COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

June 6, 2023

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JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
June 6, 2023 | Washington, D.C.

AGENDA

1. **Opening Business**

   A. Welcome and Opening Remarks – Judge John D. Bates, Chair

   B. **ACTION:** The Committee will be asked to approve the minutes of the January 2023 Committee meeting.

   C. Status of Rules Amendments

      - Report on rules adopted by the Supreme Court and transmitted to Congress on April 24, 2023 (potential effective date of December 1, 2023).

2. **Joint Committee Business**

   A. Information Items

      - Report on pro se electronic filing project (oral report);
      - Report on electronic filing deadline project (oral report); and
      - Report on unified bar admission proposal (oral report).

3. **Report of the Advisory Committee on Appellate Rules** – Judge Jay S. Bybee, Chair

   A. **ACTION:** The Committee will be asked to recommend the following for final approval:

      - Rule 35 (En Banc Determination);
      - Rule 40 (Panel Rehearing; En Banc Determination);
      - Rule 32 (Form of Briefs, Appendices, and Other Papers); and
      - Appendix of Length Limits.

   B. **ACTION:** The Committee will be asked to approve the following for publication for public comment:

      - Rule 39 (Costs on Appeal); and
      - Rule 6 (Appeal in a Bankruptcy Case).

   C. Information Items

      - Possible amendments to Rule 29 (Brief of an Amicus Curiae) to address disclosures and new suggestions regarding permission to file amicus briefs;

- Intervention on appeal suggestion – new subcommittee formed to consider; and
- Items pending consideration by other rules committees: Third-party litigation funding and social security numbers in court filing.

4. **Report of the Advisory Committee on Bankruptcy Rules** – Judge Rebecca B. Connelly, Chair

A. **ACTION:** The Committee will be asked to recommend the following for final approval:

- The Restyled Bankruptcy Rules (Parts I–IX);
- Rule 7001 (Types of Adversary Proceedings);
- Rule 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits) and related amendments to Rules 4004, 5009, 9006 and the elimination of Official Form 423;
- Rule 8023.1 (Substitution of Parties); and
- Official Form 410A (Proof of Claim Attachment).

B. **ACTION:** The Committee will be asked to approve the following for publication for public comment:

- Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence);
- Rule 8006 (Certifying a Direct Appeal to the Court of Appeals); and
- Six Official Forms related to the proposed Rule 3002.1 amendments: Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R.

C. Information Items

- Proposal to require redaction of the entire SSN from filings in bankruptcy;
- Deferral of consideration of suggestion to adopt national rules addressing electronic debtor signatures;
- Proposed amendment to Rule 5009(b) (Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied) requiring notice reminders to the debtor to file the certificate showing completion of a personal financial management course; and
- Proposed amendment to Rule 1007(h) (Lists, Schedules, Statements, and Other Documents; Time Limits) regarding the postpetition disclosure of certain assets.

5. **Report of the Advisory Committee on Civil Rules** – Judge Robin L. Rosenberg, Chair

   A. **ACTION:** The Committee will be asked to recommend the following for final approval:

      - Rule 12 (Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing).

   B. **ACTION:** The Committee will be asked to approve the following for publication for public comment:

      - Proposed Amendments to Rules 16(b)(3) (Pretrial Conferences; Scheduling; Management) and 26(f)(3) (Duty to Disclose; General Provisions Governing Discovery); and
      - Proposed New Rule 16.1 (Multidistrict Litigation Management).

   C. Information Items

      - Rule 41 (Dismissal of Actions) Subcommittee Report;
      - Discovery Subcommittee Report;
      - Rule 7.1 (Disclosure Statement) Proposal Update;
      - Rule 23 (Class Actions) Proposal Update;
      - Rule 53 (Masters) Proposal Update;
      - Civil Jury Trial Demands Update; and
      - Rule 11 (Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions) Proposal Update.

6. **Report of the Advisory Committee on Criminal Rules** – Judge James C. Dever III, Chair

   A. Information Items

      - Rule 17 (Subpoena) Subcommittee Report;
      - Rule 23)(Jury or Nonjury Trial) Proposal Update; and
      - Rule 49.1 (Privacy Protection For Filings Made with the Court) Proposal Update.

7. **Report of the Advisory Committee on Evidence Rules** – Judge Patrick J. Schiltz, Chair

A. **ACTION:** The Committee will be asked to recommend the following for final approval:

- Rule 107 (Illustrative Aids) (published as Rule 611(d)) (Mode and Order of Examining Witnesses and Presenting Evidence);
- Rule 1006 (Summaries to Prove Content);
- Rule 613(b) (Witness's Prior Statement);
- Rule 801(d)(2) (Definitions That Apply to This Article; Exclusions from Hearsay); and
- Rule 804(b)(3) (Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness).

B. Information Items

- Decision to table until a future date consideration of possible amendments to Rule 611(e) (Mode and Order of Examining Witnesses and Presenting Evidence) regarding juror questions.

8. **Other Committee Business**

A. Legislative Update.

B. **ACTION:** Strategic Planning. This agenda item asks the Committee to report on its strategic initiatives noting, as appropriate, how such initiatives link to one or more of the eleven strategies and two goals in the *Strategic Plan for the Federal Judiciary* (*Plan*) identified by the Executive Committee as planning priorities. Strategic initiatives are projects, studies, or other efforts that have the potential to make significant contributions to the accomplishment of a strategy or goal in the *Plan*. Committees are also invited to suggest topics for discussion at future long-range planning meetings of Judicial Conference committee chairs.

C. Next Meeting – January 4, 2024

RULES COMMITTEES — CHAIRS AND REPORTERS

Committee on Rules of Practice and Procedure (Standing Committee)

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

Secretary to the Standing Committee

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Chair	Reporter
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Advisory Committee on Bankruptcy Rules

Chair	Reporter
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	Professor Laura B. Bartell Wayne State University Law School Detroit, MI

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Professor Richard L. Marcus
University of California
Hastings College of the Law
San Francisco, CA

Associate Reporter

Professor Andrew Bradt
University of California, Berkeley
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Advisory Committee on Criminal Rules

Chair

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Reporter

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

Associate Reporter

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

Advisory Committee on Evidence Rules

Chair

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

Reporter

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

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
(Standing Committee)

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Washington, DC

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Committee on Rules of Practice and Procedure

Members	Position	District/Circuit	Start Date		End Date
John D. Bates Chair	D	District of Columbia	Member: Chair:	2020 2020	---- 2023
Paul J. Barbadoro	D	New Hampshire		2023	2025
Elizabeth J. Cabraser	ESQ	California		2021	2024
Robert J. Giuffra, Jr.	ESQ	New York		2017	2023
William J. Kayatta, Jr.	C	First Circuit		2018	2024
Carolyn B. Kuhl	JUST	California		2017	2023
Troy A. McKenzie	ACAD	New York		2021	2024
Patricia A. Millett	C	DC Circuit		2020	2025
Lisa O. Monaco*	DOJ	Washington, DC		----	Open
Andrew J. Pincus	ESQ	Washington, DC		2022	2025
Gene E.K. Pratter	D	Pennsylvania (Eastern)		2019	2025
D. Brooks Smith	C	Third Circuit		2022	2025
Kosta Stojilkovic	ESQ	Washington, DC		2019	2025
Jennifer G. Zipps	D	Arizona		2019	2025
Catherine T. Struve Reporter	ACAD	Pennsylvania		2019	2023

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* Ex-officio - Deputy Attorney General

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Liaisons for the Advisory Committee on Appellate Rules	Andrew J. Pincus, Esq. *(Standing)* Hon. Daniel A. Bress *(Bankruptcy)*
Liaison for the Advisory Committee on Bankruptcy Rules	Hon. William J. Kayatta, Jr. *(Standing)*
Liaisons for the Advisory Committee on Civil Rules	Hon. D. Brooks Smith (*Standing*) Hon. Catherine P. McEwen *(Bankruptcy)*
Liaison for the Advisory Committee on Criminal Rules	Hon. Paul J. Barbadoro (*Standing*)
Liaisons for the Advisory Committee on Evidence Rules	Hon. Robert J. Conrad, Jr. (*Criminal*) Hon. Carolyn B. Kuhl *(Standing)* Hon. M. Hannah Lauck (*Civil*)

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TAB 1

TAB 1A

Item 1A will be an oral report.

TAB 1B

MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
January 4, 2023

The Judicial Conference Committee on Rules of Practice and Procedure (the "Standing Committee") met in a hybrid in-person and virtual session in Fort Lauderdale, Florida, on January 4, 2023. The following members attended:

Judge John D. Bates, Chair
Elizabeth J. Cabraser, Esq.
Robert J. Giuffra, Jr., Esq.
Judge William J. Kayatta, Jr.
Judge Carolyn B. Kuhl
Dean Troy A. McKenzie
Judge Patricia A. Millett
Hon. Lisa O. Monaco, Esq.[*]
Andrew J. Pincus, Esq.
Judge Gene E.K. Pratter
Kosta Stojilkovic, Esq.
Judge D. Brooks Smith
Judge Jennifer G. Zipps

The following attended on behalf of the Advisory Committees:

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

Advisory Committee on Bankruptcy Rules –
Judge Rebecca Buehler Connelly, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter

Advisory Committee on Civil Rules –
Judge Robin L. Rosenberg, Chair
Professor Richard L. Marcus, Reporter
Professor Andrew Bradt, Associate Reporter
Professor Edward H. Cooper, Consultant

Advisory Committee on Criminal Rules –
Judge James C. Dever III, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

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

Others who provided support to the Standing Committee, in person or remotely, included Professor Catherine T. Struve, the Standing Committee's Reporter; Professors Daniel R. Coquillette, Bryan A. Garner, and Joseph Kimble, consultants to the Standing Committee; H. Thomas Byron III, Secretary to the Standing Committee; Allison A. Bruff, Esq., Bridget M. Healy, Esq., and S. Scott Myers, Esq., Rules Committee Staff Counsel; Brittany Bunting–Eminoglu and Shelly Cox, Rules Committee Staff; Christopher I. Pryby, Law Clerk to the Standing Committee; Hon. John S. Cooke, Director of the Federal Judicial Center (FJC); and Dr. Tim Reagan, Senior Research Associate, FJC.

[*] Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, represented the Department of Justice (DOJ) on behalf of Deputy Attorney General Lisa O. Monaco.

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OPENING BUSINESS

Judge Bates called the meeting to order. He welcomed new Standing Committee members Judge D. Brooks Smith and Andrew Pincus; the new chairs of the Advisory Committees on Bankruptcy and Civil Rules, Judge Rebecca Connelly and Judge Robin Rosenberg; and the new Associate Reporter for the Civil Rules Committee, Professor Andrew Bradt. Judge Bates noted the departures of Judge Gary Feinerman from the Standing Committee and former Civil Rules Committee Chair Judge Robert Dow. He stated that he would work to find new members to fill the vacancies on the Standing and Civil Rules Committees. In addition, Judge Bates welcomed the members of the public who were attending remotely or in person.

Upon motion by a member, seconded by another, and without dissent: **The Standing Committee unanimously approved the minutes of the June 7, 2022, meeting.**

Judge Bates highlighted pending rules amendments, including new emergency rules arising out of the CARES Act and amendments to Evidence Rules 106, 615, and 702. These amendments will take effect on December 1, 2023, assuming that the Supreme Court approves them and absent any contrary action by Congress.

For the legislative update, Judge Bates observed that with the end of the 117th Congress, all pending legislation had expired. Law clerk Christopher Pryby noted that, of the Fiscal Year 2023 National Defense Authorization Act provisions that he had highlighted at earlier Advisory Committee meetings, none remained in the enacted version of the bill.

JOINT COMMITTEE BUSINESS

Electronic Filing by Self-Represented Litigants

Judge Bates introduced this agenda item, which is under consideration by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees. He thanked Professor Struve for her leadership on this project and her coordination among the Advisory Committees, and he invited her to provide an update on those discussions.

Professor Struve began by acknowledging the group effort that had gone into the project so far, especially from the FJC team, including Tim Reagan, Carly Giffin, and Roy Germano, who had done phenomenal work that culminated in a study released in 2022.

This project originated from several proposals about electronic filing for self-represented litigants. The current rules provide for electronic filing as a matter of course by those who are represented by lawyers, but self-represented litigants must file nonelectronically unless allowed to file electronically by court order or local rule. The proposals take two main forms: one advocates a national rule presumptively allowing self-represented litigants to file electronically, while the other advocates disallowing categorical bans on, and setting a standard for granting permission for, electronic filing by self-represented litigants.

Recounting the FJC's findings, Professor Struve noted that, in the courts of appeals, there is a close split between the circuits that presumptively give self-represented litigants access to the Case Management/Electronic Case Filing system ("CM/ECF") and those that allow that access

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with permission; one outlier circuit currently has a local provision prohibiting self-represented litigants from filing electronically. In the district courts, the picture is more mixed—the bulk of districts allow self-represented litigants to file electronically with permission, a bit less than 10% presumptively permit self-represented litigants to file electronically, and about 15% do not allow it at all. And in the bankruptcy courts, it is rare for self-represented litigants to have access to CM/ECF.

The fall Advisory Committee meetings provided an opportunity to get members' senses about the current situation and their reactions to the possibility of adopting a default rule of presumptive access to CM/ECF for self-represented litigants. Those discussions also considered potential alternate means of electronic access for self-represented litigants, like those that courts experimented with during the COVID-19 pandemic. The discussions also included the possibility of policy changes not based on rules amendments as well as the need for coordination with other committees of the Judicial Conference.

A second question concerns the rules governing service of papers during a lawsuit. As between any pair of litigants who are both users of CM/ECF, service is simple, because the notice of electronic filing produced when the paper is filed in CM/ECF constitutes service. By contrast, a form of service other than the notice of electronic filing is necessary when the party to be served is not a CM/ECF user. But when a party that is not a CM/ECF user files a paper by some other means, must that party separately serve the parties who *are* users of CM/ECF? Those parties will receive the notice of electronic filing after the court clerk scans and uploads the nonelectronic filing to CM/ECF. The rules nevertheless appear to require the non-CM/ECF user to serve these parties. The questions before the committees were: Why? Is this burden on self-represented litigants necessary? Should the rules be amended to eliminate this requirement? Some districts have eliminated the requirement for service on parties who are CM/ECF users, and those districts have generally reported positive experiences with that change.

Professor Struve reported a fair amount of interest in investigating the possibility of eliminating that requirement. But there are still some details to be worked out: (1) How does the court make clear to a nonelectronic filer which parties are, and which are not, on CM/ECF—and, thus, who does and does not need separate service? (2) Would the three-day rule work seamlessly with this change, or would it need some wording adjustments? For example, the time calculation might need to be clarified or adjusted to ensure no unfairness to a party if there is some delay between when the clerk receives a filing and when the clerk dockets it in CM/ECF. Professor Struve believes this proposal contains the germ of an idea that may be appropriate for a possible rule amendment, and she expressed her hope that the Advisory Committees would continue working on the project in the spring.

Returning to whether there should be a change in the default rule governing self-represented litigants' access to CM/ECF, Professor Struve surveyed the reactions of the Advisory Committees on that proposal. The Bankruptcy Rules Committee took a positive view of the overall idea, viewing it as a matter of access to the courts. Notably, the court-clerk representative on that committee supported the proposal, saying that it is helpful for filings to be electronic whenever possible. But there was some division of views on the committee, with a couple of members expressing the need for caution and raising important questions that are detailed in the committee's minutes and reports.

The Appellate Rules Committee took a somewhat positive view of the overall concept of access to CM/ECF for self-represented litigants, in line with the current policies of the courts of appeals. Professor Struve thought that the interesting question for this committee was whether the Appellate Rules should be amended to reflect or encourage that outcome, given that the courts of appeals are already increasing CM/ECF access for self-represented litigants (with greater celerity than the lower courts). A default rule of access to CM/ECF for self-represented litigants might be easiest to adopt in the Appellate Rules, given the movement in that direction in the courts of appeals. A question for the Appellate Rules Committee may be how to balance that consideration against the value of uniformity across the national sets of rules.

Professor Struve reported that there were more skeptical voices in the Civil Rules Committee on the proposal relating to CM/ECF access. Some members wondered whether the matter might be more appropriately treated by another Judicial Conference actor such as the Committee on Court Administration and Case Management ("CACM"). Overall, there was much less momentum on the Civil Rules Committee for a rule change.

Turning to the Criminal Rules Committee, Professor Struve first noted that this committee's interest was different from that of the other Advisory Committees. There are very few nonincarcerated, self-represented litigants appearing in situations covered by the Criminal Rules. (Professor Struve noted that, even in the districts that presumptively allow self-represented litigants CM/ECF access, that presumption of access typically excludes incarcerated litigants because of the logistical particulars of carceral settings. So, at least in the near future, even the most expansive grant of electronic-filing permission to self-represented litigants would likely not encompass incarcerated self-represented litigants.) But the committee had an excellent discussion of the service issue, and the committee would be open to exploring that question further.

Professor Struve concluded by welcoming the input of the Standing Committee members on any of these topics. She noted that the project continues to operate in an information-gathering mode, especially on the service issue and the various ways by which electronic-filing access could be expanded for self-represented litigants, including by working in tandem with other Judicial Conference actors.

Judge Bates thanked Professor Struve and opened the floor to comments and questions.

A practitioner member suggested that greater access for self-represented litigants is a good thing, but also that some fraction of self-represented litigants would abuse electronic-filing access. This member asked which would be easier for courts to administer: a rule requiring courts to deal with requests for permission, or a rule granting access by default and leaving the courts to deal with the task of revoking that access in particular cases? Professor Struve noted that Dr. Reagan and his colleagues at the FJC had talked with clerk's offices around the country and would be in a good position to answer that question. Dr. Reagan reported that, in speaking with personnel in several districts that had recently expanded self-represented litigants' access to CM/ECF, he and his colleagues heard that court personnel's fears were not particularly realized. He also observed that self-represented litigants can disrupt the work of the court regardless of their filing method. In fact, some courts appreciated receiving documents electronically because they did not have to receive things in physical form that would be unpleasant to handle. And every court is quite capable of limiting improper litigant behavior.

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A judge member appreciated the thoroughness of the FJC report in obtaining input from clerk's offices and considering the pros and cons of a change in the rules and other issues that would arise. The member thought that the primary focus of this project ought to be learning about the experiences of clerk's offices. The clerk's office of the member's court had strong views on this matter, especially on who should bear the burden of the work generated by noncompliant self-represented litigants.

