

(i) 17(a) (subpoena contents)

Rule 17(a) carries forward the current requirements for the contents of subpoenas, including the proceeding's title and court's seal, etc. The text as published had been revised to clarify that it applies to both subpoenas for producing items as well as those for testimony. However, as NACDL noted in its submitted comments, the published language did not appear to include subpoenas to testify <u>and</u> produce items at the same hearing. USC-RULES-CR-2025-0003-

0015 at 2. As published, (a) provides that a subpoena must "require the recipient to attend and testify or produce designated items at a specified time and place."

The Advisory Committee agreed that the text of (a) should be clarified to recognize that subpoenas may require testimony, production, or both. Accordingly, it recommends the following (style-approved) revision of the first sentence of (a):

> A subpoena must state the court's name and the proceeding's title, include the court's seal, and require that the recipient ~~to attend and testify or produce designated items~~— at a specified time and place~~—~~—attend and testify, produce designated items, or do both.

No change in the committee note is needed for this correction of the text, since the new language and the published committee note already reflect the current understanding of Rule 17(a), which the Advisory Committee intended to carry forward. For the same reason, republication is not required.

(ii) 17(c)(3)(A) (victim information subpoenas)

Rule 17(c)(3)(A) allows "a non-grand jury subpoena requiring the production of personal or confidential information about a victim to be served on a third party only by court order upon motion."

Professor Cassell argued that there was an error in the 2008 revision of Rule 17(c)(3), limiting the requirement of a motion and order to subpoenas to be served on a third party, and not when service is to be made directly on the victim. Cassell Revised Statement, USC-RULES-CR-2025-0003-0016, at 11-12 (hereinafter Cassell Revised Statement). He argued that the proposed revisions would allow subpoenas to victims for a wide variety of personal or confidential information before trial and that although one might argue that the victim is a "third party" to the case, the rule seems to distinguish between the victim and the third party from whom victim information is being sought. *Id.* The Advisory Committee's research identified two cases which supported Professor Cassell's concern, concluding that victims are not "third parties" under current Rule 17(c)(3).

Given the confusion on this point, the Advisory Committee approved this clarification in the text:

> (A) *Motion and Order Required.* After a complaint, indictment, or information is filed, a non-grand-jury subpoena requiring the production of personal or confidential information about a victim may be served on a third party, including a victim, only by court order upon motion.

The proposed note explaining this change states (lines 437-444):

> The amendment also responds to a few decisions that had interpreted the rule as applicable only to subpoenas for personal or confidential information served on third parties other than a victim. The amendment adds the words "including a

> victim" to clarify that the requirement of a motion and court order before a subpoena seeking personal or confidential information about a victim may be served on a third party applies when that third party is a victim.

There was no opposition to clarifying in the text that the term "third-party" includes victims. Victims are not parties in criminal cases. In criminal cases they are generally considered "third-parties" like nonparty media representatives, nonparty subpoena recipients, nonparty asset owners, etc. If the disclosure of a victim's personal and confidential information is so sensitive that it warrants judicial prescreening of a subpoena to allow the judge to reject or narrow the scope of the request and put in place an appropriate protective order to safeguard the information, then judges should exercise the same oversight for *any* such subpoena, whether the recipient is a third party who is not a victim, a victim other than the victim whose information is sought, or the victim whose information is sought.

Because the Advisory Committee viewed the revision as making explicit the intention of the 2008 amendments and resolving an ambiguity that came to light during the public comment period, it did not deem the change to be "substantial," and it concluded additional public input was not needed. Accordingly, it concluded the revision does not require republication.

(iii) 17(c)(5) (place of production)

As published, **Rule 17(c)(5)** stated that "A non-grand-jury subpoena requested by a represented party may require the recipient to produce the designated items to that party's counsel." For subpoenas sought by a self-represented party, however, the amendment provided that the subpoena must require production to the court unless the court orders otherwise. The published committee note explained:

> … [(c)(5)] clarifies when a subpoena must order the recipient to produce designated items to the court, and when it need not do so. Again, the text in former (c)(1) stating that the "court may direct the witness to produce the designated items in court before trial or before they are to be offered into evidence" produced conflicting decisions on this point. Some courts read the rule as always requiring returns to the court, others that it required returns to the court whenever a subpoena ordered production before trial, and still others that it permitted returns directly to the requesting party unless the court ordered items produced to it. The Committee concluded that judges should have discretion to determine where (and how) production should take place. To the extent the prior text of the rule was leading to unnecessary limits on the discretion of the court to allow returns to the requesting party, it created needless burdens for courts and required revision.
>
> Accordingly, subsection (c)(5) sets two defaults, both subject to departure by court order. First, it provides that a subpoena requested by a self-represented party must require the recipient to produce the designated items to the court. Judicial oversight at both the issuance and production stages is added assurance that parties without legal training or ethical responsibilities will not deliberately or unintentionally access inappropriate or non-compliant information that a judge

> would be able to intercept if the recipient were required to provide the items to the court. The second default in (5) is for all other non-grand-jury subpoenas, namely those sought by represented parties. It provides the subpoena may require the recipient to produce the designated items to that party's counsel, reflecting present practice in many districts. The rule places no restrictions on the court's discretion to vary from these default rules. For example, when a subpoena is likely to produce private or privileged information, it is common practice for courts to order in camera review before disclosure to anyone.

This part of the published amendment generated widely divergent comments. Defense commenters expressed strong support for this provision for the reasons stated in the published committee note, but NACDL claimed that the statement in the committee note at lines 333-337 erroneously limited what it read as a more sweeping change by the text. USC-RULES-CR-2005-0003-0015 at 4 n. 3. The statement in the published Note read: "the court has discretion ... to order that the recipient produce the items to the court instead of directly to the requesting party's counsel (*see* (c)(5))." NACDL argued that "under proposed (c)(5) such judicial discretion applies *only* to subpoenas issued by *pro se* defendants." *Id.* (emphasis added.) The court's discretion, in NACDL's reading of the text, was limited to only subpoenas sought by self-represented defendants, "where greater judicial control is required to compensate for the lack of professional responsibility and judgment that counsel representation ensures." *Id.* Accordingly, NACDL argued, the court has no discretion to restrict the location of production when subpoenas are sought by represented parties.

In contrast, victim advocates expressed strong opposition to any direct production to defense counsel, contending that (c)(5) would strip away another critical safeguard for victims. Professor Cassell stated that direct production would "cut[] the district court out of its statutorily required role of protecting crime victims" as required by 18 U.S.C. § 3771(b)(1). Cassell Revised Statement at 15. Moreover, since the proposed rule permits ex parte motions, prosecutors may also be prevented from discharging their statutory duties to use their "best efforts" to see crime victims are notified of and accorded their rights under the CVRA. Id. at 15-16. Ms. Eliason expressed alarm that direct production would "make it easier for [victims'] intimate information to be directly accessed by defendants, exacerbating victims' retraumatization, revictimization, and safety risks." Eliason Revised Statement, USC-RULES-CR-2025-0003-0017, at 8 (hereinafter Eliason Revised Statement). She described how the current process of return to the court protects victims:

> … victims typically have at least the chance to seek protective orders from the court with respect to documents produced to defendants. These protective orders often redact portions of the documents to preserve victims' privacy, or tailor the manner in which defendants access the personal information altogether. A staff attorney at Volare who regularly assists victims with redactions describes it as a "time-consuming process." Each subpoena request can entail a series of proposed redactions back and forth between the victim, the defendant, and the court, often requiring specific data sharing platforms like Box that a victim may be unfamiliar with using. …
>
> But the amendments to Rule 17 will enable defendants and defense counsel's access to significantly more sensitive and private information from victims directly—such as reproductive health, mental health, and citizenship records—because Rule 17 will no

> longer contemplate the court's involvement as both the court's responsibility under the Crime Victims' Rights Act (CVRA) and as a safeguard in ensuring that victims are afforded their rights. Because documents will be delivered directly to defense counsel, the court, victims, and their counsel will not have the opportunity to redact, contest, or remove non-responsive portions of records.