Ms. Shapiro asked whether the FJC report looked at whether self-represented litigants complied with redaction and privacy-protection rules. Dr. Reagan responded that the report did not get into the weeds with this question, but he did note that this same problem occurs with represented litigants as well. One appellate clerk had mentioned locking a document and later posting a corrected version; he was not sure whether that had to do with redaction problems. He stated that there is a way to configure CM/ECF so that the court must "turn the switch" before a submitted filing is made available in the record.

Judge Rosenberg reiterated her comments from the October Civil Rules Committee meeting, which reflected feedback from her court's clerk: Most courts are not equipped to accept self-represented litigants' filings through CM/ECF. So, while it is a good idea to expand electronic filing to all litigants, until all courts can comply, it is not advisable to amend the federal rules to establish a presumption in favor of allowing electronic filing. Additionally, different courts use different versions of CM/ECF, and the version used affects both the court and the filer. Further, there is not a unique identifier for many self-represented litigants. By contrast, attorneys have unique bar numbers.

Professor Struve responded that, if a court would not be able to function with a presumption in favor of electronic access for self-represented litigants, then that court could adopt a local rule to opt out of the presumption. It is true that, if the bulk of districts opted out, that might lead one to question the wisdom of the rule. As to the point about identifiers, Professor Struve suggested that the districts currently allowing presumptive or permissive electronic access by self-represented litigants would have had to solve that problem, so it would be helpful to ask those districts for their experiences with that issue.

Judge Bates concluded by recognizing that cases involving self-represented litigants make up a large part of the civil and bankruptcy dockets in federal court, and this is a project that the committees will continue to work on. He hoped that the committees and reporters would continue to provide a high level of participation, and he thanked Professor Struve and everyone else who had worked on the project with her so far.

Presumptive Deadline for Electronic Filing

Judge Bates reported on a joint committee project that arose from a suggestion by Chief Judge Chagares of the Third Circuit, the former chair of the Appellate Rules Committee, that the committees consider changing the presumptive deadline for electronic filing from midnight to an earlier time. Judge Bates observed that the FJC had done excellent research for this project, and that one of the relevant FJC reports was included in the agenda book. The status of the project is uncertain. The Civil Rules Committee has recommended that the project be dropped. But the Appellate Rules Committee recommended that the question of how to proceed be posed, in the

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first instance, to the Joint Subcommittee on E-filing Deadlines, because that Subcommittee has not convened recently. Judge Bates agreed that the Joint Subcommittee should be asked to undertake a careful review of the project, and he noted that he would also continue to seek Chief Judge Chagares's input.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Bybee and Professor Hartnett presented the report of the Advisory Committee on Appellate Rules, which last met in Washington, D.C., on October 13, 2022. The Advisory Committee presented several information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 134.

Information Items

Amicus Disclosures. Judge Bybee reported on this item. He described it as perhaps the highest-profile matter before the Advisory Committee. There has been a long exchange of correspondence between the Clerk of the Supreme Court and the chairs of the Senate and House Judiciary Committees over amicus practice, and, during the previous Congress, legislation was introduced in each house that would regulate amicus practice. The Supreme Court and its Clerk referred the matter to the Advisory Committee. The Advisory Committee has made some progress, but it seeks input from the Standing Committee on some important policy questions.

Judge Bybee directed the Standing Committee's attention to draft Rules 29(c)(3) and (c)(4) as set out in the agenda book; he noted that this was a working draft, not yet a proposal. Draft Rule 29(c)(3) would require an amicus to disclose any party that has a majority interest in or control of the amicus. Draft Rule 29(c)(4) would require the amicus to disclose any party that has contributed 25% or more of the amicus's gross annual revenue over the last 12 months. The Advisory Committee sought input on two questions: (1) Is 25% the right number? (2) Is the last 12 months the right lookback period, or should it be the previous calendar year? As to question (1), at the October 2022 Advisory Committee meeting, some members had expressed concern that, if the rule set one particular percentage—such as 25%—as the trigger for disclosure, then where a party's contributions were anywhere above that single threshold the amicus might not file a brief out of concern that the court would assign the brief little weight. An alternative suggestion was to require an amicus to disclose that the contribution percentage lay within some "band" of amounts—such as from 20% to 30%, 30% to 40%, and so on.

A practitioner member wondered whether there was a need to regulate this area. However, given that Congress has expressed an interest in the topic, the member suggested that perhaps it did make sense for the committees to consider possible rule amendments. The member thought 25% was a reasonable number because, in the member's experience, that contribution level would be highly unusual and could indicate that the amicus is acting as a front for a party. The member also thought it more administratively feasible to use the last calendar year than the last 12 months.

Judge Bates asked whether the current draft Rule 29(c)(3) would capture a situation in which a party and the party's counsel each had a one-third interest in the amicus. Should the rule capture that situation? The draft wording—"whether a party or its counsel has (or two or more

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parties or their counsel collectively have) a majority ownership interest"—addresses a situation in which "two or more parties or their counsel" have a collective interest, but it is not clear if it captures situations in which a single party and its counsel have a collective interest. Should "a party or its counsel has" be "a party and/or its counsel have"?

Professor Garner opined that a hard contribution threshold might encourage parties to structure their contributions in such a way as to avoid meeting the threshold. He suggested that the Advisory Committee instead consider a rule requiring disclosure of "the extent to which" a party has contributed to the amicus. The court could decide for itself what contribution amount was de minimis. And an organization that goes to the trouble of preparing an amicus brief would be able to answer the contribution question with a fair degree of certainty.

Professor Hartnett responded that the Advisory Committee had some concern about requiring that amount of precision. Instead, requiring disclosure within a band of contribution percentages tried to address the structuring issue. The Advisory Committee also wanted to build into the rule a floor beneath which amici need not worry about having to make a disclosure.

Judge Bates noted that the rule could also be tweaked to require disclosure of a precise percentage above a floor. Those below that floor would not have to make a disclosure.

A practitioner member commented on the general view of practitioners in this area: If an amicus must make a disclosure, then its brief will probably not get much attention. A rule that requires a disclosure suggests that a brief containing that disclosure is tainted in some way. In many of these situations, an amicus would likely choose not to file a brief rather than to make a disclosure. So there should almost certainly be a floor before disclosures are required. There is also a First Amendment interest in this area (the member noted the decision in *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021))—and whatever rule is adopted must be examined through that lens. That interest further weighs in favor of a floor below which no disclosure is required. Because the disclosure requirement will change the dynamics of amicus filings, the calculus on whether and how to amend the rule should consider whether the benefits of disclosure outweigh the harm of deterring amicus filings.

Judge Bates agreed that the goal is not to dissuade the filing of amicus briefs but rather to provide information to the courts and public with respect to those who file these briefs.

A judge member had difficulty recalling any amicus briefs as to which it was not obvious who was filing the brief and as to which more information about the amicus would have made a difference. It is the brief's contents that matter, not its author. If other appellate judges feel similarly, then the member would not worry about trying to craft a rule that would require complete disclosure of all details about the amicus.

Judge Bybee noted that one concern is that parties are evading their own page limits by inserting their arguments into amicus filings. The judge member suggested skepticism about the gravity of that particular concern. He conceded that Congress's interest in the amicus-disclosure issue weighs in favor of careful consideration of a possible rule amendment. But, he suggested, if the courts of appeals generally feel that they are not being hoodwinked by amici or deluded into believing something about which they otherwise would have been more suspicious had amici's

relationships with the parties been apparent, that should temper the rulemakers' zeal for pursuing an all-encompassing, exhaustive disclosure requirement.

Another judge member disclaimed knowledge as to whether the 25% figure was "right," but stated that this figure was "not wrong." The member suggested that searching for the precisely "right" number was not worthwhile. Responding to Professor Garner's prior suggestion, this member warned against building into the rule any subjectivity that would allow a court to decide whether to require disclosure based on who the participants are. If a proposal is adopted, it should use an objective number rather than a moving target. As to the lookback period, the member suggested that the prior fiscal or calendar year would be more administrable than a moving 12-month period; the latter would require a lot of research and calculation.

A practitioner member acknowledged the focus on drawing a line between helpful disclosure requirements and unhelpful, unwarranted disclosure requirements. But the member also wondered whether a lower threshold might normalize disclosure, making it not such a negative thing. A lower threshold like 5% or 10% would generate a lot more disclosures, but such a disclosure would not necessarily discredit a brief as much as a disclosure in response to a higher threshold that is only infrequently met.

A judge member thought that a threshold above 25% would be too high. And if the threshold were set higher than 25%, a disclosure would really mark the amicus brief because it would be extremely unusual. The member also suggested that judges' views on the optimal level of disclosure are not the only consideration. Members of the public may not have the same information or reactions that judges do. Part of the value of the disclosures was to let the public know who is responsible for filing amicus briefs. This transparency concern is particularly strong when amicus filings are cited by judges as persuasive in their decisionmaking.

A practitioner member expressed doubt about the idea of normalizing disclosures. The purpose of a disclosure is to flag something relevant about a brief. The member questioned whether lowering the threshold would serve that purpose. Instead, the goal should be to identify a category of briefs to treat with caution.

Another practitioner member thought that more regulation of amicus briefs was not a good idea. If a relevant industry group files an amicus brief in a case on appeal, that tells the court that the industry is concerned about some issue—it does not matter only to the parties. The rule should encourage filing amicus briefs. Judges can pay attention to what they want to in those briefs. The member thought that 25% was the right threshold because it is objective and because, if a party is paying for 25% or more of the amicus organization's cost, it is largely a party-controlled organization. As to most big organizations that routinely file amicus briefs, the number would probably be 5% or less. The member also agreed that required disclosures may chill the filing of amicus briefs.

Professor Garner suggested that a rule requiring disclosure of "the extent to which" a party has contributed to the amicus could be combined with a provision stating a presumption that any contribution over 25% would be excessive. Judge Bates noted that this presumption would change the thrust of the rule by expressly stating how the court would view the brief. Judge Bybee did not think the Advisory Committee had been going in that direction; he could not remember a judge

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having said anything like, "if the party contributes over 50%, I won't consider the brief." Instead, some judges have suggested that it is important to have more information, not less. Professor Hartnett agreed that the rule has governed only when disclosure is required; discounting a brief's weight has not been addressed in the rule's text. This kind of modification would significantly change how the rule operates.

Professor Hartnett sought more comment on the banding idea. He thought it might mitigate the risk of using a single number—if that number is too high, it works like an on–off switch; if too low, it does not give enough information because a court cannot tell how far the contribution amount is above the threshold. Banding would provide more information than a single threshold, while not requiring the same degree of precise calculation as the "extent to which" option. Would this idea work as a compromise?

Judge Bates agreed that using banding would require more information from an amicus than would a single percent threshold above which disclosure is required.

A practitioner member stressed that the disclosure requirement would need to include a floor beneath which disclosure is not required. This member suggested that, once there is a floor, having banding in addition would not do much work, especially if the floor is as high as 25%.

Another practitioner member liked the banding approach because it would provide more information to the courts and public. The question would then be where to start and end each band. More disclosure is better, and so long as it remains up to the judges to decide at what level a disclosure matters, then the rule introduces no presumption of taint.

A third practitioner member remarked that a member of a big amicus organization generally must undergo a rigorous application process before the organization will sign onto an amicus brief for that member. That process is useful because courts can then take that organization's reputation as a signal—if it signs a brief, then the issue is one that matters to more than just the litigants. The member liked the 25% threshold because it indicates that the amicus is not really a broad-based group that represents the industry. Lowering the threshold defeats the purpose of having amicus briefs and introduces a false perception of taint if there is a disclosure of a low percentage. The lower threshold would lead to too much micromanaging of amici. The member also expressed concern that a lower threshold could disadvantage plaintiff-side amici because bigger organizations tend to be on the defense side. And one can look at the website of a large organization to see if a party is a member.

An academic member expressed a preference for keeping the rule as simple as possible. That militates in favor of a single number. The member liked 25%—it is high enough that if an amicus is above that threshold, it will raise eyebrows. The difficulty with banding is that compliance could be complicated, particularly if there is no lower bound. Without a lower bound, if a party had bought a single table at a fundraiser for the amicus, the amicus would then have to divide the value of the contribution associated with buying that table by the amicus's overall revenue in order to determine the percentage value of its contribution. A disclosure requirement without a lower bound would discourage potential amici from filing. It would signal that courts do not want to hear their voices.

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The conversation then turned to draft Rule 29(e). Judge Bybee introduced this draft rule, which appeared on page 137 of the agenda book. The draft rule would require an amicus to disclose any nonparty that contributed over $1,000 to the amicus with the intent to fund the amicus brief. Judge Bybee asked two questions: (1) Is the $1,000 figure the right threshold? This figure was meant to exclude disclosures for crowdfunded briefs. (2) Should the draft rule contain provisions like those in draft Rules 29(c)(3) and (c)(4), requiring disclosures of contributions even if they are not earmarked for funding an amicus brief?

Judge Bates remarked that a $1,000 cutoff, although high enough to address the crowdfunding issue, seems very low.

A judge member thought that this draft rule would require amici to make greater disclosures than parties themselves must. Parties may obtain funding from undisclosed sources, raising issues about third-party litigation funding. The draft rule overemphasizes the importance of amicus briefs and mistakenly suggests that courts are more concerned with who is speaking than with the merits of the argument. The member also thought that this is a policy question that should be deferred until the discussion of third-party litigation funding of parties; in the meantime, this member suggested, subpart (e) should be deleted from the draft. Professor Hartnett observed that the current rule requires disclosure if someone other than the amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief. The member acknowledged that fact, but argued that proposed subdivision (e) would heighten the issue.

Judge Bates remarked that there may be greater First Amendment issues in requiring disclosure of nonparty contributions than in requiring disclosure of party contributions.

A practitioner member stated that adopting draft Rule 29(e) would be a mistake. It would open up a hornet's nest concerning intentionality. How can you determine whether someone intended to fund a brief? Suppose an organization told potential donors the topics of ten amicus briefs it intended to file over the coming year. Or suppose that a donor bought a ticket to a dinner at which a representative of the organization discussed some of its amicus filings. The member also thought that $1,000 was a low threshold.

Another practitioner member commented that the innovation in draft Rule 29(e) is really about contributions by members of amicus organizations—there is already a disclosure requirement as to contributions by nonmembers. The member differentiated two types of amicus organizations: larger organizations with annual budgets that include a chunk of money for amicus briefs, and organizations (typically smaller) that "pass the hat" to fund a particular amicus brief. Draft Rule 29(e), this member suggested, would unfairly burden such smaller organizations by requiring them to make disclosures, whereas dues payments probably would not have to be disclosed. Draft Rule 29(e) would make it harder for those smaller amici to file briefs.

A judge member thought that the draft rule could lead to an escalation of corporate screens and shielding to evade required disclosures. A would-be funder might set up an LLC to make the donation; would the rule also have to require disclosure of the LLC's funding? This judge sees briefs from a number of amici for which the funding is unknown. The draft rule aims for more disclosure than is currently required for dark-money contributions to political campaigns. There is a public interest in disclosure, but there are practical limitations on what the committees can do.

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The member cautioned against increasing the complexity of the disclosure scheme (for example, with banding)—such new hurdles could be leapt over as easily as the current ones.

A practitioner member supported omitting draft Rule 29(e). Congress, this member suggested, is concerned about parties, not nonparties. Nonparties do not implicate the same concerns. The member also noted that, under the current Rule (as well as under draft Rule 29(c)(2)), if a party contributes any money intended to fund an amicus brief, the fact of the contribution must be disclosed.

Judge Bates asked why, in draft Rule 29(d), the language is limited to only a *party*'s awareness. Draft Rule 29(c) is worded in terms of *party or counsel*; why should 29(d) be different? Judge Bybee agreed with that wording change and, more generally, thanked the Standing Committee for its input.

Rule 39 (Costs). Judge Bybee briefly covered this and the remaining items. The Supreme Court suggested in *City of San Antonio v. Hotels.com, L.P.*, 141 S. Ct. 1628, 1638 (2021), that "the current Rules . . . could specify more clearly the procedure that . . . a party should follow" to bring its arguments about costs to the court of appeals. The real problem in this situation is a narrow one that is nevertheless important in some big cases. It involves the disclosure to parties of the consequences for costs on appeal if a supersedeas bond is filed or another means of preserving rights pending appeal is used. A subcommittee is currently working on this issue. It may be useful for the Appellate Rules Committee to coordinate with the Civil Rules Committee to see whether the Civil Rules might also require changes.

Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis ("IFP")). Form 4 concerns the disclosures required of a party seeking IFP status on appeal. The Advisory Committee has tried to simplify the form. Many of the circuits have ignored the form for years and have their own forms. The Advisory Committee is not purporting to change that fact, only to simplify the current national form. Also, the Supreme Court has incorporated the form by reference in Supreme Court Rule 39.1, so it would be advisable to ask if the Court has any input on changing the form.

Appellate Rule 6 (Appeal in a Bankruptcy Case) and Direct Appeals in Bankruptcy. Judge Bybee adverted briefly to this project, which dovetails with the Bankruptcy Rules Committee's project (discussed later in the meeting) to amend Bankruptcy Rule 8006(g) to clarify that any party may request permission to appeal directly from the bankruptcy court to the court of appeals. He noted that the Appellate and Bankruptcy Rules Committees are coordinating their work on Bankruptcy Rule 8006(g) and Appellate Rule 6.

Striking Amicus Briefs; Identifying Triggering Person. Rule 29(a)(2) allows a court to refuse to file or to strike an amicus brief that would lead to a judge's disqualification. A suggestion was made to modify this rule to require the court to identify the amicus or counsel who would have triggered a disqualification. After extensive discussion, the Advisory Committee removed this item from its agenda.

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Appeals in Consolidated Cases. A suggestion to amend Rule 42 arose following *Hall v. Hall*, 138 S. Ct. 1118 (2018). After thorough discussion, the Advisory Committee removed this item from its agenda.

Judge Bates asked for comments on the other information items outlined in the Advisory Committee's report. Hearing none, he invited the Bankruptcy Rules Committee to give its report.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Connelly and Professors Gibson and Bartell presented the report of the Advisory Committee on Bankruptcy Rules, which last met in Washington, D.C., on September 15, 2022. The Advisory Committee presented one action item and three information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 175.

After Judge Connelly recognized the work of Judge Dennis Dow, the Advisory Committee's previous chair, the committee began its report.