Id. (footnotes omitted). Ms. Eliason emphasized that "[w]ithout review of records turned over to defense, the court is no longer able to strike nonresponsive requests, implement redactions, and create guardrails around defendants' access to sensitive information *before* defense has access to the information. The amended rule alienates judges from their rightful duty to ensure victims are afforded their rights." *Id.* at 9. Moreover, she expressed concern that production without judicial oversight can create the risk of serious harm to victims. For example, without redaction, subpoenaed material might provide information about the times and locations of medical or therapy sessions, creating an opportunity for further crimes against victims. *Id.* at 8-9.

Noting that NACDL's submission identified an ambiguity in the published rule and committee note,[4] the Advisory Committee favored clarifying the rule to remove this ambiguity. It also concluded that the text should clearly state a default requiring production of personal and confidential information about a victim to the court — rather than directly to counsel — unless the court orders otherwise. The Advisory Committee understood that production to the court in this situation was common practice.

The Advisory Committee approved the following revised text for (c)(5). For clarity, the clean version appears below:

> **(5)** ***Non-Grand-Jury Subpoena--Place to Produce the Designated Items.*** Unless the court orders otherwise, a non-grand-jury subpoena:
>
> (A) must require the recipient to produce the designated items to the court if the subpoena:
>
> (i) is requested by a self-represented party; or
>
> (ii) requires the production of personal or confidential information about a victim; and
>
> (B) may require the recipient to produce the designated items to that the requesting party's counsel if the subpoena:
>
> (i) is requested by a represented party; and

[4] NACDL's interpretation of the rule was not unreasonable—though it is not consistent with the committee note nor, we believe, with the intent of the Advisory Committee. In contrast to the first sentence of (c)(5), which references the court's ability to vary the default rule regarding self-represented defendants, the remainder of (c)(5) states only that "[a] non-grand-jury subpoena requested by a represented party *may require* the recipient to produce the designated items to that party's counsel." (Emphasis added). This language might be read as granting permission to the *party seeking the subpoena* to determine whether to require production directly to counsel. If (c)(5) is read together with (c)(2)(C), which allows subpoenas to be filed without a motion or order unless (c)(3) or (4) or a local order requires them, that interpretation becomes less reasonable, because those provisions recognize the court's discretion to require production to be made to the court to permit in camera review, either by an order in an individual case, or by local rule.

(ii) does not require the production of personal or confidential information about a victim.

The changes are shown on lines 111-132 of the redline version. The revision to the committee note approved to accompany this change explains (at lines 455-506):

> **Rule 17(c)(5)** is also new. It clarifies when a subpoena must order the recipient to produce designated items to the court, and when it need not do so. Again, the text in former (c)(1) stating that the "court may direct the witness to produce the designated items in court before trial or before they are to be offered into evidence" produced conflicting decisions on this point. Some courts read the rule as always requiring returns to the court, others that it required returns to the court whenever a subpoena ordered production before trial, and still others that it permitted returns directly to the requesting party unless the court ordered items produced to it. The Committee concluded that judges should have discretion to determine where (and how) production should take place. To the extent the prior text of the rule was leading to unnecessary limits on the discretion of the court to allow returns to the requesting party, it created needless burdens for courts and required revision.
>
> Accordingly, subsection (c)(5) sets ~~two~~ three defaults, ~~both~~ each subject to departure by court order.
>
> First, ~~it~~(5)(A)(i) provides that a subpoena requested by a self-represented party must require the recipient to produce the designated items to the court. Judicial oversight at both the issuance and production stages is added assurance that parties without legal training or ethical responsibilities will not deliberately or unintentionally access inappropriate or non-compliant information that a judge would be able to intercept if the recipient were required to provide the items to the court.
>
> The second default in (5) is for ~~all other~~ non-grand-jury subpoenas that require the production of personal or confidential information about a victim ~~namely those sought by represented parties~~. Paragraph (5)(A)(ii) provides that unless the court orders otherwise, such subpoenas must require the recipient of such subpoenas to produce the designated items to the court, not directly to counsel. Production to the court provides an opportunity for the court, before the information produced is disclosed to the requesting party, to review the information produced in camera, require redactions, restrict access, regulate retention, add other protective orders, or take other actions to protect the victim's dignity and privacy.
>
> The third default, in (5)(B), is that unless the court orders otherwise, ~~It provides the~~ a subpoena that is requested by a represented party and that does not require the production of personal or confidential information about a victim may require the recipient to produce the designated items to ~~that~~ the requesting party's counsel~~, reflecting~~. This default reflects present practice in many districts.
>
> The rule places no restrictions on the court's discretion to vary from these default rules. For example, when a subpoena is likely to produce private or privileged information, it is common practice for courts to order in camera review before disclosure to anyone.

The Advisory Committee concluded that the proposed revision would not require republication. It responds to public comments contending that the proposed amendment would have the unintended effect of bypassing a common procedure that has provided substantial protection to victims. The testimony and written comments provided an ample basis for the Advisory Committee to make its decision, and the Advisory Committee saw no need for further public comments. Moreover, the proposed revision received unanimous support from all members of the Advisory Committee, who did not see it as controversial.

b. Recommended changes in the notes

In addition to the note revisions discussed above, the Advisory Committee recommends revisions to the published committee notes to **17(c)(5)**, **17(c)(3)(B)** and **17(c)(2)(B)(ii)**.

(i) 17(c)(5)

An addition to the note on **17(c)(5)** is discussed in the next section, pages 19-22, in connection with comments seeking a change in the text.

(ii) 17(c)(3)(B)

Rule 17(c)(3)(B) requires notice to the victim before an order is entered allowing a subpoena for the victim's personal or confidential information. Current Rule 17(c)(3) requires a court order to subpoena this personal or confidential information, and states that absent "exceptional circumstances" the court must require giving notice to the victim before entering the order. The published amendment did not disturb this language, which was part of the original (c)(3) provision added to Rule 17 in 2008.

Both Ms. Eliason and Professor Cassell emphasized the link between ex parte motions and what they saw as a critical gap in the requirement that victims receive notice when a party seeks a subpoena requiring the production of personal or confidential information about a victim. Cassell Revised Statement at 16-25; Eliason Revised Statement at 11-14. Their principal concern was that the courts will find "exceptional circumstances" and grant ex parte orders for personal or confidential information without giving the victims notice to permit them to move to quash the subpoena or otherwise object. Indeed, in that situation, the victim might be unaware that their confidential information had been provided by a third party.