Action Item

Publication of Proposed Amendment to Official Form 410 (Proof of Claim). Judge Connelly reported on this item. The Advisory Committee sought the Standing Committee's approval to publish for public comment an amendment to Official Form 410. A creditor must file this form for the creditor's claim to be recognized in a bankruptcy case. Official Form 410 contains a field for a uniform claim identifier ("UCI"), which a creditor may fill in for electronic payments in Chapter 13 cases. The Advisory Committee has proposed a revision to remove both the specification of electronic payments and the reference to Chapter 13 cases, allowing a creditor to list a UCI for paper checks or electronic payments in any bankruptcy case.

Upon motion by a member, seconded by another, and without dissent: **The Standing Committee unanimously approved the publication for public comment of the proposed amendment to Official Form 410.**

Information Items

Rule 8006(g) (Certifying a Direct Appeal to a Court of Appeals). Professor Bartell reported on this item. As amended in 2005, 28 U.S.C. § 158 provides for direct appeals of final judgments, orders, or decrees from the bankruptcy court directly to the court of appeals upon appropriate certification and subject to the court of appeals' discretion to hear the appeal. Bankruptcy Rule 8006(g) requires that, within 30 days after certification, "a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with" Appellate Rule 6(c). The bankruptcy rule is in the passive voice and does not specify who may file that request for permission. Bankruptcy Judge A. Benjamin Goldgar proposed an amendment to clarify what he—and the Advisory Committee—believed to be the meaning of the rule: any party, not just the appellant, may file the request for permission.

At Professor Struve's request, the Bankruptcy and Appellate Rules Committees have worked together to draft amendments to ensure that Rule 8006(g) is compatible with Appellate

Rule 6(c). The Bankruptcy Rules Committee has approved an amendment to Rule 8006(g) that was the product of that collaborative effort. Because the Appellate Rules Committee has created a subcommittee to consider related amendments to Appellate Rule 6(c), the Bankruptcy Rules Committee will wait to seek approval for publication of amended Rule 8006(g) until publication is also sought for an amendment to the appellate rule.

Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case). Professor Gibson reported on this item. Bankruptcy Rule 3002.1 requires the holder of a mortgage claim against a Chapter 13 debtor to provide certain information during the bankruptcy case. This information lets the debtor and the trustee stay up-to-date on mortgage payments. Significant proposed amendments to Rule 3002.1 were published in August 2021, and the Advisory Committee received very valuable comments. The Advisory Committee has improved the proposal in response to those comments. Because the post-publication changes are substantial, re-publication would be helpful. The Advisory Committee still needs to review comments on proposed amendments to related forms. The committee will likely seek approval to republish the amended rule and related forms at the Standing Committee's June 2023 meeting.

Electronic Filing by Self-Represented Litigants. Professor Gibson reported on this item as well. She agreed with Professor Struve that the Advisory Committee had a positive response to the prospect of expanding electronic filing by self-represented litigants. Professor Gibson noted her surprise at this response, given that bankruptcy courts are currently the least likely to allow self-represented litigants to file electronically. She concurred with Professor Struve that there were a couple of committee members who raised concerns, particularly about improper filings. Other committee members noted that self-represented litigants could make improper filings even in paper form. The Advisory Committee needs to think about the serious privacy concerns raised earlier. But, overall, the Advisory Committee supported looking at how to extend electronic-filing access to self-represented litigants in coordination with the other Advisory Committees.

Judge Bates opened the floor to questions or comments regarding the Advisory Committee's report. Hearing none, he invited the Civil Rules Committee to give its report.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Rosenberg and Professors Marcus, Bradt, and Cooper presented the report of the Advisory Committee on Civil Rules, which last met in Washington, D.C., on October 12, 2022. The Advisory Committee presented three action items and several information items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 203.

After Judge Rosenberg recognized the work of Judge Robert Dow, the Advisory Committee's previous chair, and welcomed Professor Bradt as the new Associate Reporter, the committee began its report.

Action Items

Publication of Proposed Amendments to Rules 16(b)(3) (Pretrial Conferences; Scheduling; Management) and 26(f)(3) (Duty to Disclose; General Provisions Governing

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Discovery). Judge Rosenberg reported on this item. The Advisory Committee sought the Standing Committee's approval of proposed amendments to Rules 16(b)(3) and 26(f) for publication for public comment. These amendments would require the parties to focus at the outset of litigation on the best timing and method for compliance with Rule 26(b)(5)(A)'s privilege-log requirement and to apprise the court of the proposed timing and method. It can be onerous to create and produce a privilege log that identifies each individual document withheld on privilege grounds. The original submissions advocated revising the rule to call for the identification of withheld materials by category rather than identifying individual documents. The Advisory Committee examined that proposal as well as competing arguments for logging individual documents. Judge Rosenberg noted that there is a divide between the views of "requesting" and "producing" parties. The Advisory Committee concluded that the best resolution was to direct the parties to address the question in their Rule 26(f) conference, which would give the parties the greatest flexibility to tailor a privilege-log solution appropriate for their case. Thus, the proposed amendment to Rule 26(f)(3)(D) would add "the timing and method for complying with Rule 26(b)(5)(A)" to the list of topics to be covered in the proposed discovery plan. The proposed amendment to Rule 16(b)(3)(B)(iv) would make a similar addition to the list of permitted contents of a Rule 16(b) scheduling order. The proposed committee notes to the amendments stress the importance of requiring discussion early in the litigation in order to avoid later problems. The committee note to the Rule 26 amendment also references the discussion (in the 1993 committee note to Rule 26(b)(5)(A)) of the Rule's flexible approach.

Professor Cooper added that the privilege-log problem stems from Rule 26(b)(5)(A)'s text, which requires the withholding party to "describe the nature of" the items withheld "in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." That is a beautiful statement of the rule's purpose but it gives no guidance on how to comply. The Civil Rules Committee's Discovery Subcommittee acknowledged the complex policy concerns at play and it consulted widely and at length. The picture that emerged is one in which the producing parties can face significant compliance costs, while the receiving parties are concerned about overdesignation and that the descriptions they receive do not enable them to make informed choices about whether to challenge an assertion of privilege. In addition, problems may surface belatedly because the privilege log is provided late in the discovery process. The subcommittee realized that there would be no easy prescription for every case, and it concluded that parties are in the best position to solve the problem by working together in good faith. The proposed amendment adds only a few words, but it is intended to start a very important process.

Professor Marcus noted that the Advisory Committee has heard from many commenters. The amendment had evolved quite a bit and was now ready for public comment.

Judge Bates observed that, although the changes to the rules' text are modest, the proposed amendments are accompanied by three or four pages of committee notes. Some of that note discussion is historical, and some is explanatory, but some looks like best-practices guidance. He wondered whether this was unusual or a matter of concern.

Professor Marcus acknowledged the importance of that concern. He noted that this is a concise change to a rule that has a large body of contention surrounding it. Because the proposed amendment asks parties to discuss something that is not defined in the rule with great precision, it seems helpful for the committee note to provide some prompts for that discussion. Public comment

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often focuses on the committee notes, and such comment might prompt the Advisory Committee to revise the note language after publication. But it seems more desirable to put some guidance into the proposed note rather than to provide a Delphic rule with no guidance.

Professor Cooper added that this issue was considered at the Advisory Committee meeting. The practice on committee notes has varied over time. For example, the 1970 committee notes to the discovery-rule amendments would put a treatise to modest shame, and served a good purpose at the time. And courts of appeals have said that committee notes can provide useful guidance for interpreting the rules. The note is subject to polishing, and public reaction may stimulate and help focus that polishing. It is challenging at best to improve on the present text of Rule 26(b)(5)(A)—how does one express in rule text that what may work in one case may not work in another? The note grew to these proportions in order to capture how the parties might try to alleviate problems that have emerged in practice but that are too varied and complex to incorporate into the rule's text.

Judge Bates expressed concern that, even if the note spurs more comments, because this is a contentious issue, the comments would reflect competing views of what the note should contain. Would the Advisory Committee then intend to resolve those competing views in deciding what goes in the committee note in terms of what is or isn't the best practice? Publication could make this process more complex, especially with so many bits of best-practice advice offered on a subject that is important to many litigants and counsel.

A practitioner member thought that the rule text was elegant and salutary and also noted appreciation of the existing rule's cross-reference to Evidence Rule 502. The long committee note would create the attention that the Advisory Committee wants, would focus practitioners on how to make the process work, and would address the existing problem of privilege logs coming late in the discovery process.

A judge member agreed with Judge Bates and stated that his initial reaction had been that the Standing Committee was being asked to approve a committee note, not a rule change. But then, the member said, he perceived a linkage between the rule text and the committee note. Because the rule was intended to be flexible, not one-size-fits-all, that is why it should be on the agenda early in the case. But the committee note could be greatly reduced to something like: "This was not intended to be an inflexible, one-size-fits-all rule. *See* the 1993 committee notes. This issue should be discussed early on in litigation, hence the proposed change." That might more appropriately focus the public comments.

Another practitioner member thought that the proposed amendment to the rule's text was an excellent addition that would treat both plaintiffs and defendants fairly. The committee note serves a purpose and is evenhandedly written. The note would help parties in privilege-log negotiations to push back against a view that all communications must be logged. A short note runs the risk of accomplishing little. This longer note would allow for good discussion between parties in order to alleviate costs and burdens.

A third practitioner member liked the rule change itself but agreed that the committee note was on the long side. The note is evenhanded but reads like something that would be better found in a treatise, not a committee note. There would be some benefit to stripping some examples out

of the note and allowing litigants and courts to develop the practice. Over time, a treatise would capture the best practices.

Professor Coquillette congratulated the Advisory Committee on an excellent rule, but agreed that the notes were too long and contained too much practical advice. The point is often made that lawyers look to treatises for practical advice. But those sources are behind paywalls, and some lawyers do not even read committee notes. So substantive changes should be in the rule text. Professor Coquillette observed that the committee notes could be revised after public comment.

A judge member suggested striking language in the draft committee note to the amendment to Rule 16(b)(3). Specifically, the clause "these amendments permit the court to provide constructive involvement early in the case" (agenda book page 211, lines 265–66) is inaccurate because a court does not need the rule's permission to be involved in discussions about complying with the privilege-log requirement. Professor Marcus asked the member whether the word "enable" would be better than "permit." The member thought that "enable" might still carry the implication that the court does not otherwise have the authority to manage the case by talking to counsel about what should be in a privilege log. Another judge member suggested replacing "permit" with "acknowledge the ability of."

A practitioner member offered suggestions for shortening the committee note to the Rule 26(f) amendment. The initial paragraphs were background. The paragraph starting on page 209 at line 200 recounted privilege-log practice. The next paragraph listed some examples that were probably worth having in the note. The paragraph discussing technology was useful to have in the note. Then there were the paragraphs about timing of privilege logs. The current draft's ten to twelve paragraphs, this member suggested, could probably be reduced to about four.

Judge Bates asked the representatives of the Advisory Committee whether they wanted to proceed with seeking the Standing Committee's approval for publication or to return to the Advisory Committee with the Standing Committee's feedback first. After conferring, Judge Rosenberg announced that she and the reporters would return to the Advisory Committee and the appropriate subcommittee with the Standing Committee's comments. The Advisory Committee would bring the proposed amendment back to the Standing Committee, with any warranted changes, at its June meeting. **No further action was taken on this item at this time.**

Appeals in Consolidated Cases. Judge Rosenberg reported on this item. This suggestion arose from *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018), in which the Supreme Court observed that if its holding regarding finality of judgments in actions consolidated under Rule 42(a) "were to give rise to practical problems for district courts and litigants, the appropriate Federal Rules Advisory Committees would certainly remain free to take the matter up and recommend revisions accordingly." After extensive discussion and a thorough FJC study by Dr. Emery Lee, a joint subcommittee of the Appellate and Civil Rules Committees found that there was not a sufficient problem to warrant a rule amendment—that is, litigants were not missing the deadline by which to appeal a final judgment in a consolidated action. The item was therefore removed from the joint subcommittee's and the Civil Rules Committee's agenda.

Judge Rosenberg recommended that the joint subcommittee be dissolved. The Appellate Rules Committee's representatives concurred. Judge Bates noted that he was unsure whether the

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joint subcommittee had been formed by a vote of the Standing Committee. Hearing no questions or comments about this item from the Standing Committee, Judge Bates asked whether anyone objected to removing the *Hall v. Hall* issue from ongoing review by the joint subcommittee and the Advisory Committees and dissolving the joint subcommittee. **Without objection, the joint subcommittee was dissolved.**

Presumptive Deadline for Electronic Filing. Judge Rosenberg briefly addressed this item, noting that the Advisory Committee had recommended that the proposal be removed from its agenda. But, based on Judge Bates's comments from earlier in the meeting, the joint subcommittee would reconsider the suggestion. **No further action was taken on this item at this time.**

Information Items

Multidistrict Litigation ("MDL"). Judge Rosenberg introduced this item by remarking that the MDL Subcommittee had first been formed in 2018 in response to comments about how important MDLs had become. No decision has yet been made on whether to recommend a rule change addressing MDLs. The subcommittee has instead focused on the question: if there *were* a rule change, what would the best possible rule be? Every MDL is different, and that has been the guiding principle throughout the iteration of different proposals. The subcommittee has been mindful of the importance of flexibility and of the many factors that bear on MDLs. The subcommittee explored putting MDL provisions into Rules 16 and 26 before ultimately developing the idea for a new Rule 16.1.

There are two versions of the draft rule, currently called Alternatives 1 and 2. The Advisory Committee has not yet considered and discussed the feedback of participants at the transferee judges' conference. Alternative 1 was well-received at the transferee judges' conference by many of the same judges who did not support an MDL-specific rule change four years ago.

MDLs make up anywhere from one-third to one-half of the federal docket. There are many new transferee judges who need to be educated about these cases. These judges also appoint new attorneys to leadership in MDLs, and these attorneys need to have proper direction and expertise. The *Manual for Complex Litigation* is being updated, but even if it were already up-to-date, people always begin by looking at the rules. So there needs to be something about MDLs in the rules.

The draft rule is designed to maintain flexibility. It has a series of guiding principles or prompts. Some prompts will apply in a specific MDL, but others may not. A judge need not go through every point listed in the draft rule. The goal is to put these points on the radar of the judges and counsel so that they start active case management early on.

Professor Marcus remarked that input from the Standing Committee would be extremely valuable to the subcommittee, especially as to the list of topics set out in Alternative 1 on page 219 of the agenda book. Judge Rosenberg agreed that the subcommittee would welcome comments on both Alternative 1 and Alternative 2. The goal is to have a more refined version to take to the full Advisory Committee meeting in March and potentially to the Standing Committee for approval for publication in June.

Judge Bates opened the floor for comments and questions.

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An academic member noted that the Standing Committee had previously debated whether guidance on MDLs should go in a rule or in some other resource. This member queried whether it might make sense to wait to see the update of the *Manual for Complex Litigation*. The member suggested that Alternative 1's long list looked more like something that would go in the *Manual* than like rule text. Alternative 2 looked more rule-like, but this member would be more comfortable adopting Alternative 2's more spare approach if more detailed guidance could be found elsewhere, such as in the *Manual*. The academic member also noted others' suggestions that the rulemakers address the question of authority for some of the things that judges have done in managing MDLs, and the member questioned whether either alternative draft tackled that issue.

Judge Bates remarked that the next edition of the *Manual* would be a substantial update and would take a long time to complete. Judge Cooke estimated that it would take two to three years, probably closer to three years. Judge Bates noted that, given the three-year timeline for rule changes, it would take about six years for anything like draft Rule 16.1 to come into effect if the committees awaited the new *Manual*.

Judge Rosenberg observed that the *Manual* is not a quick read, and not every judge has or needs to have a desk copy. But as to whether this is a best-practices or a rules issue, she agreed with former chair Judge Dow's emphasis on making sure to put things in the rules—not every lawyer or judge reads the *Manual* or other resources, but everyone looks at the rules.

A judge member stated that a rule along the lines of Rule 16.1 would be helpful to judges and expressed a preference for Alternative 1 because it provides the information a court would need without having to read through a whole manual. It gives the court a lot of ideas and factors to consider in managing the case. Alternative 2 is too broad and vague to be helpful for a first-time MDL judge. Addressing the bracketed items in Alternative 1, such as the reference to a common benefit fund, the member expressed support for including those items in order to spark thought about what needs to be discussed.

Regarding Alternative 1, another judge member asked how the report called for by the rule would address items 6 through 14 if items 1 through 5 had not yet been resolved. If it is unknown who is leadership counsel or what leadership counsel's authority is, who engages in the discussion of items 6 through 14? Judge Rosenberg responded that draft Rule 16.1(b) discusses the designation of coordinating counsel for the preconference meet-and-confer. Coordinating counsel will not necessarily become permanent leadership counsel. Interim coordinating counsel and the judge can identify issues on which the judge needs feedback. These decisions can be changed, perhaps when leadership counsel is appointed or there is a major development in the MDL. This is not uncommon, that decisions made by leadership counsel need to be changed along the way. The rule contemplates that court-appointed coordinating counsel will help with the meet-and-confer and reporting to the court at the first conference on the first 14 issues or any additional issues the court deems necessary. The judge member asked what happens if there is dissension on the plaintiff side. Can coordinating counsel commit to anything in items 6 through 14? What if plaintiffs' counsel is split 50/50 on those issues?

To answer this question, Judge Rosenberg asked a practitioner member to talk about that member's experience with the issue. The member commented that there have been several large MDLs in which the court has appointed interim coordinating counsel to get the lawyers talking to

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each other and resolve or narrow the issues. In situations where there is not unanimity on one side on some procedural priority, coordinating counsel presents the differing views to the court in an organized fashion at the initial conference. That doesn't give coordinating counsel absolute authority to make decisions unless there is a consensus. The emphasis is on the organizational and coordinating functions—to let the court see the range of views and make decisions in an orderly way.

Professor Marcus commented that the rule lets the judge direct counsel to report about the topics listed on page 219 of the agenda book. That would help orient the judge to the case and focus the lawyers on things that matter, even if they do not agree. That is better than a free-for-all. And requiring the lawyers to address relevant issues early on could help to avoid situations where the judge makes decisions based on incomplete information and later comes to question them, as Judge Chhabria described concerning his experience with the *Roundup* case. It may also be sensible to soften the language in proposed Rule 16.1(d) on page 220 to make clear that the management order after the initial conference is subject to revision. Overall, the point is to give the judge guidance in overseeing the case.

A judge member expressed continuing skepticism. There is some merit to the question about the court's authority. But the member asked how often transferee courts are reversed for acting without authority. If there is not a problem, perhaps not so much work needs to be done on a solution. This judge noted that the choice between the two alternative drafts only arises if one is first persuaded that a rule is needed at all.

Judge Bates observed that there might have been an authority question in *In re Nat'l Prescription Opiate Litigation*, 976 F.3d 664 (6th Cir. 2020).

A practitioner member stated that he has a bias because his firm litigates many MDLs on the defense side. The member's sense is that the plaintiffs' bar thinks that the MDL system basically works okay, while the defense bar does not think it is working, at least not in the big pharmaceutical MDLs. Rather, the system leads to settlements of meritless cases for billions of dollars. It is difficult for the rulemakers to work in an environment like that, where some people are relatively happy with the system and some are not. Both alternatives, especially the longer Alternative 1, are really about the plaintiffs' side. They may be potentially helpful, but they do not speak to defense concerns. The primary defense concern is that large MDLs are not vehicles for consolidating existing cases so much as encouraging more cases to be filed. The language coming closest to speaking to defense-side concerns is on page 219 of the agenda book, lines 568–69, about creating an avenue for vetting. But the proposed language ("*[w]hether the parties should be directed to* exchange information about their claims and defenses at an early point in the proceedings") was too agnostic. The member suggested considering deleting "whether the parties should be directed to" and starting with "exchange of information about". At least from an efficiency standpoint and from the defense bar's perspective, vetting is important.

The member also commented that, in previous versions, there had been debate about whether the exchange should be of "information" or "information and evidence." The member agreed that "evidence" seems awkward. But "information" is amorphous and may not be enough to determine whether cases in an MDL are meritorious. One suggestion is "exchange information

about the factual bases of their claims and defenses." That gets at the "evidence" concept without using the word "evidence."

Another practitioner member endorsed the idea of separating items 1 through 5 from items 6 through 13 in Alternative 1. This member expressed concern about the application of Alternative 1 before lead counsel is appointed, because then it would become an opportunity for would-be lead counsel to pontificate about the issues in items 6 through 13—that puts the cart before the horse. One of the most important things in an MDL is the appointment of lead counsel. The rules do not limit a judge's considerations in making that appointment. Does the judge consider the size of the claim? Counsel's experience level? The member has a bias toward the Private Securities Litigation Reform Act because it sets a process and criteria for appointing lead counsel. The member thought that transferee judges like that they can pick whom they want for lead counsel. The member predicted that this would become a controversy one day in a big MDL because there are no standards for that appointment. Perhaps a future Advisory Committee will add meat to that bone, but many of the topics listed in the current draft rule are obvious things that any competent MDL judge or defense counsel would want to consider.

A judge member thought that Alternative 1 is a particularly good framework to organize an MDL and indeed any complex case. The member suggested two big-picture additions. First, direct the parties in preparing their report and discussing the case to adhere to the principles of Civil Rule 1—just, speedy, and inexpensive dispositions. Counsel are not always aware of that rule. Second, there should be an emphasis on early determination of core factual issues—this might be early vetting—and core legal issues. Not necessarily dispositive legal issues, but core issues like a *Daubert* motion, an early motion in limine, or an early motion for summary judgment that will shape the law applicable to the case. Civil Rule 16(c)(2) concludes its long list of matters for consideration at a pretrial conference with "facilitating . . . the just, speedy, and inexpensive disposition of the action," thus referencing Rule 1. But because that is so important in a complex case, the reference to Rule 1 should be at the outset of the new rule, followed by a direction to focus on core issues of fact and law.

Judge Bates asked what the Advisory Committee thinks about the issue of settlement. There are questions concerning the court's role and authority, and settlement is a big issue in MDLs. Transferee judges historically have had different levels of involvement. Some think they have no authority to get involved. That is unlike class actions, where Rule 23 sets forth the judge's very involved oversight role. For normal civil cases, Rule 16(c)(2) tells the judge to focus on settlement and to use special procedures to assist in settlements. The question is what the proposed rule says about settlements in MDLs. In Alternative 1 on page 219, at lines 557–58, there is a reference to addressing a possible resolution. In Alternative 2 on page 220, line 598, there is also a reference to possible resolution. What is the message being sent to the bar and bench if that is where settlement winds up in the rule, especially compared to the more fulsome requirement in Rule 23? It is important to write these rules for the less-experienced judges and practitioners.

A practitioner member thought that another provision could be added to deal specifically with settlement—assessing whether there is a method for a prompt resolution of the claims. Over the years, more would probably be added to the rule, but something specifically dealing with considerations of early resolution, and settlement generally, would certainly be worth listing. But the problem of attorney jousting before the appointment of leadership counsel will still arise.

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Another practitioner member thought that different language could solve the sequencing issue. The language would state that not all the considerations should be considered or decided at one initial conference; rather, they should be addressed in a series of conferences. Experienced MDL judges know that case management is an ongoing, iterative process; a single pretrial order is not enough. This language could avoid some confusion about how many of the considerations in the rule need to be addressed at one time. It would tell the court that this is a menu of items and let the court determine which are the priority items for the first conference and which to address in an ongoing fashion.

The previous practitioner member reiterated that, unless leadership counsel is appointed early, it makes no sense to deal with the other topics. It would be helpful, especially to inexperienced judges, to make clear in the rule that the appointment of leadership counsel should be dealt with up front.

Judge Rosenberg remarked that the subcommittee spent a lot of time on the settlement issue. Transferee judges thought that—unlike class actions, which have unrepresented parties—judges did not and should not manage, oversee, or approve settlements in MDLs. Some lawyers who looked at the draft rule may have had similar reactions. The subcommittee ultimately decided to take out that language. Still, it is important for the MDL process to have integrity and transparency, and so the subcommittee considered how a judge could ensure the process has those qualities without having the authority to approve a settlement. The solution was to give the judge a more proactive role in all aspects of case management, including appointing leadership counsel, determining leadership counsel's responsibilities, and having a regular reappointment process. Ensuring that the process is fair can promote trust in the outcome.

Judge Bates acknowledged the distinction between managing the process and reviewing the outcome, but suggested that the draft rule did not contain much guidance about what the judge should consider in appointing leadership counsel or about what other parties and counsel should be doing to create a process that will lead to a fair and just resolution of the claims.

Professor Marcus added that, with respect to settling individual claims asserted by claimants represented by other lawyers, appointment of leadership counsel is dicey. The subcommittee has given that scenario a lot of thought and discussion, including whether there could be a process by which a judge could "approve" the negotiation process for any settlements that come about. That is also dicey. On page 219 of the agenda book, in item 13, in brackets, another possibility is mentioned, which is to use a master to assist with possible resolution. Another question is: what happens if leadership counsel's own cases are settled—must different leadership counsel be appointed? MDLs involve different situations from Rule 23(e), and there is a "third-rail" aspect to this subject, so it is very valuable to have the Standing Committee's feedback while addressing it.

Judge Bates asked whether special masters have been widely used in managing and reaching settlements in MDLs. A practitioner member said yes, absolutely. In some of the biggest cases, special masters run the whole settlement process. Judge Bates asked if such a master reports to the court. A practitioner member gave an affirmative answer to this question, but remarked that these masters are not typically Rule 53 special masters. They are called "settlement masters" or "court-appointed mediators." It is an ad hoc appointment in terms of the roles and duties, but those

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duties do typically include reporting to the court. The extent to which the master can report to the court on the substance of the negotiations is usually worked out among the parties. In the *Opiate* MDL, there were Rule 53 appointments of special masters who ultimately became involved in mediation and settlement. In the *Volkswagen* MDL, Judge Breyer invented a position called "settlement master," which was not based on Rule 53 but had many but not all of the same responsibilities and roles. Judge Breyer made the appointments after requesting input from the parties on whether to appoint a master and, if so, whom. The court need not follow the parties' recommendations, but in the member's experience, this topic is discussed with the parties and the court's determinations do not come as a surprise.

Judge Bates thought that judges who appoint masters would communicate with them. Should the master's reporting duty to the judge be one of the considerations under the rule?

Judge Rosenberg mentioned that the subcommittee had received feedback from some groups that did not like having the words "special master" in the draft rule. It might create a presumption that there should be a special master, even if not everyone wants one. This led to some discussion, and some thought it might be better to have the words "special master" in the rule so that the parties will talk about it, even if they disagree.

Judge Bates asked whether the rulemakers should be careful about referring to the appointment of a "special master." Might the reference be viewed as authorizing something outside of Rule 53? He intended no criticism of what any judge has done in the MDL process, but he asked whether the rulemakers want to give, through a casual reference in item 13 of a laundry list, an imprimatur to the idea that a judge can say, "I want a settlement master. Rule 53 doesn't fit, so I'm just going to create this role on my own."

Judge Rosenberg responded that the subcommittee has discussed this topic but has not yet brought it to the full Advisory Committee. The subcommittee is working on tweaking the language in response to feedback on that issue and others. As another example, in line 570 of the report in the agenda book, there is a reference to a "master complaint." The rules do not provide for a master complaint, but the Supreme Court has referred to master complaints, and so has the subcommittee. One piece of feedback was that the term should not be used. Does using it somehow give credibility to a form of complaint that the rules otherwise do not mention?

Judge Bates commented that one could go pretty far back in this line of thought. The rules do not authorize the appointment of leadership counsel, for example. There are a lot of things that may not have a specific basis in the existing rules.

A judge member noted that the draft rule does not make any reference to the transferor court. It rarely happens that the case is sent back, but the MDL framework does contemplate that the work of the transferee court ends at some point. An item could be added to suggest that the transferee court and lawyers should consider when a case should be sent back to the transferor court.

Professor Cooper commented that a suggestion had arisen that the rule should address remand. But it was unclear whether the suggestion meant addressing motions to remand to state court, in cases plaintiffs thought improperly removed, or remand to transferor courts.

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The judge member thought that it sounds like there is a never-ending list of items that could be considered or called into question. At what point do we return to the concept of "first do no harm"? Is there a need for this rule? What is its usefulness?

Professor Marcus commented that there has been a decades-long debate about whether the transferor court, if a case goes back, can simply start from scratch and throw out what the transferee judge did with the case. Putting a time limit on transferee activities might produce some behaviors that should not be encouraged. Also, as Professor Cooper said, remand means two different things here. Under 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation ("JPML") has authority to remand to the transferor court, but the JPML usually awaits a suggestion from the transferee judge that this would be desirable. The transferee judge cannot do this unilaterally.

Judge Bates commented that there are some things, not listed in the draft rules, that might occur later on before the transferee judge, particularly bellwether trials. If the draft rule is viewed as a continuing conference obligation, should it address other items, such as how to manage and sequence any bellwether proceedings?

Judge Rosenberg responded that bellwether management was not included because it is far along in the MDL process and might be outside the realistic scope of what can and should be discussed in the early conferences.

Professor Marcus added that there are also various views about whether bellwethers are useful. It is probably unwise to urge the judge to map out possible use of bellwethers at the start of an MDL. He predicted that any rule will say that, except for extremely simple and small MDLs, one conference is not enough, and the management plan must be revisited as things move forward. So the rule's focus will probably be on the initial exercise, and the expectation will be that judges continue to oversee other events as they become timely. Bellwethers might be in that latter category.

Judge Rosenberg thanked the Standing Committee for its feedback.

Rule 41(a) (Dismissal of Actions). Judge Rosenberg reported on this item. The Advisory Committee formed a subcommittee to address a conflict about the scope of Rule 41(a)(1)(A), which allows a plaintiff to voluntarily dismiss without prejudice an "action" without obtaining a court order or the defendants' consent. The subcommittee's research showed that courts approach Rule 41 dismissals in different ways. The primary disagreement is whether Rule 41(a)(1)(A) requires dismissal of an entire action against all parties or whether it may be used to dismiss only certain claims or only claims against certain parties. The subcommittee has not reached a consensus on whether to pursue an amendment or what amendment to propose. An additional wrinkle is Rule 15, through which a plaintiff can amend a complaint to remove certain claims or defendants. The subcommittee is considering whether Rule 15 should be the vehicle by which a party should dismiss something short of the entire action.

Judge Bates remarked that this is a complex issue, and he solicited comments or feedback from the Standing Committee. Hearing none, Judge Rosenberg turned to the remainder of the report, and invited Professor Cooper to present the next item.

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Rule 7.1 (Disclosure Statement). Professor Cooper addressed two suggestions made to the Advisory Committee about recusal disclosures. One suggestion, about "grandparent corporations," contemplates a company that owns a stake in a second company, which in turn has a stake in a third company. If, say, Orange Julius is a party to an action, then the current rule requires it to disclose that Dairy Queen is its owner. But the rule does not require Orange Julius to disclose that Berkshire Hathaway owns Dairy Queen. So if the judge in the action owns shares of Berkshire Hathaway, that judge may not have notice of a potential financial interest in the case's outcome. Should something be done to address this in the rule?

The other suggestion proposed a rule directing all parties and their counsel to consult the assigned judge's publicly available financial disclosures. The parties would either flag any interests that may raise a recusal issue or certify that they have checked and do not know of any. The Advisory Committee has not really dived into this. Rule 7.1 covers only nongovernmental corporate parties. There are all sorts of business organizations with complicated ownership structures that may involve interests a judge is not aware of. Should the Advisory Committee just say it is too complicated to try to go further than corporations?

In response to a question posed by Professor Cooper, Judge Bates suggested that, unless the Appellate or Bankruptcy Rules Committees feel otherwise, it makes sense for the Civil Rules Committee to take the lead in considering proposed amendments to Rule 7.1.

Other Items Considered. At this point, Judge Bates opened the floor for any remaining issues raised in the Civil Rules Committee's report. He asked a question about service awards for class-action representatives. Does the Advisory Committee view this issue as a matter of procedure or of substantive law? Judge Rosenberg responded that the issue was not a subject of much discussion at the last Advisory Committee meeting. Professor Marcus thought that there was no need to worry about the issue yet. There was a pending certiorari petition on the issue, so there might be more to learn by waiting.

Professor Marcus turned to Rule 45, about which a question had arisen: what does it mean to "deliver" a subpoena? By hand? By email? It may be that, in civil litigation, counsel can work this out. Is it worth trying to devise specifics on a method of delivery?

A judge member drew attention to the information item on standards and procedures for deciding in forma pauperis ("IFP") status, and suggested that that item warranted action. The member remarked that a *Yale Law Journal* article had described disparate practices on IFP status, which raised important issues of access to justice. The Appellate Rules Committee is looking at a standardized form for IFP status on appeal. The member suggested that someone should review this—if not the rulemakers, then a different committee of the Judicial Conference.

Judge Bates commented that the current view of the Advisory Committee was that it was not going to take any specific action on standards for IFP status. If the Rules Committees are not going to look further at this, should they encourage another Judicial Conference committee to do so? The only other logical Judicial Conference committee is CACM. Judge Rosenberg remarked that there is an Administrative Office pro se working group that may also be appropriate. Judge Bates suggested that perhaps the rulemakers could communicate to these entities that the Advisory Committee is not going to do anything with the topic for now but views it as an important question.

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Another judge member informally asked the Advisory Committee to consider whether there is a need to address the Supreme Court decision in *Kemp v. United States*, 142 S. Ct. 1856 (2022), which held that a judge's error of law is a "mistake" under Rule 60(b).

Items Removed from Agenda. Judge Rosenberg concluded by noting items removed from the Advisory Committee's agenda. These included proposed amendments to Rule 63 (Successor Judge), Rule 17(a) (Real Party in Interest) and Rule 17(c) (Minor or Incompetent Person). There were no questions or comments from the Standing Committee on these items.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Dever and Professors Beale and King presented the report of the Advisory Committee on Criminal Rules, which last met in Phoenix, Arizona, on October 27, 2022. The Advisory Committee presented two information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 297.

Information Items

Rule 49.1 (Privacy Protection for Filings Made with the Court). Judge Dever reported on this item. He explained that the Advisory Committee had considered and decided to remove from its agenda a proposal by Judge Furman regarding Rule 49.1. The rule's committee note refers to 2004 guidance from CACM that certain documents should remain confidential and not be made part of the public record. In *United States v. Avenatti*, 550 F. Supp. 3d 36 (S.D.N.Y. 2021), Judge Furman held that the common law and the First Amendment required appropriate disclosure of a defendant's CJA Form 23 and accompanying affidavit. Judge Furman suggested amending Rule 49.1(d) and removing the committee note's reference to the CACM guidance. The Advisory Committee concluded that the original committee note did not produce confusion about the constitutional or common-law rights of access, and it also hesitated to venture into potentially substantive issues through rule amendments.

Rule 17 (Subpoena). Judge Dever reported on this item as well. The Advisory Committee is analyzing a proposal by the New York City Bar to amend Rule 17 to allow defendants to more easily subpoena third parties for documents. As part of this process, the Advisory Committee has appointed a subcommittee, chaired by Judge Nguyen, to gather information about how federal courts apply the rule and how states handle these kinds of subpoenas. The goal is to determine whether there is a problem that warrants a rule change. There have been two Supreme Court cases interpreting the rule, both fairly atypical. The subcommittee has heard from a wide variety of experienced practitioners from the defense bar and the Department of Justice. The process is still in its early stages, and the Advisory Committee will continue to study these issues.

Judge Bates commented that the miniconference on the Rule 17 issue at the most recent Advisory Committee meeting had been very informative and had elicited several different perspectives that should be useful in the committee's ongoing study.

Judge Bates opened the floor to questions or comments regarding the Advisory Committee's report. Hearing none, he invited the Evidence Rules Committee to give its report.

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REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Schiltz and Professor Capra presented the report of the Advisory Committee on Evidence Rules, which last met in Phoenix, Arizona, on October 28, 2022. The Advisory Committee presented two information items and no action items. The Advisory Committee's report and the draft minutes of its last meeting were included in the agenda book beginning at page 365.

Information Items

Rule 611 (Juror Questions for Witnesses). Judge Schiltz reported on this item. This proposal would add a new subsection (e) to Rule 611 to create safeguards if jurors are permitted to ask questions at trial. The proposed amendment was presented to the Standing Committee at the June 2022 meeting. Most comments then had been about whether jury questioning is a good thing at all; some members thought that it was not and that putting safeguards in the rule would only encourage judges to allow jurors to ask questions. The proposed amendment was returned to the Advisory Committee for further study on the pros and cons of juror questioning.

The Advisory Committee held a miniconference on the issue at its fall 2022 meeting in Phoenix, Arizona, which was coincidental but fortunate in that Arizona is a pioneer among the states in allowing juror questioning. The panel included federal and state judges and civil and criminal practitioners, all with a great deal of experience with juror questioning. All of them expressed the view that juror questioning was a positive thing with many benefits and few risks. They all supported the proposed rule. It was difficult to find opponents—one whom Professor Capra did find could not attend the miniconference. Afterward, the Advisory Committee thoroughly discussed the proposal. It will continue to discuss the proposal at its spring 2023 meeting and decide whether to pursue it.