Professor Cassell and Ms. Eliason focused on the underlined language in the 2008 Committee Note to Rule 17(c):

> The amendment provides a mechanism for notifying the victim, and makes it clear that a victim may move to quash or modify the subpoena under Rule 17(c)(2)—or object by other means such as a letter—on the grounds that it is unreasonable or oppressive. The rule recognizes, however, that there may be exceptional circumstances in which this procedure may not be appropriate. <u>Such exceptional circumstances would include</u>, evidence that might be lost or destroyed if the subpoena were delayed or <u>a situation where the defense</u>

> would be unfairly prejudiced by premature disclosure of a sensitive defense strategy. The Committee leaves to the judgment of the court a determination as to whether the judge will permit the question whether such exceptional circumstances exist to be decided ex parte and authorize service of the third-party subpoena without notice to anyone.

In their view, it will nearly always be possible for the defense seeking a subpoena for victim information to argue that defense strategy would be prematurely disclosed. Moreover, they urged, that problem is compounded by the last sentence, which permits the court to make that judgment ex parte "without notice to anyone." Cassell Revised Statement at 23-25; Eliason Revised Statement at 11-12. This, they argued, violates the courts' duty under the CVRA to ensure that victims are treated with fairness and with respect for their dignity and privacy. *See* 18 U.S.C. § 3771(a)(8). And notice to the victim of the fact a subpoena is being sought is critical, because it is the necessary predicate to the victim's ability to contest the subpoena or seek its modification.

Responding to this concern, the Advisory Committee agreed to add language to the published committee note accompanying the statutory duty of notice in (c)(3). Specifically, the addition draws attention to the distinction between disclosing a detailed explanation of reasons for requesting an ex parte subpoena, which in some cases may prematurely disclose trial strategy, and notifying the victim that a party is seeking his or her information from a particular subpoena recipient, which would not ordinarily reveal confidential strategy. Becoming aware that a subpoena is being sought is not the same as being handed a roadmap of how a party will use the material. The suggested addition to the published note is shown in red, below:

> **Rule 17(c)(3)** retains the requirement in former (c)(3) of a motion and court order for a subpoena seeking personal and confidential information about a victim, now in subparagraph (A), as well as the requirement of prior notice to a victim absent exceptional circumstances, now in subparagraph (B). Both requirements were added to the Rule in 2008 to implement the Crime Victim's Rights Act and are unchanged, except for the addition of style revisions, including adding the term "non-grand-jury" to (A).
>
> The amendments also add a provision permitting ex parte applications for good cause, but it is important to distinguish that good cause requirement from the "exceptional circumstances" concept in (c)(3). Exceptional circumstances under (c)(3) would include that evidence might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy.[5] It will be uncommon that a notice to a victim will meaningfully implicate the concern about disclosing defense strategy because, unlike subpoena applications under this Rule, a notice merely informs the victim of the request, not the reasons why the subpoena

[5] To make the note read more smoothly than the version approved by the Advisory Committee, Judge Mosman suggests the Standing Committee add the words "a showing" to the note. If approved by the Standing Committee, the sentence would read:

> Exceptional circumstances under (c)(3) would include a showing that evidence might be lost or destroyed if the subpoena were delayed or a situation where the defense would be unfairly prejudiced by premature disclosure of a sensitive defense strategy.

is sought. In contrast, the showing of "good cause" to file a motion ex parte would require an explanation of the reason.

In the Advisory Committee's view, this addition to the note would not require republication. The first step in the republication analysis is whether the change is substantial. The limited role of committee notes supports the conclusion that republication is not required. Committee notes are not permitted to change, restrict, or expand the rule stated in the text. Given the limited role played by committee notes, inclusion of the new language in the committee note—not the text of the rule—provides support for the view that the change is not substantial.

Moreover, the proposed addition to the note is consistent with the language in the 2008 committee note for (c)(3). It carries forward language explaining that both loss of evidence *and* unfair prejudice by premature disclosure of a sensitive defense strategy may constitute exceptional circumstances, while providing an explanation why disclosure to the victim that a subpoena is being sought will seldom result in the latter.

(iii) 17(c)(2)(B)(iii)

Finally, the Advisory Committee recommends a revision in the note accompanying **17(c)(2)(B)(ii)** for clarity. Subparagraph (c)(2)(B) articulates the modified version of the test announced by the Supreme Court in *Nixon*. At lines 326-28 the committee note explains that the published rule included no separate reference to relevance "because it is not likely that information would be admissible unless it was relevant." The Advisory Committee concluded that this sentence was wordy and confusing, and it recommends that it be revised to read "There is no separate reference to "relevance" in **(c)(2)(B)** because information would not be admissible unless it were relevant."

The revised language recognizes that relevance is a foundational requirement for admissibility. This clarification is especially helpful in light of the concerns expressed by some commentators that the "likely to be admissible" standard was a poor fit for proceedings like sentencing and suppression hearings, where the Federal Rules of Evidence do not apply. As members noted at the meeting, even in proceedings where the FRE are not applicable, courts still determine admissibility applying the basic standards of relevance, as well as authenticity, and reliability. Privileges apply as well under FRE 1101(c).

c. Recommendations for no changes

(i) Victim concerns about expanding the scope of the proceedings

Victim advocates expressed strong opposition to authorizing the availability of subpoenas to proceedings other than trial, arguing that this would have a very serious detrimental effect on victims.

Professor Paul Cassell argued that because 95% of cases are currently resolved by pleas, expanding subpoenas to non-trial settings would expand "the possible situations where victims could be subpoenaed by something like 20-fold—i.e., around 2000%." Cassell Revised Statement at 7. He argued, for example, that allowing defense subpoenas for detention hearings in a violent crime case would permit routine subpoenas for all of the victim's medical and psychological records in an effort to undercut the government's arguments regarding the level of danger the defendant presents. *Id.* at 7. He questioned the Advisory Committee's assumption that detention hearings happen so swiftly such subpoenas will be rare. *Id.* He noted that the Advisory Committee's "consensus" on this point reflected only the views of judges, prosecutors, and defense counsel—but not victim advocates. Indeed, Cassell suggests that defense attorneys in a violent crime case would ordinarily move to subpoena the victim's medical and treatment records. He expressed doubt that the other requirements (particularity, reason to believe that the recipient possesses the material sought, and not reasonably available from another source) would be difficult to overcome or provide much of a safeguard. *Id.* at 8-9. Similarly, he argued that at sentencing hearings defense counsel could use subpoenas as the functional equivalent of cross-examining victims by examining their confidential records. He emphasized that victims are not currently subject to cross-examination, so this would be a significant change, greatly increasing the victim's trauma. *Id.* at 9.

In her testimony, Professor Meg Garvin also expressed concern that "all parts of Rule 17 affect victims," and that the combined effect of the amendments would increase the number of subpoenas for victim information, and that the expansion to proceedings other than trial would permit what she called "persistent subpoenas" for this information. Jan. 22, 2026 Tr. of Hr'gs on Prop. Amends. to Rule 17, at 27-28. She stressed that "the lower practical barriers to repeated demands for information are going to expose victims" to trauma, as well as the difficulty of navigating the unfamiliar criminal justice system at an earlier time in the proceedings "where relevance is more up in the air and the rules of evidence are not necessarily in play at all or are in play in a restricted fashion." *Id.* at 28-29. She expressed special concern about fishing expeditions, especially in sexual assault cases. *Id.* at 29. Similarly, Ms. Eliason expressed concern that the revised standard of admissibility is ill suited to non-trial proceedings in which the Rules of Evidence are not applicable or the applicability of evidentiary rules is "illusory." Eliason Revised Statement at 7. She urged that the "likely to be admissible standard offers "almost no shelter at all" for victims and expressed concern that judges might become more likely to grant subpoenas for efficiency's sake because of the workload generated by the increased number of subpoenas. *Id.*

The Advisory Committee declined to revise Rule 17(c)(2)(A) to restrict the scope of application to trial alone or to edit the list of proceedings where subpoenas are presumptively available. Although the concerns raised by the victim advocates are substantial, subpoenas are already available for some (or all) of these pretrial proceedings as well as others in a significant number of districts, and there has been no indication that the serious consequences Professor Cassell and other victim advocates fear are occurring now in those districts.