Judge Bates thought the miniconference was a helpful exercise. Although it was one-sided—as it necessarily would be in Arizona—it gave the committee many issues to consider.

Professor Capra reiterated that it was difficult to find someone in Arizona who had anything critical to say about the practice. There were a couple of comments—one from a judge at the miniconference who said that juror questioning sometimes took too much time, and another from a prosecutor who said that sometimes there is a risk that questioning can get out of hand because the lawyers cannot control the witness. But there was a swarm of positive factors indicating that juror questioning is not the problem that some think it would be. Most juror questions are only for clarification, not attempts to take over the case or to pick or fill holes in one party's case.

Judge Bates raised a concern about juror questions in criminal cases. The criminal process is not a pure search for the truth—the prosecutor has the burden to prove guilt. He suggested that a juror question may unfairly help the prosecution by revealing a problem in the case that the prosecutor can then address or cure.

A judge member asked whether there was anecdotal information from actual jurors, such as information from a questionnaire asking whether they liked being able to ask questions. Professor Capra said that the judges reported that they generally discuss the process with jurors

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and that reviews had been positive. One juror told a judge that he was glad he could ask questions so that he did not have to look up answers on the internet. Another juror said that it was nice to be able to ask questions; even if the juror did not do so, the juror still became more involved in the process. Judge Schiltz also commented that there have been studies showing that jurors give overwhelmingly positive feedback about the ability to ask questions.

A practitioner member asked whether a 50-state (and multidistrict) survey had been done to learn about the prevalence of the practice. Professor Capra responded that there are some data on that question. The state of Washington has a juror-questioning practice. About 15% to 20% of trials in federal courts allow juror questioning. The member commented that it would be a good idea to identify federal district judges who allow the practice and to get their feedback. Judge Bates observed that it is a judge-by-judge question, not a court-by-court question. The practitioner member reiterated that the Advisory Committee should try to determine the frequency of the practice outside of Arizona and to talk with federal judges who have done juror questioning and find out its pros and cons. Judge Schiltz noted that the Advisory Committee had the same questions and had asked Professor Capra to gather more data on them. Professor King commented that the National Center for State Courts has collected and published data about juror questioning in the states.

Judge Bates asked whether the Advisory Committee had considered whether there is a difference between the civil and criminal contexts and whether a rule might address one but not the other. Professor Capra responded that any safeguard that applies in the civil context would have to apply to the criminal context as well. Perhaps criminal cases could have additional safeguards, but no safeguards would apply only to the civil context.

Judge Schiltz commented that there had been a study in the Ninth Circuit that recommended permitting juror questioning in civil cases but not criminal cases. Judge Bates suggested, however, that there was more recent work in the Ninth Circuit that was more positive about juror questions. And Professor Capra noted that the Ninth Circuit pattern criminal instructions now address juror questions.

Rule 611 (Illustrative Aids). Judge Schiltz reported on this item as well. The Advisory Committee held a second miniconference in Phoenix on illustrative aids. Despite the fact that illustrative aids are used in virtually every trial, there is confusion over the difference between demonstrative evidence, which is admitted into evidence, and illustrative aids, which are not admitted into evidence and are used only to help the jury understand evidence that has been admitted. There are variations among judges' practices about notice requirements to opposing counsel, whether illustrative aids can go to the jury room, and whether the aids become part of the record.

This amendment would add a new subsection (d) to govern the use of illustrative aids. It would clarify the distinction between illustrative aids and demonstrative evidence, require notice, prohibit illustrative aids from going to the jury room absent a court ruling and proper instruction, and require they be made part of the record so that they would be available to the appellate court.

The miniconference featured a large panel of judges, professors, and practitioners, most of whom opposed the proposed rule. Since then, the Advisory Committee has also received about 40

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comments on the rule. Most opposition is to the notice requirement. Practitioners adamantly opposed having to show their illustrative aids to their opponents, especially aids they wanted to use at closing. There were also practical concerns. The category of illustrative aids spans a wide variety. For example, if an attorney writes something on a chart as a witness is testifying, how does the attorney give prior notice to opposing counsel of that contemporaneously created illustrative aid? The Advisory Committee did receive a comment in support of the rule—including the notice requirement—from the Federal Magistrate Judges Association. At its spring 2023 meeting, the Advisory Committee will review the comments and decide whether to move forward, perhaps after excising the notice requirement.

Judge Bates, noting that this miniconference had also been very helpful to the Advisory Committee, opened the floor for comment.

A practitioner member raised concerns about the notice requirement from the member's colleagues in trial practice. Attorneys persuade juries in two ways: by words and by visuals. When both are aligned, people retain far more information than when only one method is used. An attorney would never show the outline of an opening statement or witness exam to an opponent—it puts the attorney at a strategic disadvantage because opponents can change what they will say in response. Sharing an illustrative aid is similar. And the effect of taking the notice requirement out would be that there is a transcript, an objection, and a discussion—the rule would treat illustrative aids the same as attorneys' oral statements. Requiring notice would put more disclosure obligation on the visual than the oral. Professor Capra responded that he thinks the Advisory Committee was comfortable with deleting the notice requirement, and it is likely that that is what will happen.

The member also commented that, as illustrative aids are defined—helping the factfinder understand admitted evidence—a strict reading would mean that a PowerPoint presentation could not be used in an opening because no evidence will have been admitted yet. Professor Capra responded that the Advisory Committee needs to decide whether the rule applies to openings and closings. If the rule were to apply to openings and closings, one could revise proposed Rule 611(d)(1)'s "understand admitted evidence" to read "understand admitted evidence or argument."

A judge member mentioned that, as a trial judge, the member would customarily make illustrative aids a part of the record. Now, after 20 years on the court of appeals, the member has had very little occasion to see an illustrative aid that is part of the trial record. The member continues to think that putting aids in the record is the better practice. The appellate courts are so far removed from the trial process that anything that gives them a better feel of what has been before the trier of fact is of great assistance.

A second practitioner member expressed support for rulemaking on this topic and commented on the centrality of slides in modern trials. The member is often concerned that the other side will do something crazy with illustrative aids in openings and closings. The member can sometimes work out an arrangement with the other side to mutually disclose trial materials. But sometimes things like closing slides are made the night before the closing argument—when is it practical to give notice for these aids? Putting aids in the record is an easy decision, as is making it clear that they do not go to jury deliberations. Notice might bother the member less than it does other lawyers because the member has seen people do crazy things at trial, and the damage is done even if the judge says something after the fact. The standard in proposed Rule 611(d)(1)(A)

Draft

("[substantially] outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time") gives a judge enormous power over what can be done—that might be good or bad. The member does not know what the standard should be; maybe it should be the same as applies to oral advocacy in a closing argument.

A third practitioner member largely agreed with the previous member's comments. The solution is probably not one-size-fits-all, so the member is not sure what to do about a notice requirement. The second practitioner member suggested that you do not want to show aids to opposing counsel so far in advance that they can change what they will do in response, but you do want to make sure that there are not any slides that are so outrageous that the judge should know about them in advance.

Professor Capra asked whether the solution might be to take out the notice requirement from the text but to put in language that summarizes the two previous members' comments—there is no one-size-fits-all notice requirement, but notice is preferred because it allows judges to decide in advance rather than after the fact. But the rule would leave the determination for the judge to make.

The second practitioner member agreed with Professor Capra's suggestion. The "Wild West" view of trials is dangerous, so having some notice is a good idea. But it should not be so much notice that each side can redo its slides in response to the other's.

The third practitioner member noted that it is much harder to unsee than unhear something. That is a qualitative difference between what is said and shown. Judge Bates observed that it would be valuable for the Advisory Committee to consider preserving judges' discretion to deal with the notice issue.

The first practitioner member reiterated opposition to a notice requirement. Leaving the notice requirement out of the rule does not strip a federal judge of inherent authority. Also, some slides' power comes from not disclosing them in advance. If this rule applies to openings and closings, notice disincentivizes parties from using powerful slides during those key parts of trial.

Professor Capra responded that many judges already use Rule 611(a) to control visual demonstrations in openings and closings. It did not make sense to him to exclude openings and closings from a rule specific to illustrative aids because there would then be two rules covering essentially the same thing, one during trial and one during openings and closings.

Updates on Other Rules Published for Public Comment.

Judge Schiltz briefly mentioned that there are several other proposed rules that are published for comment. The Advisory Committee has received almost no comments on those rules.

Judge Bates called for any further comments from the Standing Committee. Hearing none, Judge Bates thanked the Advisory Committees, their members, reporters, and chairs for their hard work.

Draft

OTHER COMMITTEE BUSINESS

Action Item

Judiciary Strategic Planning. This was the last item on the meeting's agenda. Judge Bates explained that the Standing Committee needed to give its recommendations to the Judicial Conference's Executive Committee about the contents of the strategic plan and what should receive priority attention over the next two years. The recommendations were due within a week after the meeting. Judge Bates requested comment on the priorities in the strategic-planning memorandum beginning on page 402 of the agenda book. No comments were offered.

Judge Bates then sought the Standing Committee's authorization to work with the Rules Committee Staff to give comments to the Executive Committee, on behalf of the Rules Committees, about the strategies and goals for the next two years. This procedure had been followed in the past, but he wanted to be sure that no one had any problem with it. **Without objection, the Standing Committee gave Judge Bates that authorization.**

New Business

Judge Bates then opened the floor to new business. No member raised new business.

CONCLUDING REMARKS

Before adjourning the meeting, Judge Bates thanked the Standing Committee members and other attendees for their valuable contributions and insights. The committee will next convene on June 6, 2023, in Washington, D.C.

Draft

TAB 1C

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2023

Current Step in REA Process:
- Transmitted to Congress (Apr 2023)

REA History:
- Transmitted to Supreme Court (Oct 2022)
- Published for public comment (Aug 2021 – Feb 2022 unless otherwise noted)
- Approved by Standing Committee (June 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 2	Proposed amendment developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	BK 9038, CV 87, and CR 62
AP 4	The proposed amendment is designed to make Rule 4 operate with Emergency Civil Rule 6(b)(2) if that rule is ever in effect by adding a reference to Civil Rule 59 in subdivision (a)(4)(A)(vi) of Appellate Rule 4.	CV 87 (Emergency CV 6(b)(2))
AP 26	The technical proposed amendment adds “Juneteenth National Independence Day” to the list of legal holidays.	AP 45, BK 9006, CV 6, CR 45, and CR 56
AP 45	The technical proposed amendment adds “Juneteenth National Independence Day” to the list of legal holidays.	AP 26, BK 9006, CV 6, CR 45, and CR 56
BK 3011	Proposed new subdivision (b) would require courts to provide searchable access to unclaimed funds on local court websites.	
BK 8003 and Official Form 417A	Proposed rule and form amendments are designed to conform to amendments to FRAP 3(c) clarifying that the designation of a particular interlocutory order in a notice of appeal does not prevent the appellate court from reviewing all orders that merged into the judgment, or appealable order or degree.	AP 3
BK 9038 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, CV 87, and CR 62
BK 9006(a)(6)(A)	Technical amendment approved by Advisory Committee without publication add Juneteenth National Independence Day to the list of legal holidays.	AP 26, AP 45, CV 6, CR 45, and CR 56
CV 6	The technical proposed amendment adds “Juneteenth National Independence Day” to the list of legal holidays.	AP 26, AP 45, BR 9006, CR 45, and CR 56
CV 15	The proposed amendment to Rule 15(a)(1) is intended to remove the possibility for a literal reading of the existing rule to create an unintended gap. A literal reading of “A party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or [pre-answer motion]” would suggest that the Rule 15(a)(1)(B) period does not commence until the service of the responsive pleading or pre-answer motion – with the unintended result that	

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

Rule	Summary of Proposal	Related or Coordinated Amendments
	there could be a gap period (beginning on the 22nd day after service of the pleading and extending to service of the responsive pleading or pre-answer motion) within which amendment as of right is not permitted. The proposed amendment would preclude this interpretation by replacing the word "within" with "no later than."	
CV 72	The proposed amendment would replace the requirement that the magistrate judge's findings and recommendations be mailed to the parties with a requirement that a copy be served on the parties as provided in Rule 5(b).	
CV 87 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CR 62
CR 16	The technical proposed amendment corrects a typographical error in the cross reference under (b)(1)(C)(v).	
CR 45	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, AP 45, BR 9006, CV 6, and CR 56
CR 56	The technical proposed amendment adds "Juneteenth National Independence Day" to the list of legal holidays.	AP 26, AP 45, BR 9006, CV 6, and CR 45
CR 62 (New)	Proposed new rule developed in response to § 15002(b)(6) of the CARES Act, which directs that the Judicial Conference and the Supreme Court consider rules amendments to address emergency measures that may be taken by the courts when the President declares a national emergency.	AP 2, BK 9038, and CV 87
EV 106	The proposed amendment would allow a completing statement to be admissible over a hearsay objection and cover unrecorded oral statements.	
EV 615	The proposed amendment limits an exclusion order to the exclusion of witnesses from the courtroom. A new subdivision would provide that the court has discretion to issue further orders to "(1) prohibit disclosure of trial testimony to witnesses who are excluded from the courtroom; and (2) prohibit excluded witnesses from accessing trial testimony." Finally, the proposed amendment clarifies that the existing provision that allows an entity-party to designate "an officer or employee" to be exempt from exclusion is limited to one officer or employee.	
EV 702	The proposed amendment would amend Rule 702(d) to require the court to find that "the expert's opinion reflects a reliable application of the principles and	

Effective (no earlier than) December 1, 2023

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REA History:

- Transmitted to Supreme Court (Oct 2022)
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- Approved by Standing Committee (June 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	methods to the facts of the case." In addition, the proposed amendment would explicitly add the preponderance of the evidence standard to Rule 702(b)–(d).	

PROPOSED AMENDMENTS TO THE FEDERAL RULES

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
AP 32	Conforming proposed amendment to subdivision (g) to reflect the proposed consolidation of Rules 35 and 40.	AP 35, 40
AP 35	The proposed amendment would transfer the contents of the rule to Rule 40 to consolidate the rules for panel rehearings and rehearings en banc together in a single rule.	AP 40
AP 40	The proposed amendments address panel rehearings and rehearings en banc together in a single rule, consolidating what had been separate provisions in Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 would be transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.	AP 35
Appendix: Length Limits Stated in the Federal Rules of Appellate Procedure	Conforming proposed amendments would reflect the proposed consolidation of Rules 35 and 40 and specify that the limits apply to a petition for initial hearing en banc and any response, if requested by the court.	AP 35, 40
BK 1007(b)(7) and related amendments	The proposed amendment to Rule 1007(b)(7) would require a debtor to submit the course certificate from the debtor education requirement in the Bankruptcy Code. Conforming amendments would be made to the following rules by replacing the word “statement” with “certificate”: Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2).	
BK 7001	The proposed amendment would exempt from the list of adversary proceedings in Rule 7001, “a proceeding by an individual debtor to recover tangible personal property under § 542(a).”	
BK 8023.1 (new)	This would be a new rule on the substitution of parties modeled on FRAP 43. Neither FRAP 43 nor Fed. R. Civ. P. 25 is applicable to parties in bankruptcy appeals to the district court or bankruptcy appellate panel, and this new rule is intended to fill that gap.	AP 43
BK Restyled Rules	The third and final set of current Bankruptcy Rules, consisting of Parts VII-IX, are restyled to provide greater clarity, consistency, and conciseness without changing practice and procedure. The first set of restyled rules (Parts I & II) were published in 2020, and the second set (Parts III-VI) were published in 2021. The full set of restyled rules is expected to go into effect no earlier than December 1, 2024.	
BK Form 410A	The proposed amendments are to Part 3 (Arrearage as of Date of the Petition) of Official Form 410A and would replace the first line (which currently asks for “Principal & Interest”) with two lines, one for “Principal” and one for “Interest.”	

Effective (no earlier than) December 1, 2024

Current Step in REA Process:

- Published for public comment (Aug 2022 – Feb 2023 unless otherwise noted)

REA History:

- Approved for publication by Standing Committee (Jan and June 2022 unless otherwise noted)

Rule	Summary of Proposal	Related or Coordinated Amendments
	The amendments would put the burden on the claim holder to identify the elements of its claim.	
CV 12	The proposed amendment would clarify that a federal statute setting a different time should govern as to the entire rule, not just to subdivision (a).	
EV 107	The proposed amendment was published for public comment as new Rule 611(d), but is now new Rule 107.	EV 1006
EV 613	The proposed amendment would require that, prior to the introduction of extrinsic evidence of a witness's prior inconsistent statement, the witness receive an opportunity to explain or deny the statement.	
EV 801	The proposed amendment to paragraph (d)(2) would provide that when a party stands in the shoes of a declarant or declarant's principal, hearsay statements made by the declarant or declarant's principal are admissible against the party.	
EV 804	The proposed amendment to subparagraph (b)(3)(B) would provide that when assessing whether a statement is supported by corroborating circumstances that clearly indicate its trustworthiness, the court must consider the totality of the circumstances and evidence, if any, corroborating the statement.	
EV 1006	The proposed changes would permit a properly supported summary to be admitted into evidence whether or not the underlying voluminous materials have been admitted. The proposed changes would also clarify that illustrative aids not admitted under Rule 1006 are governed by proposed new subdivision (d) of Rule 611.	EV 611

Agenda E-19 (Summary)
Rules
March 2023

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

- Federal Rules of Appellate Procedure ....p. 2
- Federal Rules of Bankruptcy Procedure ....p. 3
- Federal Rules of Civil Procedure .... pp. 4-5
- Federal Rules of Criminal Procedure... pp. 5-6
- Federal Rules of Evidence .... pp. 6-7
- Judiciary Strategic Planning ....p. 7

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

Agenda E-19
Rules
March 2023

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

The Committee on Rules of Practice and Procedure (Standing Committee or Committee) met on January 4, 2023. All members participated.

Representing the advisory committees were Judge Jay S. Bybee, Chair, and Professor Edward Hartnett, Reporter, Advisory Committee on Appellate Rules; Judge Rebecca Buehler Connelly, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Laura B. Bartell, Associate Reporter, Advisory Committee on Bankruptcy Rules; Judge Robin L. Rosenberg, Chair, Professor Richard L. Marcus, Reporter, Professor Andrew Bradt, Associate Reporter, and Professor Edward H. Cooper, Consultant, Advisory Committee on Civil Rules; Judge James C. Dever III, Chair, Professor Sara Sun Beale, Reporter, and Professor Nancy J. King, Associate Reporter, Advisory Committee on Criminal Rules; and Judge Patrick J. Schiltz, Chair, and Professor Daniel J. Capra, Reporter, Advisory Committee on Evidence Rules.