In making this decision, the Advisory Committee reconfirmed its understanding that subpoenas are now in use for these purposes in many districts. It reviewed research that identified many districts in which courts have recognized Rule 17 subpoenas proceedings for the proceedings identified Rule 17(c)(2)(A), as well as two circuits recognizing that subpoenas may be permitted for sentencing.[6] It noted that a leading treatise states that Rule 17 subpoenas are not limited to trials and may be issued for purposes including a deposition or a determination of an issue of fact raised by a pretrial motion.[7] A member confirmed that in her district, they are able to subpoena documents and materials for court proceedings other than trial, including detention hearings, suppression hearings, and violation hearings.

Making subpoenas available for these proceedings facilitates the rights provided in other rules. The rules for the pretrial proceedings identified in the proposed amendment already give the defendant a right to present evidence, or assume that the judge will allow the defendant to do so. Rule 17 provides the only avenue for obtaining evidence from third parties for use in those proceedings. Rule 46 requires compliance with the Bail Reform Act, 18 U.S.C. § 3142(f), which provides that at the detention hearing, a person "has the right . . . to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise." A defendant may need to testify or introduce evidence at a suppression hearing. The government too may occasionally turn to Rule 17 to obtain evidence from third parties for a pretrial hearing, for example, to rebut a defendant's factual allegation. As for post-trial hearings, Rule 32 does not grant any right to introduce evidence at the sentencing hearing, but Rule 32(i)(2) states that "[T]he court may permit the parties to introduce evidence on the objections," and Rule 32(i)(4)(ii) states the court must "permit the defendant to speak or present any information to mitigate the sentence." At revocation hearings, however, Rule 32.1(b)(2)(C) expressly includes an entitlement of the person to "present evidence[] and question any adverse witness[.]"

The victim advocates did not claim that the harms they described are occurring in the districts where such subpoenas are already permitted. When asked specifically at the January 22 hearing about problems in districts in which subpoenas are already permitted in proceedings other than trial, Professor Garvin noted she always sought to limit Rule 17 subpoenas to trials (though she was not always successful), and she acknowledged that when subpoenas were authorized for other hearings, she had been able to litigate issues such as relevance and particularity. Jan. 22, 2026 Tr. of Hr'gs on Prop. Amends. to Rule 17, at 33-35. Professor Cassell and Ms. Eliason did not directly address that issue. Similarly, at the November 2024 Committee meeting in New York, the speakers who opposed the expansion of Rule 17 did not present information or argue that the problems they anticipated were actually occurring in districts with expanded subpoena practice.[8]

The published rule also includes multiple options for a court to respond to any issues it may encounter with subpoenas at non-trial proceedings. It expressly states that a court is free to

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[6] *United States v. Winner*, 641 F.2d 825, 833 (10th Cir. 1981); *United States v. Krane*, 625 F.3d 568, 574 (9th Cir. 2010).

[7] 2 WRIGHT, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL 2d § 272 (4th ed.) states (footnotes omitted):

> Rule 17 is not limited to subpoenas for the trial. A subpoena may be issued for a preliminary examination, a grand jury investigation, a deposition, for determination of an issue of fact raised by a pre-trial motion, or for post-trial motions.

[8] Deputy Assistant Attorney General Lisa Miller did provide examples of cases in which information disclosed to the defendant by the government during discovery under Rule 16 had been used by the defendant to harm and intimidate third parties, Minutes of Criminal Rules Advisory Committee, November 6-7, 2024, at 32, but those examples did not involve Rule 17 subpoenas.

regulate subpoenas, for example, by requiring a motion and order of the court before service, see Rule17(c)(2)(C), and/or by requiring that items required to be produced by a subpoena, a category of subpoenas, or all subpoenas be returned to the court and not directly to the requesting party, see Rule 17(c)(5). In addition, judges may use protective orders as they wish. In other words, a court can tailor the scope of its oversight to any concerns that may arise from subpoena practice in its individual district. On the use of subpoenas for non-trial proceedings, as well as several other issues, the proposed rule recognizes the need to provide district judges with flexibility and trusts them to exercise it wisely.

Although the victim advocates sought to narrow the scope of the rule to trials, NACDL's comment requested that the rule should be broadened to presumptively permit a subpoena for *any* evidentiary hearing. USC-RULES-CR-2025-0003-0015, at 3-4. The Subcommittee did not find this persuasive. The rule provides the necessary discretion to allow subpoenas for other evidentiary hearings when warranted. The amendment assumes that not only will judges exercise their discretion to provide more oversight should parties misuse subpoenas for proceedings other than trial if needed, it trusts judges to be gatekeepers for the proper use of subpoenas at evidentiary hearings other than those enumerated.

(ii) The revised Nixon standard

Rule 17(c)(2)(B) governs the standard for the contents of subpoenas and includes the Advisory Committee's revision of the strict *Nixon* standard:

(B) *Required Content and Limitations.* The subpoena must describe each designated item with reasonable particularity and seek only items that:
  (i) are likely to be possessed by the subpoena's recipient;
  (ii) are not reasonably available to the party from another source; and
  (iii) are, or contain information that is, likely to be admissible as evidence in the designated proceeding.

Multiple comments urged the Advisory Committee to revise this standard. Defense commentators renewed their support for the more generous "relevant and material" standard, and the victim advocates urged a return to the *Nixon* standard.

The comments from the New York City Bar's White Collar Committee, the New York County Lawyers Association's Federal Courts Committee, NACDL, and individual commenter Morgan Noel all expressed support for the broader standard of "relevant and material." *See* USC-RULES-CR-2025-0003-0013 (New York City Bar Association, White Collar Crime Committee); USC-RULES-CR-2025-0003-0015 (NACDL); USC-RULES-CR-2025-0003-0011 (New York County Lawyers Association (NYCLA) Federal Courts Committee); USC-RULES-CR-2025-0003-0005 (Morgan Noel).

Defense witnesses at both of the Advisory Committee's meetings in Phoenix and New York argued that in many districts the *Nixon* standard was applied so strictly that it was impossible, as a practical matter, to obtain pretrial subpoenas. In contrast, they stated that the more relaxed standards worked well in other districts. Despite their strong opposition to this change, the victim advocates provided no information about increased problems in those districts with more relaxed standards, and similarly the speakers at the New York Advisory Committee meeting in November 2024 who opposed the expansion of Rule 17 did not present information or argue that the problems they anticipated were already occurring in districts with expanded subpoena practice. Indeed, in response to Judge Nguyen's question whether the Department of Justice thought there was a greater risk to victims and witnesses in districts that interpret *Nixon* more permissively compared to districts that have no subpoena practice or interpret *Nixon* very strictly, Deputy Assistant Attorney General Lisa Miller "said that she had not noted a trend," and "Mr. Randall said that he also did not have a sense of current abuses." Minutes of Criminal Rules Advisory Committee, November 6-7, 2024, at 34.

On this point, the only new element in the post-publication statements and testimony by the victim advocates is the argument that this change to the *Nixon* standard would operate in tandem with the other changes discussed, and thus cumulatively have a serious impact on victims. Professor Cassell recognized that "[t]he Advisory Committee appears to have believed the standard was, de facto, the operating rule in some districts[.]" Cassell Revised Statement at 15. But he responded that "the existing rule—and the incorporated *Nixon* standard—was tethered to trials. By specifically expanding the rule to many other proceedings, without the same evidentiary restrictions associated with trial (e.g., detention and sentencing hearings), the proposed rule clearly begins to resemble an anything-goes approach." *Id.* As noted above, the Subcommittee recommends no change in the availability of subpoenas for those proceedings.

The Advisory Committee recommends no changes in 17(c)(2)(B) as published. It concluded that the issues raised in the comments had been carefully considered during the development of the published rule, which reflects a compromise between the competing positions. The districts that already permit the use of subpoenas under a relaxed *Nixon* standard and those that allow subpoenas for purposes other than trial do not appear to have experienced the serious consequences feared by the victim advocates.

(iii) Subpoenas for personal or confidential information of persons other than victims

The Advisory Committee recommends no change in the text of **Rule 17(c)(2)(C)** as published, but it does recommend an addition to the committee note for 17(c)(5), as noted above. Rule 17(c)(2)(C) provides that—with the exception of subpoenas seeking personal or confidential information about victims and subpoenas sought by self-represented defendants—no motion and order are required before service unless otherwise required by a local rule or court order. During the consideration of the amendment, both defense lawyers and judges expressed serious concerns about the burdens of filing and adjudicating motions for subpoenas, burdens that would increase substantially if motions and orders were required for additional categories of subpoenas. Because this provision mediated the workload of both counsel and the courts and expressly left discretion to require motions for additional subpoenas through local rules or other orders, this provision received strong support in the Advisory Committee.

But one commenter, Mr. Wroblewski, argued that the amendments should be revised to require a motion and court order whenever a subpoena seeks personal or confidential about anyone. USC-RULES-CR-2025-0003-0003. In <u>Court Review Should Be Required Before Our Personal</u>

Information is Subpoenaed, a Substack posting submitted as part of his comment, he expressed great concern about one aspect of the proposal: that except for subpoenas seeking personal or confidential information about victims, it generally authorizes prosecutors and defense attorneys to prepare and serve a subpoena "without any motion and thus without any review by a court." He noted that when personal or confidential information about a person other than a victim is sought, the subpoena can be issued without any notice to the person whose information is being sought. He argued this is troubling for two reasons. First, the rule would provide no protection for personal privacy and the "unconstitutional use of subpoenas." And second, the amendment creates an honor system, in which interested parties determine whether a subpoena they seek meets the standards set by the amended rule.

Mr. Wroblewski's argument was policy based (though he added a constitutional dimension discussed below). A version of this argument that all subpoenas seeking personal or confidential information should require a motion and order had been initially persuasive to the subcommittee when it first drafted a possible amendment that provided more judicial oversight of subpoenas and protection for individual privacy interests.[9] But judges and practitioners alike expressed strong views against requiring motions for *all* subpoenas seeking such protected information. At that point, the Advisory Committee understood that a proposal requiring motions and a court order for all subpoenas seeking protected information would generate substantial opposition. Accordingly, it moved forward with a compromise proposal that required motions, a court order, and notice for subpoenas seeking personal and confidential information about victims, and it added a requirement of advance judicial authorization to proceed ex parte as well as a motion for all subpoenas sought by self-represented defendants. This compromise received unanimous support in the subcommittee and the full Advisory Committee, and it was approved for publication by the Standing Committee. Thus Mr. Wrobleski's policy arguments were, in effect, rejected before publication as part of the compromises required to obtain full support for the amendments.

Mr. Wroblewski's post-publication submission supported his policy arguments with a constitutional argument based on *Carpenter v. United States*, 585 U.S. 296 (2018), which held that the Fourth Amendment required the government to seek a warrant to obtain cell site location information (CSLI) held by third parties.[10] But *Carpenter* did not hold that subpoenas in general are subject to the Fourth Amendment. To the contrary, the *Carpenter* Court described its decision as "a narrow one," 585 U.S. at 316. It emphasized the "detailed, encyclopedic, and effortlessly

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[9] The subcommittee's discussion draft, presented at the Advisory Committee's November 2024 meeting in New York, required a motion and order for *all* Rule 17(c) non-grand jury-subpoenas, and heighted procedures for protected information, which it defined to include not only personal or confidential information about a victim, but also "[the type of] information that [may/is likely to be] protected by [a privilege, confidentiality protection, or privacy protection under federal or state law]." *See* Discussion Draft of Rule 17, in Agenda Book for Advisory Committee on Criminal Rules, November 6-7, 2024 at 445-46, lines 21-29. The personal and confidential information Mr. Wroblewski seeks to protect would fall within that definition.

[10] In a passage cited by Mr. Wroblewski, the Court stated that it "has never held that the Government may subpoena third parties for records in which the suspect has a reasonable expectation of privacy." 585 U.S. at 317. Mr. Wroblewski contends that *Carpenter* thus established "both that subpoenas implicate the Fourth Amendment—*in some circumstances at least*—and that information held by third parties—*also in some circumstances*—is protected." USC-RULES-CR-2025-0003-0003 (emphasis added.)

compiled" nature of CSLI records, and the prevalence of cellphones, which could accord the government "near perfect surveillance" of an individual's movements. *Id.* at 309, 312. Accordingly, the Court ruled that, under the Fourth Amendment, the government must obtain a search warrant in order to access historical CSLI records. Thus subpoenas seeking CSLI—and perhaps other broad-scope digital information—raise special (and perhaps unique) privacy concerns, and the government may have to seek a warrant based on probable cause.

The Advisory Committee was not persuaded that *Carpenter* required revising the published amendment to mandate a motion and order for any subpoena seeking personal or confidential information about anyone. Few Rule 17 subpoenas will seek information that would be considered as "detailed and encyclopedic" as the CSLI records in that case. And it is unclear whether court's coercive power to enforce a subpoena is sufficient to constitute the state action necessary to bring the Fourth Amendment into play when a subpoena is sought by a criminal defendant. (If it is, that argument would seem to apply equally to parties in civil proceedings, who rely on the court's power to enforce subpoenas, which issue without requiring a motion or judicial review. *See* Fed. R. Civ. P. 45.)

In any event, under the published rule, any constitutional arguments based on *Carpenter* can be raised and adjudicated in particular cases by a motion to quash the subpoena under Rule 17(c)(2) (renumbered as 17(c)(7) in the published amendment). Additionally, a court concerned about potential use of subpoenas seeking personal and confidential information of persons who are not victims can, by local rule or court order, require a motion for any such subpoena, as many courts already do. The rule as published does not discourage or prevent a court from adopting the policy Mr. Wroblewski proposed.