Also participating in the meeting were Professor Catherine T. Struve, the Standing Committee's Reporter; Professor Daniel R. Coquillette, Professor Bryan A. Garner, and Professor Joseph Kimble, consultants to the Standing Committee; H. Thomas Byron III, the Standing Committee's Secretary; Bridget Healy, Scott Myers, and Allison Bruff, Rules Committee Staff Counsel; Christopher I. Pryby, Law Clerk to the Standing Committee; John S. Cooke, Director, and Dr. Tim Reagan, Senior Research Associate, Federal Judicial Center; and

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

Elizabeth J. Shapiro, Deputy Director, Federal Programs Branch, Civil Division, Department of Justice.

In addition to its general business, including a review of the status of pending rule amendments in different stages of the Rules Enabling Act process and pending legislation affecting the rules, the Standing Committee received and responded to reports from the five advisory committees. The Committee also received an update on the coordinated work among the Appellate, Bankruptcy, Civil, and Criminal Rules Committees to consider suggestions to allow expanded access to electronic filing by pro se litigants and an update on a suggestion to change the presumptive deadline for electronic filing.

FEDERAL RULES OF APPELLATE PROCEDURE

Information Items

The Advisory Committee on Appellate Rules met on October 13, 2022. The Advisory Committee discussed possible amendments to Rule 29 (Brief of an Amicus Curiae), Rule 39 (Costs), and Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis).

The Advisory Committee has been considering potential amendments to Rule 29 for several years and received helpful feedback from the Standing Committee regarding the need for and scope of any potential additional requirements for disclosures by amici curiae, including disclosure requirements related to ownership, control, or funding by the parties or non-parties. In addition, the Advisory Committee is considering possible amendments to Rule 39 in the light of *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), regarding the allocation of costs on appeal, specifically related to supersedeas bonds. The Advisory Committee is also considering possible amendments to Form 4 in response to a suggestion highlighting issues with the current

form, and has consulted clerks and senior staff attorneys in the circuits to determine the most relevant information on the form.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Official Form Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted a proposed amendment to Official Form 410 (Proof of Claim) with a recommendation that it be published for public comment in August 2023. The Standing Committee unanimously approved the Advisory Committee's recommendation.

Official Form 410 (Proof of Claim)

The proposed amendment eliminates the language on the proof-of-claim form that restricts use of a uniform claim identifier ("UCI") to electronic payments in chapter 13, and thereby allows the UCI to be used in cases filed under all chapters of the Bankruptcy Code and for all payments whether or not electronic. Use of the UCI is entirely voluntary on the part of the creditor. The amended language allows a creditor to list a UCI on the proof-of-claim form in any case.

Information Items

The Advisory Committee met on September 15, 2022. In addition to the recommendation discussed above, the Advisory Committee continued consideration of proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and related forms. A version of the amended rule published for comment in 2021 received a number of comments on proposed provisions designed to enhance the likelihood that chapter 13 debtors will emerge from bankruptcy current on their home mortgages. In light of the comments, the Advisory Committee is considering changes that would likely require republication in August 2023.

FEDERAL RULES OF CIVIL PROCEDURE

Information Items

The Advisory Committee on Civil Rules met on October 12, 2022. The Advisory Committee submitted proposed amendments to Rules 16(b)(3) (Pretrial Conferences; Scheduling; Management) and 26(f)(3) (Duty to Disclose; General Provisions Governing Discovery) regarding privilege logs with a recommendation that they be published for public comment in August 2023. The proposed amendments would call for early identification of a method to comply with Rule 26(b)(5)(A)'s requirement that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials. Specifically, the proposed amendment to Rule 26(f)(3)(D) would require the parties to address in their discovery plan the timing and method for complying with Rule 26(b)(5)(A). The proposed amendment to Rule 16(b) would provide that the court may address the timing and method of such compliance in its scheduling order. During the Standing Committee meeting, members expressed differing views concerning the length of and level of detail in the committee notes that would accompany the proposed amendments. The Advisory Committee was asked to reexamine the notes in light of that discussion, and to present the proposed amendments to the Standing Committee at its June 2023 meeting.

In addition, the Advisory Committee continues to consider a potential new rule concerning judicial management of multidistrict litigation proceedings. The MDL subcommittee has developed a sketch for a new Rule 16.1 directed to MDL proceedings. The new rule would prompt a meet-and-confer session among counsel before the initial case management conference with the transferee court. In two alternatives, the sketch of the rule provides various topics for discussion by counsel. The Advisory Committee continues to discuss the possibility of proposing a new Rule 16.1.

The Advisory Committee also discussed potential amendments to Rule 7.1 (Disclosure Requirement) regarding disclosure of possible grounds for recusal, Rule 41(a) (Dismissal of Actions) regarding the dismissal of some but not all claims or parties, Rule 45(b)(1) (Subpoena) regarding methods for serving a subpoena, and Rule 55 (Default; Default Judgment) regarding the directive that in some circumstances the clerk "must" enter a default or a default judgment.

FEDERAL RULES OF CRIMINAL PROCEDURE

Information Items

The Advisory Committee on Criminal Rules met on October 27, 2022. The Advisory Committee removed from its agenda a suggestion regarding Rule 49.1 (Privacy Protection For Filings Made with the Court) and considered a suggestion to amend Rule 17 (Subpoena).

The Advisory Committee considered a suggestion to amend Rule 49.1 by adding the phrase "subject to any applicable right of public access" before Rule 49.1(d)'s authorization permitting the court to order that filings be made under seal. This change had been proposed to address certain language in an earlier committee note that included a reference to the *Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files* (March 2004) issued by the Committee on Court Administration and Case Management (CACM). As quoted in the committee note, the CACM guidance provides that certain documents—including "financial affidavits filed in seeking representation pursuant to the Criminal Justice Act"—"shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access." Several reasons factored into the Advisory Committee's decision not to pursue the proposed amendment. One was the concern that the amendment would be perceived as taking a position on an issue of substantive law (that is, whether such financial affidavits are judicial documents subject to disclosure under the First Amendment or a common law right of access). Another was the

observation that such an amendment would not remove the earlier committee note's reference to the CACM guidance.

The Advisory Committee continues to consider a New York City Bar Association suggestion concerning Rule 17. The Advisory Committee formed a subcommittee to study the issue and, to gather more information about Rule 17 in practice, invited a number of experienced attorneys to participate in its fall meeting. The participants included defense lawyers in private practice, federal defenders, and representatives of the Department of Justice. The participants spoke about their experience with Rule 17 subpoena practice, and answered questions regarding the standards for securing third-party subpoenas and the role of judicial oversight in the process.

FEDERAL RULES OF EVIDENCE

Information Items

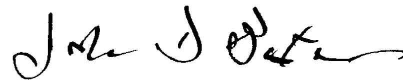
The Advisory Committee on Evidence Rules met on October 28, 2022. In connection with the meeting, the Advisory Committee held panel discussions on two suggestions concerning Rule 611 (Mode and Order of Examining Witnesses and Presenting Evidence). The first panel discussion related to a possible new Rule 611(e) regarding the practice of allowing jurors to pose questions for witnesses. The Advisory Committee will continue its research into juror questions, including how often the practice is used in federal courts and potential safeguards for the practice. The second panel discussion related to proposed new Rule 611(d) regarding illustrative aids, which was published for public comment in August 2022. Proposed Rule 611(d) would state the permitted uses of illustrative aids and would set procedures for their use. Finally, the Advisory Committee provided updates on other rules published for public comment, including Rule 613(b) (Witness's Prior Statement) regarding prior inconsistent statements, Rule 801(d)(2) (Definitions That Apply to This Article; Exclusions from Hearsay) related to hearsay statements by predecessors in interest, Rule 804(b)(3) (Exceptions to the Rule Against Hearsay—When the

Declarant Is Unavailable as a Witness) regarding the corroborating circumstances requirement, and Rule 1006 (Summaries to Prove Content) regarding summaries of voluminous records.

JUDICIARY STRATEGIC PLANNING

The Committee was asked to provide recommendations to the Executive Committee regarding the prioritization of goals and strategies in the 2020 *Strategic Plan for the Federal Judiciary* (*Plan*) to determine which strategies and goals from the *Plan* should receive priority attention over the next two years. The Committee's views were communicated to Chief Judge L. Scott Coogler, the judiciary planning coordinator, by letter dated January 10, 2023.

Respectfully submitted,



John D. Bates, Chair

Elizabeth J. Cabraser	Lisa O. Monaco
Robert J. Giuffra, Jr.	Andrew J. Pincus
William J. Kayatta, Jr.	Gene E.K. Pratter
Carolyn B. Kuhl	D. Brooks Smith
Troy A. McKenzie	Kosta Stojilkovic
Patricia Ann Millett	Jennifer G. Zipps

TAB 2

TAB 2A

Item 2A will be an oral report.

TAB 3

TAB 3A

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Judge Jay Bybee, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules

DATE: May 11, 2023

I. Introduction

The Advisory Committee on Appellate Rules met on Wednesday, March 29, 2023, in West Palm Beach, Florida. The draft minutes from the meeting accompany this report.

The Advisory Committee seeks final approval of proposed amendments to Rules 35 and 40 dealing with rehearing, along with conforming amendments to Rule 32 and the Appendix on Length Limits. (Part II of this report.)

It also seeks publication of two proposed amendments, one to Rule 39, dealing with costs on appeal, and one to Rule 6, dealing with appeals in bankruptcy cases. (Part III of this report.)

Other matters under consideration (Part IV of this report) are:

- expanding disclosures by amici curiae;
- requiring disclosure of third-party litigation funding;
- regularizing the criteria for granting in forma pauperis status and revising Form 4;
- in conjunction with other Advisory Committees, making the deadline for electronic filing earlier than midnight;
- in conjunction with other Advisory Committees, expanding electronic filing by self-represented litigants;
- a new suggestion to provide greater protection for Social Security numbers in court filings;
- a new suggestion to create a rule dealing with intervention on appeal; and
- a new suggestion to eliminate the requirement of party consent or court permission for filing an amicus brief.

The Advisory Committee also considered two items and removed them from the Advisory Committee's agenda (Part V of this report):

- a suggestion to create a rule dealing with decisions on unbriefed grounds; and
- a new suggestion to permit all persons to practice law, absent a compelling reason for restriction.

II. Action Item for Final Approval—Rules 35 and 40 (18-AP-A)

The Advisory Committee began a comprehensive review of Rule 35, dealing with hearing and rehearing en banc, and Rule 40, dealing with panel rehearing, in the spring of 2018. In the spring of 2021, the Advisory Committee approved a modest set of proposed changes to those Rules and asked the Standing Committee to publish them for public comment. At the June 2021 meeting of the Standing Committee, however, members of the Standing Committee asked about several provisions of those Rules. The Advisory Committee's defense of most of the questioned provisions was that they were in the existing Rules and that the Advisory Committee was attempting to minimize the changes proposed.

The Standing Committee remanded the matter to the Advisory Committee with instructions to take a freer hand in improving the Rules. The Advisory Committee did so, producing proposed amendments transferring the content of Rule 35 to Rule 40, thereby bringing together in one place the relevant provisions dealing with rehearing. These proposed amendments clarify the distinct criteria for rehearing en banc and panel rehearing and eliminate much redundancy.

In January of 2022, the Standing Committee approved the comprehensive revision for publication, and in June of 2022, it also approved a minor correction for publication. The comprehensive revision, as corrected, was published in the summer of 2022 and accompanies this report. The Advisory Committee reviewed the public comments and unanimously recommends final approval without change.

The Advisory Committee received five formal comments. Three comments broadly critique basic aspects of en banc process. They object that rehearing en banc should be widely available, should not be disfavored, and that oral argument should be allowed on the question whether to grant a petition.

Two other comments are more substantial. First, a comment submitted by J. Krell expresses concern that the published Rule would allow a second bite at the apple after a panel decision is amended, no matter how minor the amendment. This comment suggests that a court of appeals should be allowed, without invoking Rule 2, to order that no further petitions for rehearing will be entertained, perhaps with a caution that this should only be done if the amendment is so minor that any subsequent petition would be obviously frivolous or dilatory.

One of the earliest concerns with which this project started was that courts were inappropriately foreclosing subsequent petitions. The Advisory Committee decided not to broadly endorse the very power that was the target of concern in the first place. At earlier stages in this multi-year process, the Advisory Committee struggled with the issue of drawing a line between the kinds of amendments that would permit a new petition and those that would not. It was never comfortable with

a place to draw the line and decided, as the committee note explains, to rely on the ability of a court to easily deny frivolous petitions, to shorten the time to file a petition or the time to issue the mandate, and, when necessary, to invoke Rule 2. The good sense of litigants and counsel will prevent most rehearing petitions when the amendment to the panel decision is trivial, particularly with the stringent criteria for both forms of rehearing specified together in the amended rule. Courts can readily reject frivolous rehearing petitions without calling for a response, and no vote need be taken on a petition for rehearing en banc unless a judge calls for one.

The Advisory Committee considered the possibility that a party might abuse the rule to gain additional time to seek certiorari. But it concluded that this is a remote risk. The time to seek certiorari is already 90 days and can be extended an additional 60 days by a Circuit Justice. A more substantial concern is that a party who secured an injunction in the trial court but saw that injunction vacated by the court of appeals might seek to delay issuance of the mandate to have the benefit of the injunction as long as possible. But the ability to shorten the time to issue the mandate takes care of this problem.

The rule as amended would not foreclose a court from ordering that no further petitions for rehearing will be entertained; it remains subject to the power to suspend the rules under Rule 2. But the subcommittee hopes that the need to suspend the rules to bar petitions for rehearing will lead courts of appeals to think twice about doing so, bearing in mind the difficulty of knowing what a party might have to say about an amended decision.

Second, a comment submitted by the National Association of Criminal Defense Lawyers, which supports the overall proposal, suggests that the same local flexibility written into 40(d)(3) dealing with length limits and 40(d)(1) dealing with time limits should also be written into 40(d)(2) dealing with the form of the petition.

The Advisory Committee concluded that this change is unnecessary. While Rule 32(a) requires that a brief bear a cover, Rule 32(c)(2) governs other papers, "including a petition for panel rehearing and a petition for hearing or rehearing en banc," and specifically states that a "cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2)." Rule 32(c)(2)(A). In addition, Rule 32(e) explicitly permits local variation. Thus while amended Rule 40(d)(2) does not itself contain a local option provision, the rule that it incorporates—Rule 32(a)—does contain one.

For these reasons, the Advisory Committee unanimously recommends final approval of these amendments as published.

The following is to be added after the text of Rule 32 and its Committee Note as published:

Changes Made After Publication and Comment

None.

The following is to be added after the text of Rule 35 and its Committee Note as published:

Changes Made After Publication and Comment

None.

Summary of Public Comment

See Rule 40.

The following is to be added after the text of Rule 40 and its Committee Note as published:

Changes Made After Publication and Comment

None.

Summary of Public Comment

Claudi Barber (AP-2022-0001-0003): The rule should not provide that rehearing en banc is not favored. Petitions for rehearing should be freely granted when something unjust appears in the record.

Andrew Straw (AP-2022-0001-0004): There should be no discretion. Every petition for en banc review should have a merits decision.

Anonymous (AP-2022-0001-0008): It is somewhat unprofessional for an appellate court to determine that a certain type of hearing is unfavorable. It would be prudent to allow oral argument on whether or not to grant a petition.

J. Krell (AP-2021-0001-0005): The proposed amendments are minor and largely unobjectionable. Combining Rules 35 and 40 seems appropriate given the degree to which petitions for panel rehearing and for rehearing en banc have become intertwined, and others seem reasonable. But the rules should codify the practice of the simultaneously amending the opinion, denying rehearing en banc, and ordering that no further petitions for panel or en banc rehearing will be entertained, perhaps a caution that this should be done only if the

amendment is so minor that any subsequent petition would be obviously frivolous or dilatory.

National Association of Criminal Defense Lawyers (AP-2022-0001-0009): The NACDL supports the proposed amendments, with one suggestion for improvement. Local flexibility regarding the physical presentation of rehearing petitions should be permitted, similar to the local flexibility for length and time limits.

III. Action Items for Approval for Publication

A. Costs on Appeal (21-AP-D)

Rule 39 governs costs on appeal. Some costs are taxable in the court of appeals, while others are taxable in the district court. In *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), the Supreme Court held that Rule 39 does not permit a district court to alter a court of appeals' allocation of costs, even those costs that are taxed by the district court. The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals." *Id*. at 1638.

The Advisory Committee seeks publication of proposed amendments to Rule 39. The proposal is designed to accomplish several things:

First, it clarifies the distinction between (1) the court of appeals deciding which parties must bear the costs and, if appropriate, in what percentages and (2) the court of appeals, the district court (or the clerk of either) calculating and taxing the dollar amount of costs upon the proper party or parties. It uses the term "allocated" for the former and the term "taxed" for the latter. Rule 39(a) established default rules for the allocation of costs; these default rules can be displaced by party agreement or court order.

Second, it codifies the holding in *Hotels.com*, providing that the allocation of costs by the court of appeals applies to both the costs taxable in the court of appeals and the costs taxable in the district court.

Third, it responds to the need identified in *Hotels.com* for a clearer procedure that a party should follow if it wants to ask the court of appeals to reconsider the allocation of costs. It does this by providing for a motion for reconsideration of the allocation. To prevent delay, it provides that the mandate must not be delayed while awaiting determination of such a motion for reconsideration while making clear that the court of appeals retains jurisdiction to decide the motion.

Fourth, it makes Rule 39's structure more parallel. The current Rule lists the costs taxable in the district court but not the costs taxable in the court of appeals. The proposed amendment lists the costs taxable in the court of appeals.

The proposal does not, however, deal with one significant issue. Most costs on appeal are modest. The Advisory Committee learned that some parties do not even bother to file bills of costs because the price of lawyer time to do so exceeds the value of the costs themselves. But one cost on appeal—indeed, the cost involved in *Hotels.com*—can be quite significant: the premium paid for a supersedeas bond. Because of the bond premium, the bill of costs in *Hotels.com* was for more than $2.3 million.