Although the Advisory Committee did not recommend changes to the text, members did express concern about the wider availability of subpoenas seeking personal or confidential information about persons other than victims. Members emphasized that there had been no reported problems in districts where subpoenas are now available without a motion and order, and the published rule provides courts with multiple options to deal with any concerns, including local rules or orders that would require a motion and order in particular kinds of cases, or for subpoenas seeking particular kinds of material or information. On the other hand, the purpose of the amendments is to expand the availability of subpoenas in other districts, where subpoena practice has been limited or virtually nonexistent, and thus practice norms and expectations have not developed.

The Advisory Committee recognized that there were multiple options for providing an opportunity for more judicial oversight other than requiring a motion and order, such as requiring production to the court of all personal or confidential information, requiring the filing of a sealed notice when a subpoena sought personal or confidential information, an idea offered by Ms. Ralston, or adopting some states' practice of allowing the recipient to object in writing without a lawyer. But many members expressed their view that these options had not been adequately investigated or vetted, that it was not possible to predict which procedures would be most effective at protecting privacy, or which would be less burdensome to the courts and the parties, and that probably republication would be necessary if such a change to the text was adopted.

After substantial discussion, the Advisory Committee unanimously agreed that the best resolution of these concerns was to recommend no change in the text of Rule 17(c)(2)(C) and instead adopt a three-pronged approach: (1) adding a short statement to the committee note for (c)(5) about judicial oversight, (2) exploring other avenues to facilitate the development of best practices, and (3) working with the Federal Judicial Center to monitor the implementation of the amendments closely to identify any problems as well as the approaches that prove to be most effective.

First, the Advisory Committee unanimously recommends this addition to the committee note to **Rule 17(c)(5)**:

> And to provide greater judicial oversight—for example, for subpoenas requiring the production of personal or confidential information—the rule permits a court, by local rule or court order, to require the return of such information to chambers before disclosure to the requesting party.

Second, the Advisory Committee will pursue multiple avenues to facilitate best practices. This includes consideration of revisions to AO form 89B (Subpoena to Produce Documents, Information, or Objects in a Criminal Case), working with the Bench Book Committee on revisions addressing the expansion of subpoena authority, and assisting in the prompt development of local rules and orders.

Finally, the Advisory Committee will work with the Federal Judicial Center to develop mechanisms to monitor the practice under the amendments in order to identify any problems that arise and to identify the approaches—such as local rules and orders—that might be recommended as best practices.

(iv) Expanding the scope of the motion and order requirement for victim information

Writing on behalf of the Judicial Conference Committee on Criminal Law, Judge Edmond Chang suggested that **Rule 17(c)(3)(A)** be amended to require a motion and order when a subpoena has a "reasonable possibility" of requiring the production of personal or confidential information about a victim. USC-RULES-CR-2025-0003-0014 at 2. Judge Chang explained that this standard "will capture a broader set of subpoenas and expand victim protections." *Id.* His letter acknowledged that the Advisory Committee was not aware of any significant misapplication of the current language. *Id.* But because the Criminal Law Committee believed it likely that the proposed amendment would increase the number of subpoenas, his letter expressed concern about the risk that the current language would be read narrowly as requiring a motion and order only when the party seeking the subpoena "knows to a *certainty* that the subpoena will result in the production of a victim's personal or confidential information." *Id.* (emphasis in original). That, he wrote, would "inadequately protect[] victim privacy." *Id.*

The Advisory Committee recommends no revision of the published amendment. The suggested change rests on speculation that the current language of the rule will be read very narrowly by persons seeking subpoenas for personal or confidential victim information. The Advisory Committee had no way of assessing the likelihood this would occur. Additionally, the change would probably require publication to gather public comment. Judge Chang's statement the revision would "capture a broader set of subpoenas and expand victim protections" suggested that it may be seen as a significant change.

The Advisory Committee anticipates that its efforts to develop and facilitate best practices and the close monitoring it anticipates will allow it to determine whether any changes of this nature are needed.

(v) Requiring the government to give notice to victims

Writing on behalf of the Judicial Conference Committee on Criminal Law, Judge Edmond Chang suggested another change in **Rule 17(c)(3)(B),** specifying that the *government* must give notice to the victim when a subpoena seeks personal or confidential information about the victim. USC-RULES-CR-2025-0003-0014 at 3. His letter stated that this would "align the text's rule with actual practice." *Id.* Professor Cassell made a similar suggestion, proposing the addition of the following language to (c)(3):

> (C) Service of any subpoena on an unrepresented victim must be facilitated through counsel for the attorney for the government. Service of any subpoena on a represented victim must include notice to the attorney for the government.

Cassell Revised Statement at 36.

The Advisory Committee recommends no change in this provision as published, which retains the same language about notice that currently appears in (c)(3). Our research found that the change would not appear to "align" with practice in all districts. In *United States v. Ray*, 337 F.R.D. 561, 573-74 (S.D.N.Y. 2020), the court held:

> … [I]f the subpoena calls for personal or confidential information of a victim, the Court must require that the party requesting to serve the subpoena have given notice to the victim—and in ample time for the victim to move to quash or modify—before the subpoena is served. It is not sufficient to place the responsibility on the receiving party or just to demand reasonable efforts to provide notice.
> ….
>
> The party requesting authorization for the subpoena to be served also is responsible for ensuring that notice has been provided. That is the process under the Federal Rules of Civil Procedure, where the party serving the subpoena must provide notice. It also places responsibility where that responsibility must logically rest and with the person most interested in discharging that responsibility.

It seems unwise to assume that other districts do not follow the same practice (though of course federal prosecutors and Department of Justice victim/witness coordinators may also provide notice).

The proposal also fails to take account of the situation in which the defense is able to show good cause for an ex parte application for a subpoena seeking personal or confidential information about a victim, and although the court or the requesting party provides notice of the subpoena to the victim, the court orders that it need not be disclosed to the government. The suggestion that the government must give the victim notice assumes that the government itself will always learn of the subpoena request before it is issued. It is possible in some cases that the government would lack this awareness. Thus the Criminal Law Committee's suggestion appears to be in tension with the portion of the amendment authorizing ex parte applications for good cause.

Even if the amendment were modified or interpreted to require that the government always receive the information required for notice—that is, notice that a subpoena seeking the victim's personal and confidential information from X has been requested by the defense—the Criminal Law Committee's recommended change may not be warranted. As noted above, it is not clear that mandating the government always be the one to notify the victim is the universal practice, nor that relieving the court of all responsibility for determining who must notify the victim is the best policy. It may or may not be, but the Advisory Committee did not examine this issue when developing the amendment, nor has it solicited the views of judges, the Department of Justice or the defense bar about the wisdom of this change.

Accordingly, republication for public comment and additional Committee consideration would be desirable if the suggested language were to be added to Rule 17(c)(3)(B). The change to this key provision in Rule 17 could be substantial, and to date there has been no opportunity for public comment.

(vi) Ex parte subpoenas and gag orders

Professor Cassell argued that the ex parte provisions would facilitate "gag orders" barring the victim from consulting with the prosecutor. Cassell Revised Statement at 26-33. Focusing on subpoenas issued directly to a victim, Professor Cassell explained that for production to be "effectively ex parte, the recipient of the subpoena must be required not to notify the government." *Id.* at 27. He cited an unreported 2016 case from the District of Columbia Superior Court in which the court issued such a gag order, and states that he has been informed by victims' rights organizations that other such cases exist. *Id.* Professor Cassell contended that by preventing victims from conferring with prosecutors such gag orders would violate both the CVRA, 18 U.S.C. § 3771(a)(5), and the First Amendment.

The Advisory Committee recommends no change in Rule 17(c)(2)(E) as published. Authorizing ex parte applications—which are permitted in other contexts—does not provide a basis for a gag order restricting the speech of the recipient. The published amendment makes no change in the existing law concerning gag orders and prior restraints on speech, and it does not modify or affect the CVRA, 18 U.S.C. § 3771(a)(5), which gives victims "[t]he reasonable right to confer with the attorney for the Government in the case." It appears that in federal proceedings the only example of such an order came in the unreported D.C. Superior Court case noted above. (It is unclear whether the other orders reported to Professor Cassell by victim organizations were federal cases.)

(vii) Clarifying the phrase "personal or confidential"

NACDL expressed concern that the term "personal or confidential" has not been defined, leaving the motion and order requirement "open to abuse, to the detriment of defendants' due process rights and the legitimate exercise of the defense function." USC-RULES-CR-2025-0003-0015 at 4. Accordingly, it suggested that the committee note be amended "to clarify that 'personal or confidential,' as used in this provision, is to be narrowly construed." *Id.* NACDL proposed that "[i]t should be made clear, for example, that criminal history information, security camera footage in the hands of a third party, non-content telephone toll and usage records, and bank records of an alleged crime victim, for example, are not 'personal or confidential' within the meaning of this new rule." *Id.* at 4-5.

The Advisory Committee does not recommend this change. It would go far beyond issues the Advisory Committee considered, and it expresses views the subcommittee has not discussed. During the development of the published amendment, the Advisory Committee had concluded not to attempt to define the scope of the term "personal or confidential," noting no reports that the phrase "personal or confidential" had been interpreted improperly by courts since its addition in 2008, or that there had been any "abuse" of the motion and order requirement. In addition, early in the process the Advisory Committee heard testimony that trying to define categories of what is personal and confidential would require working through a very crowded field of federal, state, and local laws and regulations defining protections for various information.

(viii) Carve-outs to protect victims

The victim advocates contended if the published rule did move forward—despite their strong opposition—then two major carve-outs would be needed to limit the impact on victims. It is not clear where the proposed carve-outs would be located in the rule. The Advisory Committee does not support the proposed revisions.[11]

Professor Cassell and Ms. Eliason both urged that, if revised, Rule 17 should exclude violent crime and all sexual offenses (including trafficking cases), as well as domestic violence and stalking cases. Cassell Revised Statement at 37-38; Eliason Revised Statement at 16-17. They proposed a definition of violent crime for this purpose drawn largely from U.S.S.G. § 4B1.2(a). Cassell Revised Statement at 37-38 (suggesting modifications of § 4B1.2(a) and any comparable state law crimes prosecuted under the Assimilative Crimes Act); Eliason Revised Statement at 16-17 (suggesting in the alternative that the Advisory Committee could use the definition in 18 U.S.C. § 16).

[11] Professor Cassell also urged the Advisory Committee to consider "promulgating rules (or urging the enactment of statutes) that will assist in the appointment of legal counsel for crime victims who might otherwise be forced to litigate complicated privacy and other issues pro se." Cassell Revised Statement at 38. He included a proposed Rule 44.1 to recognize the court's discretionary authority to appoint counsel for a victim. *Id.* at 39.

Because this suggestion involves the need to promulgate a new rule, the proposal for the appointment of counsel fell outside the proposed amendments to Rule 17.

The victim advocates stressed that violent crime cases present special privacy-related concerns, as well as concerns for victim safety, and they do not present the same concerns as the white collar cases that appear to have motivated the Advisory Committee. They contended that it would be consistent with the Advisory Committee's incremental approach to tailor the proposed amendments to cases not arising from violent crimes.

The Advisory Committee did not adopt this proposed limitation, which would be a major departure from the design of the Federal Rules of Criminal Procedure, which apply to all federal criminal offenses, though providing some adjustments rules for petty offenses and misdemeanors. *See* Fed. R. Crim. P. 58.

In the alternative, Ms. Eliason urged that Rule 17 should expressly exclude cases from the District of Columbia "to prevent their application in the DC Court system." Eliason Revised Statement at 17. She described a local law passed in 2022 that requires judges in the D.C. Superior Court to (1) serve the victim with notice of the potential disclosure of confidential information from eight kinds of professionals (including physicians, mental health professionals, and sexual assault counselors/advocates) and (2) give the victim fourteen days to object and provide an explanation for why the disclosure is not in the interest of justice. *Id.* at 12. It also requires the court to consider the rights of crime victims under the CVRA in determining whether disclosure would be in the interest of justice. *Id.* at 13. Ms. Eliason urged that the amendments to Rule 17 would severely impair victims' ability to protect their rights in the District of Columbia, whose local rules generally mirror the Federal Rules of Criminal Procedure. *Id.* at 15. She explained that the D.C. Code provides that the Federal Rules of Criminal Procedure are the default in the District, and a process must be initiated to reject any amendments to the Federal Rules. *Id.*

It is unclear whether the law adopted in 2022 would remain applicable if the proposed amendments to Rule 17 go into effect. In the hearing, Ms. Eliason suggested that victim advocates would argue it would remain in effect. *See* Jan. 22, 2026 Tr. of Hr'gs on Prop. Amends. to Rule 17 at 18 (stating "[e]ven if Rule 17 in the District Superior Court gets amended to reflect the federal rules, we will have a District law that essentially our argument would be overrides the federal—or, sorry, the District's rule that reflects the federal rule").

The Advisory Committee also declined to add this proposed limitation, which would be a major departure from the design of the Federal Rules of Criminal Procedure, which apply in all districts. Their application to cases in the D.C. Superior Courts is governed by District of Columbia Code § 11-946, which states that "[t]he Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in Title 23) unless it prescribes and adopts rules which modify those Rules."). Thus the D.C. Code itself provides a procedure for reviving or preserving the protections afforded by the law that was adopted in 2022.

(ix) Information that is not subject to subpoena

Rule 17(h)—the last subsection of the Rule—governs information that is not subject to subpoena, and states that Rule 26.2 governs**.**

The New York City Bar Association's White Collar Crime Committee urged consideration of a revision to Rule 17(h) to address what it describes as an error that occurred in the 2002 restyling of the Rule, inadvertently extending the provision which had been based on the Jencks Act, 18 U.S.C. § 3500, and Rule 26.2 to the production of witness statements held by third parties. USC-RULES-CR-2025-0003-0013. NACDL also supported this proposal. USC-RULES-CR-2025-0003-0015 at 5. The Jencks Act and Rule 26.2 address only statements possessed by the government or the defense.

The White Collar Crime Committee noted that the 2002 restyling was not intended to effect any substantive change, but nonetheless courts have taken different positions on the question whether Rule 17(h) now bars subpoenas for witness statements held by third parties, rather than the government or the defense.

The Advisory Committee declined to make the proposed change to the rule as published. This issue was not among those raised by practitioners (and judges) during the Advisory Committee's sessions in Phoenix and New York, was not debated in the subcommittee and full Advisory Committee, and was not included in the package now under consideration. Because the provision is at least arguably significant and there has been no public input, its inclusion at this point would require republication of the entire amendment.