The Advisory Committee was unable to come up with a good way to make sure that the judgment winner in the district court is aware of the cost of the supersedeas bond early enough to ask the court of appeals to reallocate the costs. Allowing a party to move for reallocation in the court of appeals after the bill of costs is filed in the district court would mean that both courts are dealing with the same costs issue at the same time. Creating a long period to seek reallocation in the court of appeals would mean that the case would be less fresh in the judges' minds and begin to look like a wholly separate appeal. Requiring disclosure in the bill of costs filed in the court of appeals would be odd because those costs are not sought in the court of appeals. Plus, a party might forego the relatively minor costs taxable in the court of appeals and care only about costs taxable in the district court. It would be possible to have the court of appeals tax the costs itself, but that would be a major departure from the principle, endorsed by the Supreme Court in *Hotels.com*, that the court closest to the cost should tax it.

For this reason, the Appellate Rules Committee believes that the easiest and most obvious time for disclosure is when the bond is before the district court for approval. It has requested the Civil Rules Committee to consider amending Civil Rule 62 to require that disclosure.

Even without such an amendment to Civil Rule 62, however, the Appellate Rules Committee believes that the following proposed amendment to Appellate Rule 39 is worthwhile and therefore asks the Standing Committee to publish it for public comment. The proposal has been revised since the Advisory Committee's March 2023 meeting in accordance with the suggestions of the style consultants.

1 **Rule 39. Costs**

2 **(a)** **~~Against Whom Assessed~~Allocating Costs Among the Parties.** The
3 following rules apply to allocating costs among the parties unless the law
4 provides, ~~-~~ the parties agree, or the court orders otherwise:

5 (1) if an appeal is dismissed, costs are ~~taxed~~ allocated against the appellant;

6 (2) if a judgment is affirmed, costs are ~~taxed~~ allocated against the appellant;

7 (3) if a judgment is reversed, costs are ~~taxed~~ allocated against the appellee;

8 (4) if a judgment is affirmed in part, reversed in part, modified, or vacated,
9 each party bears its own costs ~~costs are taxed only as the court orders~~.

10 **(b)** **Reconsideration.** Once the allocation of costs is established by the entry of
11 judgment, a party may seek reconsideration of that allocation by filing a
12 motion in the court of appeals within 14 days after the entry of judgment. But
13 issuance of the mandate under Rule 41 must not be delayed awaiting a
14 determination of the motion. The court of appeals retains jurisdiction to decide
15 the motion after the mandate issues.

16 **(c)** **Costs Governed by Allocation Determination.** The allocation of costs
17 applies both to costs taxable in the court of appeals under (e) and to costs
18 taxable in district court under (f).

19 **~~(b)~~(d)** **Costs For and Against the United States.** Costs for or against the United
20 States, its agency, or officer will be ~~assessed~~ allocated under ~~Rule 39~~(a) only if
21 authorized by law.

22 **(e)** **Costs on Appeal Taxable in the Court of Appeals.**

23 (1) **Costs Taxable.** The following costs on appeal are taxable in the court
24 of appeals for the benefit of the party entitled to costs:

25 (A) the production of necessary copies of a brief or appendix, or copies
26 of records authorized by Rule 30(f);

27 (B) the docketing fee; and

28 (C) a filing fee paid in the court of appeals.

29 ~~(c)~~(2) **Costs of Copies.** Each court of appeals must, by local rule, set~~fix~~ the
30 maximum rate for taxing the cost of producing necessary copies of a brief
31 or appendix, or copies of records authorized by Rule 30(f). The rate must
32 not exceed that generally charged for such work in the area where the

clerk's office is located and should encourage economical methods of copying.

~~(d)~~(3) **Bill of Costs; Objections; Insertion in Mandate.**

~~(1)~~(A) A party who wants costs taxed in the court of appeals must—within 14 days after~~ entry of~~ judgment is entered—file with the circuit clerk and serve an itemized and verified bill of those costs.

~~(2)~~(B) Objections must be filed within 14 days after ~~service of~~ the bill of costs is served, unless the court extends the time.

~~(3)~~(C) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

~~(e)~~**(f)** **Costs on Appeal Taxable in the District Court.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs~~ under this rule~~:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

Committee Note

In *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), the Supreme Court held that Rule 39 does not permit a district court to alter a court of appeals' allocation of the costs listed in subdivision (e) of that Rule. The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals." *Id.* at 1638. The amendment does so. Stylistic changes are also made.

Subdivision (a). Both the heading and the body of the Rule are amended to clarify that allocation of the costs among the parties is done by the court of appeals. The court may allow the default rules specified in subdivision (a) to operate based on the judgment, or it may allocate them differently based on the equities of the

66 situation. Subdivision (a) is not concerned with calculating the amounts owed; it is
67 concerned with who bears those costs, and in what proportion. The amendment also
68 specifies a default for mixed judgments: each party bears its own costs.

69 **Subdivision (b).** The amendment specifies a procedure for a party to ask the
70 court of appeals to reconsider the allocation of costs established pursuant to
71 subdivision (a). A party may do so by motion in the court of appeals within 14 days
72 after the entry of judgment. The mandate is not stayed pending resolution of this
73 motion, but the court of appeals retains jurisdiction to decide the motion after the
74 mandate issues.

75 **Subdivision (c).** Codifying the decision in *Hotels.com*, the amendment also
76 makes clear that the allocation of costs by the court of appeals governs the taxation
77 of costs both in the court of appeals and in the district court.

78 **Subdivision (d).** The amendment uses the word "allocated" to match
79 subdivision (a).

80 **Subdivision (e).** The amendment specifies which costs are taxable in the
81 court of appeals and clarifies that the procedure in that subdivision governs the
82 taxation of costs taxable in the court of appeals. The docketing fee, currently $500, is
83 established by the Judicial Conference of the United States pursuant to 28 U.S.C. §
84 1913. The reference to filing fees paid in the court of appeals is not a reference to the
85 $5 fee paid to the district court required by 28 U.S.C. § 1917 for filing a notice of
86 appeal from the district court to the court of appeals. Instead, the reference is to filing
87 fees paid in the court of appeals, such as the fee to file a notice of appeal from a
88 bankruptcy appellate panel.

89 **Subdivision (f).** The provisions governing costs taxable in the district court
90 are lettered (f) rather than (e). The filing fee referred to in this subdivision is the $5
91 fee required by 28 U.S.C. § 1917 for filing a notice of appeal from the district court to
92 the court of appeals.

B. Appeals in Bankruptcy Cases

The Advisory Committee on Bankruptcy Rules has asked the Advisory Committee on Appellate Rules to consider amendments to Appellate Rule 6 dealing with appeals in bankruptcy cases. Two different concerns led to this request.

Resetting time to appeal. The first concern involves resetting the time to appeal in cases where a district court is exercising original jurisdiction in a bankruptcy case. Federal Rule of Appellate Procedure 4(a)(4)(A) resets the time to appeal if various post-judgment motions are timely made in the district court. To be timely in an ordinary civil case, the motion must be made within 28 days of the judgment. Fed. R. Civ. P. 50(b), 52(b), 59. But in a bankruptcy case, the equivalent

motions must be made within 14 days of the judgment. Fed. R. Bankr. P. 7052, 9015(c), 9023.

So what happens if a district court itself—rather than a bankruptcy court—decides a bankruptcy proceeding in the first instance and a post-judgment motion is made on the 20th day after judgment? Does the motion have resetting effect or not?

The Court of Appeals for the First Circuit has said no. *In re Lac-Mégantic Train Derailment Litigation*, 999 F.3d 72, 84 (1st Cir. 2021). The Bankruptcy Rules and their time limits apply to a bankruptcy case heard in the district court.

This result, while sensible, is not obvious from the text of the Federal Rules of Appellate Procedure. That's because Rule 6 provides:

> **(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case.** An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. §1334 is taken as any other civil appeal under these rules.

And Rule 4(a)(4)(A) gives resetting effect to motions that are filed "within the time allowed" by "the Federal Rules of Civil Procedure"—which is 28 days, not 14 days .

The Bankruptcy Rules Committee considered amending Bankruptcy Rules 7052, 9015(c), and 9023 to provide 28 days for the motions if the proceeding is heard by the district court, but that would undermine the goal of expedition and disrupt the uniformity of bankruptcy rules. It considered asking the Appellate Rules Committee to consider amending Appellate Rule 4(a)(4)(A) to acknowledge the different timing rules, but that would complicate an already quite complicated rule with material that doesn't apply to non-bankruptcy cases. It settled on asking the Appellate Rules Committee to consider amending Appellate Rule 6(a)—the rule that deals with bankruptcy appeals where the district court exercised original jurisdiction—to acknowledge the different timing rules.

The Appellate Rules Committee agreed.[1] It proposes to add a sentence to Appellate Rule 6(a): "But the reference in Rule 4(a)(4)(A) to the time allowed for motions under certain Federal Rules of Civil Procedure must be read as a reference to the time allowed for the equivalent motions under the applicable Federal Rule of Bankruptcy Procedure, which may be shorter than the time allowed under the Civil

[1] At the meeting, the Committee agreed in principle and asked the subcommittee to refine the language and provide a Committee Note for its consideration by email. The subcommittee did so, and the full Advisory Committee without dissent approved the proposal below.

Rules." The Committee Note provides a table of the equivalent motions and the time allowed under the current version of the applicable Bankruptcy Rule.

Direct appeals. The second concern involves direct appeals in bankruptcy cases. Appeals in bankruptcy are governed by 28 U.S.C. § 158. The default rule for appeals from an order of the bankruptcy court is that such appeals go either to the district court for the district where the bankruptcy court is located or (in the circuits that have established a bankruptcy appellate panel (BAP)) to the BAP for that circuit. Under § 158, the losing party then has a further appeal as of right to the court of appeals from a final judgment of the district court or BAP.

The bankruptcy appeal process thus creates a redundancy whenever an appeal is taken to the court of appeals under § 158(d)(1), and the two-tiered procedure can be quite time-consuming. That can be problematic in the bankruptcy context, where quick resolution of the parties' disputes is sometimes critical.

In response to these concerns, as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Congress amended § 158(d) to provide that, in certain circumstances, appeals may be taken directly from orders of the bankruptcy court to the courts of appeals, bypassing the intervening appeal to the district court or BAP. To do so, Congress added § 158(d)(2), which provides:

> (A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—
>
> (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;
>
> (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
>
> (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;
>
> and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

28 U.S.C. § 158(d)(2).

Under this statute, any order of the bankruptcy court—final or interlocutory—can be certified for direct appeal to the court of appeals if it meets the remaining statutory requirements. Those requirements are similar to, but looser than, the standards for certification under 28 U.S.C. § 1292(b), which permits courts of appeals to hear appeals of interlocutory orders of the district courts in certain circumstances. Moreover, the certification can be made by the bankruptcy court, district court, BAP, or the parties. Under the Bankruptcy Rules, even if a bankruptcy court order has been certified for direct appeal to the court of appeals, the appellant must still file a notice of appeal to the district court or BAP in order to render the certification effective. As with § 1292(b), the court of appeals must also authorize the direct appeal.

Under this structure, a court of appeals' decision to authorize a direct appeal does not determine whether an appeal will go forward, but instead in what court the appeal will be heard. The party asking that the appeal from the bankruptcy court be heard directly in the court of appeals might be an appellee rather than an appellant.

Accordingly, the Bankruptcy Rules Committee seeks a clarifying amendment to Bankruptcy Rule 8006(g) providing that any party to the appeal may file a request that the court of appeals authorize a direct appeal:

> **(g) Request After Certification for a Court of Appeals To Authorize a Direct Appeal.**
>
> Within 30 days after the certification has become effective under (a), any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk in accordance with Fed. R. App. P. 6(c).

Current Appellate Rule 6(c), which governs direct appeals, largely relies on Rule 5, which governs appeals by permission. But the proposed amendment to the Bankruptcy Rules revealed that Appellate Rule 5 is not a good fit for direct appeals in bankruptcy cases. That's because Rule 5 was designed for the situation in which the court of appeals is deciding whether to allow an appeal at all. But in the direct appeal context, that's not the question. Instead, in the direct appeal context, there is an appeal; the question is which court is going to hear that appeal.[2]

More generally, experience with direct appeals shows considerable confusion in applying the Appellate Rules. This is primarily due to the manner in which Rule 6(c) cross-references Rule 5 and to its failure to take into account that an appeal of the bankruptcy court order in question is already proceeding in the district court or BAP, which results in uncertainty about precisely what steps are necessary to perfect an appeal after the court of appeals authorizes a direct appeal.

For these reasons, the Appellate Rules Committee proposes to overhaul Rule 6(c) and make it largely self-contained. Parties will not need to refer to Rule 5 unless expressly referred to a specific provision of Rule 5 by Rule 6(c) itself. Rule 6(c) makes Rule 5 inapplicable except to the extent provided for in other parts of Rule 6(c).

The proposed amendments also spell out in more detail how parties should handle initial procedural steps in the court of appeals once authorization for a direct appeal is granted, taking into account that an appeal from the same order will already be pending in the district court or BAP. The proposed Rule 6(c)(2) permits any party to the appeal to ask the court of appeals to authorize a direct appeal. It also adds provisions governing contents of the petition, answer or cross-petition, oral argument,

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[2] A caveat: 28 U.S.C. § 158(a)(3) allows appeals from a bankruptcy court to a district court (or BAP) of otherwise unappealable interlocutory orders with leave of court. Authorization of a direct appeal under § 158(d)(2) subsumes leave to appeal. Fed. R. Bankr. P. 8004(e). ("If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement.").

form of papers, number of copies, and length limits. It also makes clear that no notice of appeal to the court of appeals needs to be filed, and provides for calculating time, notification of the order authorizing a direct appeal, and payment of fees. It adds a provision governing stays pending appeal, makes clear that steps already taken in pursuing the appeal need not be repeated, and provides for making the record available to the circuit clerk. It requires all parties, not just the appellant or applicant for direct appeal, to file a representation statement. Additional changes in language are made to better match the relevant statutes.

None of these are intended to make major changes to existing procedures but to clarify those procedures. The proposal has been revised since the Advisory Committee's March 2023 meeting in accordance with the suggestions of the style consultants.

1 **Rule 6. Appeal in a Bankruptcy Case or Proceeding**

2 **(a) Appeal From a Judgment, Order, or Decree of a District Court**
3 **Exercising Original Jurisdiction in a Bankruptcy Case or Proceeding.**
4 An appeal to a court of appeals from a final judgment, order, or decree of a
5 district court exercising original jurisdiction in a bankruptcy case or
6 proceeding under 28 U.S.C. §1334 is taken as any other civil appeal under
7 these rules. But the reference in Rule 4(a)(4)(A) to the time allowed for motions
8 under certain Federal Rules of Civil Procedure must be read as a reference to
9 the time allowed for the equivalent motions under the applicable Federal Rule
10 of Bankruptcy Procedure, which may be shorter than the time allowed under
11 the Civil Rules.

12 **(b) Appeal From a Judgment, Order, or Decree of a District Court or**
13 **Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a**
14 **Bankruptcy Case or Proceeding.**

15 (1) **Applicability of Other Rules.** These rules apply to an appeal to a
16 court of appeals under 28 U.S.C. §158(d)(1) from a final judgment, order,
17 or decree of a district court or bankruptcy appellate panel exercising
18 appellate jurisdiction in a bankruptcy case or proceeding under 28
19 U.S.C. §158(a) or (b), but with these qualifications:

20 (A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13–20, 22–23, and 24(b) do not
21 apply;

22 (B) the reference in Rule 3(c) to "Forms 1A and 1B in the Appendix of
23 Forms" must be read as a reference to Form 5;

24 (C) when the appeal is from a bankruptcy appellate panel, "district
25 court," as used in any applicable rule, means "bankruptcy
26 appellate panel"; and

27 (D) in Rule 12.1, "district court" includes a bankruptcy court or
28 bankruptcy appellate panel.

29 (2) **Additional Rules.** In addition to the rules made applicable by ~~Rule~~
30 ~~6~~(b)(1), the following rules apply:

31 (A) **Motion for Rehearing.**

32 (i) If a timely motion for rehearing under Bankruptcy Rule
33 8022 is filed, the time to appeal for all parties runs from
34 the entry of the order disposing of the motion. A notice of
35 appeal filed after the district court or bankruptcy appellate
36 panel announces or enters a judgment, order, or decree—
37 but before disposition of the motion for rehearing—
38 becomes effective when the order disposing of the motion
39 for rehearing is entered.

40 (ii) If a party intends to challenge the order disposing of the
41 motion—or the alteration or amendment of a judgment,
42 order, or decree upon the motion—then the party, in
43 ~~compliance~~ accordance with Rules 3(c) and 6(b)(1)(B), must
44 file a notice of appeal or amended notice of appeal. The
45 notice or amended notice must be filed within the time
46 prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—
47 measured from the entry of the order disposing of the
48 motion.

49 (iii) No additional fee is required to file an amended notice.

50 (B) **The record on appeal.**

51 (i) Within 14 days after filing the notice of appeal, the
52 appellant must file with the clerk possessing the record
53 assembled in accordance with Bankruptcy Rule 8009—and
54 serve on the appellee—a statement of the issues to be
55 presented on appeal and a designation of the record to be
56 certified and made available to the circuit clerk.

57 (ii) An appellee who believes that other parts of the record are
58 necessary must, within 14 days after being served with the

appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) **Making the Record Available.**

(i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available in place of the redesignated record. But at any time during the appeal's pendency, any party may request ~~at any time during the pendency of the appeal~~ that the redesignated record be made available.

(D) **Filing the Record.** When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the~~

92 docket serves as the filing date of the record. The circuit clerk
93 must immediately notify all parties of that the filing date.

94 **(c) Direct Appeal Review from a Judgment, Order, or Decree of a**
95 **Bankruptcy Court by Permission Authorization Under 28 U.S.C. §**
96 **158(d)(2).**

97 (1) **Applicability of Other Rules.** These rules apply to a direct appeal
98 from a judgment, order, or decree of a bankruptcy court by permission
99 authorization under 28 U.S.C. § 158(d)(2), but with these qualifications:

100 (A) Rules 3–4, 5(a)(3) (except as provided in this subdivision (c)), 6(a),
101 6(b), 8(a), 8(c), 9–12, 13–20, 22–23, and 24(b) do not apply; and

102 (B) as used in any applicable rule, "district court" or "district clerk"
103 includes—to the extent appropriate—a bankruptcy court or
104 bankruptcy appellate panel or its clerk; and

105 (C) the reference to "Rules 11 and 12(c)" in Rule 5(d)(3) must be read
106 as a reference to Rules 6(c)(2)(B) and (C).