(x) Requirements for self-represented parties

Rule 17(c)(4) governs subpoenas sought by self-represented parties, requiring them to file a motion, make the showing required in (2)(D), and obtain an order before serving a subpoena. One commentor, Mitchell Berger, questioned why self-represented parties appear to be treated differently under the proposed amended Rule 17. USC-RULES-CR-2025-0003-0012. He argued that requiring pro se parties to file a motion, make the showing, and obtain an order subjects them to a higher standard than represented parties, potentially undermining their Sixth Amendment rights.

The Advisory Committee recommends no change in (c)(4). It reflects a deliberate choice to avoid the potential for abuse by persons who lack legal training and are not bound by the ethical rules that would deter misuse of the court's compulsory authority. Moreover, because subpoenas sought by unrepresented defendants comprise a very small subset, the motion and order requirement in those cases would not add significantly to the courts' burden.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence

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

substantially outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed ~~since~~ between the witness's conviction or release from confinement for it~~,~~ (whichever is later) and the date that the trial begins. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

* * * * *

Committee Note

Rule 609(a)(1)(B) has been amended to provide that a non-falsity-based conviction should not be admissible to impeach a criminal defendant unless its probative value *substantially* outweighs the risk of unfair prejudice to the defendant. Congress allowed such impeachment with non-falsity-based convictions under Rule 609(a)(1), but imposed a reverse balancing test when the witness was the accused. That test is more protective so as not to infringe on the accused's constitutional right to testify. The amendment underscores the importance of applying a protective balance. The amendment also makes the balancing test consistent with that in Rule 703. Courts are familiar with the formulation "substantially outweighs" as the same phrase is used throughout the rules of evidence to describe various balancing tests. Cf. Rule 403.

If a conviction is inadmissible under this rule, it is inappropriate to allow a party, under Rule 608(b), to inquire into the specific instances of conduct underlying that conviction. Rule 608 permits impeachment only by specific acts that have not resulted in a criminal conviction. Evidence relating to impeachment by way of criminal conviction is treated exclusively under Rule 609.

Nothing in this rule prohibits the use of convictions to impeach by way of contradiction. Such impeachment is governed by Rule 403. So for example, if the witness affirmatively testifies that he has never had anything to do with illegal drugs, a prior drug conviction may be admissible for purposes of contradiction even if not admissible under Rule 609. *See United States v. Castillo*, 181 F.3d 1129 (9th Cir. 1999) (unequivocal denial of involvement with drugs on direct examination warranted admission of the witness's drug activity under Rule 403).

A number of courts have, in a kind of compromise, admitted only the fact of a conviction to impeach a defendant in a criminal case. Thus the jury hears only that the defendant was convicted of a felony, not what the crime was. Absent agreement by the parties, that solution is problematic because convictions falling within Rule 609(a)(1) have varying probative value, and admitting only the fact of conviction deprives the jury of the opportunity to properly weigh the conviction's effect on the witness's character for truthfulness.

In addition, Rule 609(b) has been amended to set an endpoint by which the rule's 10-year period is to be measured. The lack of such an endpoint in the original rule has led courts to apply various endpoints, including the date of the charged offense, the date of indictment, the date of trial, and the date the witness testifies. The rule provides for the date that trial begins as the endpoint, as that is a clear and objective date and it is the time at which the factfinder begins to analyze the truthfulness of witnesses.

Excerpt from the May 17, 2026 Report of the Advisory Committee on Evidence Rules

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

MEMORANDUM*

TO: Hon. James C. Dever III, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Jesse M. Furman, Chair
Advisory Committee on Evidence Rules

RE: Report of the Advisory Committee on Evidence Rules

DATE: May 17, 2026

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met on May 7, 2026, in Washington, D.C. The Committee reviewed proposed amendments to Rule 609 and a proposed new Rule 707, which were approved for publication by the Standing Committee at its June 2025 meeting. * * *

The Committee now recommends (1) final approval of the proposed amendments to Rule 609 * * *. The Committee does not recommend action on the proposed Rule 707 at this time.

* A copy of the full committee report can be found in the June 2026 Standing Committee agenda book publicly available on www.uscourts.gov.

* * * * *

II. Action Items

A. Proposed Amendments to Rule 609 — for Final Approval

The Committee recommends that proposed amendments to Rule 609 be forwarded to the Judicial Conference for final approval. In June 2025, the Standing Committee approved for public comment a modest proposed amendment to Rule 609(a)(1)(B), which currently allows for impeachment of criminal defendant witnesses with convictions not involving dishonesty or false statement if the probative value of the conviction in proving the witness's character for truthfulness outweighs the prejudicial effect. The proposed amendment would result in the provision becoming somewhat more exclusionary. To be admitted, the probative value of the conviction would have to *substantially* outweigh its prejudicial effect. The amendment is narrower than other suggestions for changes made to, and rejected by, the Committee in the last three years, including a proposal to eliminate Rule 609 entirely and a proposal to delete Rule 609(a)(1), which would have meant that all convictions not involving falsity would be inadmissible to impeach a witness.

After extensively reviewing the case law, the Committee concluded that the amendment was warranted because a large number of courts have misapplied the existing test to admit convictions that are either similar to the crime charged or otherwise inflammatory. This is especially problematic because appellate review of decisions to admit prior convictions for impeachment is rare. That is because, in *Luce v. United States*, 469 U.S. 38 (1984), the Supreme Court held that a defendant may appeal an adverse Rule 609 ruling only if he or she takes the stand at trial, so appeals by defendants of adverse Rule 609 rulings are rare.

Through its slightly more protective balancing test, the amendment would promote Congress's intent to provide more protection to criminal defendants so that they would not be unduly deterred from exercising their rights to testify. The Committee believes that the tweak to the applicable balancing test would encourage courts to more carefully assess the probative value and prejudicial effect of convictions that are similar or identical to the crime charged, or that are otherwise inflammatory or less probative because they involve acts of violence. The proposal leaves intact Rule 609(a)(2), which governs admissibility of convictions involving dishonesty or false statements.

In addition, the proposal released for public comment contained a slight change to Rule 609(b), which covers older convictions. Subdivision (b) is triggered when a conviction is over ten years old. That ten-year period begins running from the date of conviction or release from confinement, whichever is later. But the current Rule does not specify the end date of the ten-year period. The absence of any guidance in the Rule has led courts to apply varying dates, including the date of indictment, the date that trial begins, and the date that the witness to be impeached actually testifies. The proposal released for public comment provides that the ten-year period would end on the date that the trial begins. The Committee determined that the date of trial is the date that is most easily administered, the least amenable to manipulation, and that it is a proper date for determining the credibility of a witness who is going to testify at the trial.

The Committee received fifteen public comments on the amendments to Rule 609. Save one, all commenters — including the Federal Magistrate Judges Association, the American College of Trial Lawyers, the New York City Bar Association, the National Association of Criminal Defense Lawyers, and the New York Council of Defense Lawyers — strongly supported the amendment. The one critical comment suggested a different endpoint for the Rule 609(b) time period; the Committee considered that suggestion and rejected it.

At its May 7th meeting, the Committee voted, by a margin of 7-2, in favor of recommending final approval of the proposed amendments to Rule 609. The Department of Justice voted in favor of the proposal. Accordingly, the Committee recommends that the proposed amendments, and the accompanying Committee Note — which are attached to this Report — be sent to the Judicial Conference for final approval.

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