107 (2) **Additional Rules.** In addition to the rules made applicable by (c)(1),
108 the following rules apply:

109 (A) **Petition to Authorize a Direct Appeal.** Within 30 days after a
110 certification of a bankruptcy court's order for direct appeal to the
111 court of appeals under 28 U.S.C. § 158(d)(2) becomes effective
112 under Bankruptcy Rule 8006(a), any party to the appeal may ask
113 the court of appeals to authorize a direct appeal by filing a
114 petition with the circuit clerk under Bankruptcy Rule 8006(g).

115 (B) **Contents of the Petition**. The petition must include the
116 material required by Rule 5(b)(1) and an attached copy of:

117 (i) the certification; and

118 (ii) the notice of appeal of the bankruptcy court's judgment, order,
119 or decree filed under Bankruptcy Rule 8003 or 8004.

120 (C) **Answer or Cross-Petition; Oral Argument.** Rule 5(b)(2)
121 governs an answer or cross-petition. Rule 5(b)(3) governs oral
122 argument.

123 (D) **Form of Papers; Number of Copies; Length Limits.** Rule
124 5(c) governs the required form, number of copies to be filed, and

125 length limits applicable to the petition and any answer or cross-
126 petition.

127 (E) **Notice of Appeal; Calculating Time**. A notice of appeal to the
128 court of appeals need not be filed. The date when the order
129 authorizing the direct appeal is entered serves as the date of the
130 notice of appeal for calculating time under these rules.

131 (F) **Notification of the Order Authorizing Direct Appeal; Fees;**
132 **Docketing the Appeal.**

133 (i) When the court of appeals enters the order authorizing the
134 direct appeal, the circuit clerk must notify the bankruptcy
135 clerk and the district court clerk or bankruptcy-appellate-
136 panel clerk of the entry.

137 (ii) Within 14 days after the order authorizing the direct
138 appeal is entered, the appellant must pay the bankruptcy
139 clerk any unpaid required fee, including:

140 • the fee required for the appeal to the district court
141 or bankruptcy appellate panel; and
142 • the difference between the fee for an appeal to the
143 district court or bankruptcy appellate panel and the
144 fee required for an appeal to the court of appeals.

145 (iii) The bankruptcy clerk must notify the circuit clerk once the
146 appellant has paid all required fees. Upon receiving the
147 notice, the circuit clerk must enter the direct appeal on the
148 docket.

149 (G) **Stay Pending Appeal**. Bankruptcy Rule 8007 applies to any
150 stay pending appeal.

151 ~~(A)~~(H) **The Record on Appeal**. Bankruptcy Rule 8009 governs the
152 record on appeal. If a party has already filed a document or
153 completed a step required to assemble the record for the appeal
154 to the district court or bankruptcy appellate panel, the party need
155 not repeat that filing or step.

156 ~~(B)~~(I) **Making the Record Available.** Bankruptcy Rule 8010 governs
157 completing the record and making it available. When the court of
158 appeals enters the order authorizing the direct appeal, the
159 bankruptcy clerk must make the record available to the circuit
160 clerk.

~~(C) **Stays Pending Appeal.** Bankruptcy Rule 8007 applies to stays pending appeal.~~

~~(D)~~(J) **Duties of the Circuit Clerk**. When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date as noted ~~on the docket~~ serves as the filing date of the record. The circuit clerk must immediately notify all parties of that ~~the filing~~ date.

~~(E)~~(K) **Filing a Representation Statement**. Unless the court of appeals designates another time, within 14 days after ~~entry of~~ the order ~~granting permission to appeal~~ authorizing the direct appeal is entered, the attorney for each party to the appeal ~~the attorney who sought permission~~ must file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

Committee Note

Subdivision (a). Minor stylistic and clarifying changes are made to subdivision (a). In addition, subdivision (a) is amended to clarify that, when a district court is exercising original jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 1334, the time in which to file post-judgment motions that can reset the time to appeal under Rule 4(a)(4)(A) is controlled by the Federal Rules of Bankruptcy Procedure, rather than the Federal Rules of Civil Procedure.

The Bankruptcy Rules partially incorporate the relevant Civil Rules but in some instances shorten the deadlines for motions set out in the Civil Rules. *See* Fed. R. Bankr. P. 9015(c) (any renewed motion for judgment under Civil Rule 50(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 7052 (any motion to amend or make additional findings under Civil Rule 52(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 9023 (any motion to alter or amend the judgment or for a new trial under Civil Rule 59 must be filed within 14 days of entry of judgment).

Motions for attorney's fees in bankruptcy cases or proceedings are governed by Bankruptcy Rule 7054(b)(2)(A), which incorporates without change the 14-day deadline set in Civil Rule 54(d)(2)(B). Under Appellate Rule 4(a)(4)(A)(iii), such a motion resets the time to appeal only if the district court so orders pursuant to Civil Rule 58(e), which is made applicable to bankruptcy cases and proceedings by Bankruptcy Rule 7058.

Motions for relief under Civil Rule 60 in bankruptcy cases or proceedings are governed by Bankruptcy Rule 9024. Appellate Rule 4(a)(4)(A)(vi) provides that a motion for relief under Civil Rule 60 resets the time to appeal only if the motion is

199 made within the time allowed for filing a motion under Civil Rule 59. In a bankruptcy
200 case or proceeding, motions under Civil Rule 59 are governed by Bankruptcy Rule
201 9023, which, as noted above, requires such motions to be filed within 14 days of entry
202 of judgment.

Civil Rule	Bankruptcy Rule	Time Under Bankruptcy Rule
50(b)	9015(c)	14 days
52(b)	7052	14 days
59	9023	14 days
54(d)(2)(B)	7054(b)(2)(A)	14 days
60	9024	14 days

203 Of course, the Bankruptcy Rules may be amended in the future. If that
204 happens, the time allowed for the equivalent motions under the applicable
205 Bankruptcy Rule may change.

206 **Subdivision (b).** Minor stylistic and clarifying changes are made to the
207 header of subdivision (b) and to subdivision (b)(1). Subdivision (b)(1)(C) is amended
208 to correct the omission of the word "bankruptcy" from the phrase "bankruptcy
209 appellate panel." Stylistic changes are made to subdivision (b)(2)(D).

210 **Subdivision (c).** Subdivision (c) was added to Rule 6 in 2014 to set out
211 procedures governing discretionary direct appeals from orders, judgments, or decrees
212 of the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2).

213 Typically, an appeal from an order, judgment, or decree of a bankruptcy court
214 may be taken either to the district court for the relevant district or, in circuits that
215 have established bankruptcy appellate panels, to the bankruptcy appellate panel for
216 that circuit. 28 U.S.C. § 158(a). Final orders of the district court or bankruptcy
217 appellate panel resolving appeals under § 158(a) are then appealable as of right to
218 the court of appeals under § 158(d)(1).

219 That two-step appeals process can be redundant and time-consuming and
220 could in some circumstances potentially jeopardize the value of a bankruptcy estate
221 by impeding quick resolution of disputes over disposition of estate assets. In the
222 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress
223 enacted 28 U.S.C. § 158(d)(2) to provide that, in certain circumstances, appeals may
224 be taken directly from orders of the bankruptcy court to the courts of appeals,
225 bypassing the intervening appeal to the district court or bankruptcy appellate panel.

226 Specifically, § 158(d)(2) grants the court of appeals jurisdiction of appeals from
227 any order, judgment, or decree of the bankruptcy court if (a) the bankruptcy court,
228 the district court, the bankruptcy appellate panel, or all parties to the appeal certify
229 that (1) "the judgment, order, or decree involves a question of law as to which there

230 is no controlling decision of the court of appeals for the circuit or of the Supreme Court
231 of the United States, or involves a matter of public importance"; (2) "the judgment,
232 order, or decree involves a question of law requiring resolution of conflicting
233 decisions"; or (3) "an immediate appeal from the judgment, order, or decree may
234 materially advance the progress of the case or proceeding in which the appeal is
235 taken" *and* (b) "the court of appeals authorizes the direct appeal of the judgment,
236 order, or decree." 28 U.S.C. § 158(d)(2).

237 Bankruptcy Rule 8006 governs the procedures for certification of a bankruptcy
238 court order for direct appeal to the court of appeals. Among other things, Rule 8006
239 provides that, to become effective, the certification must be filed in the appropriate
240 court, the appellant must file a notice of appeal of the bankruptcy court order to the
241 district court or bankruptcy appellate panel, and the notice of appeal must become
242 effective. Fed. R. Bankr. P. 8006(a). Once the certification becomes effective under
243 Rule 8006(a), a petition seeking authorization of the direct appeal must be filed with
244 the court of appeals within 30 days. *Id.* 8006(g).

245 Rule 6(c) governs the procedures applicable to a petition for authorization of a
246 direct appeal and, if the court of appeals grants the petition, the initial procedural
247 steps required to prosecute the direct appeal in the court of appeals.

248 As promulgated in 2014, Rule 6(c) incorporated by reference most of Rule 5,
249 which governs petitions for permission to appeal to the court of appeals from
250 otherwise non-appealable district court orders. It has become evident over time,
251 however, that Rule 5 is not a perfect fit for direct appeals of bankruptcy court orders
252 to the courts of appeals. The primary difference is that Rule 5 governs discretionary
253 appeals from district court orders that are otherwise non-appealable, and an order
254 granting a petition for permission to appeal under Rule 5 thus initiates an appeal
255 that otherwise would not occur. By contrast, an order granting a petition to authorize
256 a direct appeal under Rule 6(c) means that an appeal that has already been filed and
257 is pending in the district court or bankruptcy appellate panel will instead be heard
258 in the court of appeals. As a result, it is not always clear precisely how to apply the
259 provisions of Rule 5 to a Rule 6(c) direct appeal.

260 The new amendments to Rule 6(c) are intended to address that problem by
261 making Rule 6(c) self-contained. Thus, Rule 6(c)(1) is amended to provide that Rule 5
262 is not applicable to Rule 6(c) direct appeals except as specified in Rule 6(c) itself. Rule
263 6(c)(2) is also amended to include the substance of applicable provisions of Rule 5,
264 modified to apply more clearly to Rule 6(c) direct appeals. In addition, stylistic and
265 clarifying amendments are made to conform to other provisions of the Appellate Rules
266 and Bankruptcy Rules and to ensure that all the procedures governing direct appeals
267 of bankruptcy court orders are as clear as possible to both courts and practitioners.

268 **Subdivision (c)—Title.** The title of subdivision (c) is amended to change
269 "Direct Review" to "Direct Appeal" and "Permission" to "Authorization," to be
270 consistent with the language of 28 U.S.C. § 158(d)(2). In addition, the language "from
271 a Judgment, Order, or Decree of a Bankruptcy Court" is added for clarity and to be
272 consistent with other subdivisions of Rule 6.

273 **Subdivision (c)(1).** The language of the first sentence is amended to be
274 consistent with the title of subdivision (c). In addition, the list of rules in subdivision
275 (c)(1)(A) that are inapplicable to direct appeals is modified to include Rule 5, except
276 as provided in subdivision (c) itself. Subdivision (c)(1)(C), which modified certain
277 language in Rule 5 in the context of direct appeals, is therefore deleted. As set out in
278 more detail below, the provisions of Rule 5 that are applicable to direct appeals have
279 been added, with appropriate modifications to take account of the direct appeal
280 context, as new provisions in subdivision (c)(2).

281 **Subdivision (c)(2).** The language "to the rules made applicable by (c)(1)" is
282 added to the first sentence for consistency with other subdivisions of Rule 6.

283 **Subdivision (c)(2)(A).** Subdivision (c)(2)(A) is a new provision that sets out
284 the basic procedure and timeline for filing a petition to authorize a direct appeal in
285 the court of appeals. It is intended to be substantively identical to Bankruptcy Rule
286 8006(g), with minor stylistic changes made in light of the context of the Appellate
287 Rules.

288 **Subdivision (c)(2)(B).** Subdivision (c)(2)(B) is a new provision that specifies
289 the contents of a petition to authorize a direct appeal. It provides that, in addition to
290 the material required by Rule 5, the petition must include an attached copy of the
291 certification under § 158(d)(2) and a copy of the notice of appeal to the district court
292 or bankruptcy appellate panel.

293 **Subdivision (c)(2)(C).** Subdivision (c)(2)(C) is a new provision. For clarity, it
294 specifies that answers or cross-petitions are governed by Rule 5(b)(2) and oral
295 argument is governed by Rule 5(b)(3).

296 **Subdivision (c)(2)(D).** Subdivision (c)(2)(D) is a new provision. For clarity,
297 it specifies that the required form, number of copies to be filed, and length limits
298 applicable to the petition and any answer or cross-petition are governed by Rule 5(c).

299 **Subdivision (c)(2)(E).** Subdivision (c)(2)(E) is a new provision that
300 incorporates the substance of Rule 5(d)(2), modified to take into account that the
301 appellant will already have filed a notice of appeal to the district court or bankruptcy
302 appellate panel. It makes clear that a second notice of appeal to the court of appeals
303 need not be filed, and that the date of entry of the order authorizing the direct appeal

304 serves as the date of the notice of appeal for the purpose of calculating time under the
305 Appellate Rules.

306 **Subdivision (c)(2)(F).** Subdivision (c)(2)(F) is a new provision. It largely
307 incorporates the substance of Rules 5(d)(1)(A) and 5(d)(3), with some modifications.

308 Subdivision (c)(2)(F)(i) now requires that when the court of appeals enters an
309 order authorizing a direct appeal, the circuit clerk must notify the bankruptcy clerk
310 and the clerk of the district court or the clerk of the bankruptcy appellate panel of the
311 order.

312 Subdivision (c)(2)(F)(ii) requires that, within 14 days of entry of the order
313 authorizing the direct appeal, the appellant must pay the bankruptcy clerk any
314 required filing or docketing fees that have not yet been paid. Thus, if the appellant
315 has not yet paid the required fee for the initial appeal to the district court or
316 bankruptcy appellate panel, the appellant must do so. In addition, the appellant
317 must pay the bankruptcy clerk the difference between the fee for the appeal to the
318 district court or bankruptcy appellate panel and the fee for an appeal to the court of
319 appeals, so that the appellant has paid the full fee required for an appeal to the court
320 of appeals.

321 Subdivision (c)(2)(F)(iii) then requires the bankruptcy clerk to notify the circuit
322 clerk that all fees have been paid, which triggers the circuit clerk's duty to docket the
323 direct appeal.

324 **Subdivision (c)(2)(G).** Subdivision (c)(2)(G) was formerly subdivision
325 (c)(2)(C). It is substantively unchanged, continuing to provide that Bankruptcy Rule
326 8007 governs stays pending appeal, but reflects minor stylistic revisions.

327 **Subdivision (c)(2)(H).** Subdivision (c)(2)(H) was formerly subdivision
328 (c)(2)(A). It continues to provide that Bankruptcy Rule 8009 governs the record on
329 appeal, but adds a sentence clarifying that steps taken to assemble the record under
330 Bankruptcy Rule 8009 before the court of appeals authorizes the direct appeal need
331 not be repeated after the direct appeal is authorized.

332 **Subdivision (c)(2)(I).** Subdivision (c)(2)(I) was formerly subdivision (c)(2)(B).
333 It continues to provide that Bankruptcy Rule 8010 governs provision of the record to
334 the court of appeals. It adds a sentence clarifying that when the court of appeals
335 authorizes the direct appeal, the bankruptcy clerk must make the record available to
336 the court of appeals.

337 **Subdivision (c)(2)(J).** Subdivision (c)(2)(J) was formerly subdivision
338 (c)(2)(D). It is unchanged other than a stylistic change and being renumbered.

339 **Subdivision (c)(2)(K).** Subdivision (c)(2)(K) was formerly subdivision
340 (c)(2)(E). Because any party may file a petition to authorize a direct appeal, it is
341 modified to provide that the attorney for each party—rather than only the attorney
342 for the party filing the petition—must file a representation statement. In addition,
343 the phrase "granting permission to appeal" is changed to "authorizing the direct
344 appeal" to conform to the language used throughout the rest of subdivision (c), and a
345 stylistic change is made.

IV. Other Matters Under Consideration

A. Amicus Disclosures—FRAP 29 (21-AP-C; 21-AP-G; 21-AP-H; 22-AP-A)

In October 2019, after learning of a bill introduced in Congress that would institute a registration and disclosure system for amici curiae like the one that applies to lobbyists, the Advisory Committee appointed a subcommittee to address amicus disclosures. In February of 2021, after correspondence with the Clerk of the Supreme Court, Senator Whitehouse and Congressman Johnson wrote to Judge Bates requesting the establishment of a working group to address the disclosure requirements for organizations that file amicus briefs. Judge Bates was able to respond that the Advisory Committee on the Federal Rules of Appellate Procedure had already established a subcommittee to do so.

Appellate Rule 29(a)(4)(E) currently requires that most amicus briefs include 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.

The Advisory Committee has not yet decided whether to propose any amendments in this area. As previously reported to the Standing Committee, the Advisory Committee believes that changes to the disclosure requirements of Rule 29 are within the purview of the rulemaking process under the Rules Enabling Act, but public registration and fines are not, and that any change to Rule 29 should not be limited to those who file multiple amicus briefs. It also resists treating amicus briefs as akin to lobbying. Lobbying is done in private, while an amicus filing is made in public and can be responded to.

The question of amicus disclosures involves important and complicated issues. One concern is that amicus briefs filed without sufficient disclosures can enable parties to evade the page limits on briefs or produce a brief that appears independent of the parties but is not. Another concern is that, without sufficient disclosures, one person or a small number of people with deep pockets can fund multiple amicus briefs and give the misleading impression of a broad consensus. There are also broader concerns about the influence of "dark money" on the amicus process. Any disclosure requirement must also consider First Amendment rights of those who do not wish to disclose themselves. *See, e.g., Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

At the January 2023 meeting of the Standing Committee, the Advisory Committee presented a discussion draft of a possible amendment to Rule 29 to provide a basis for a focused discussion of the issues. While the Standing Committee was not asked to, and did not, make any decisions at that point, it did provide important feedback. In particular, the Standing Committee seemed reasonably comfortable with a 25% threshold for disclosure of non-earmarked contributions by a party to an amicus. There was some concern expressed about how easily a 12-month lookback period could be administered. And there was considerable concern expressed about significant expansion of disclosure requirements regarding contributions by nonparties to an amicus.

The Advisory Committee continued its consideration of these issues, informed by the Standing Committee's feedback. Below is an updated discussion draft. While the Advisory Committee is still not proposing any amendments, it sees little reason to revisit the 25% threshold discussed at length in the past. Instead, it is focused on two major issues, one dealing with the relationship between parties and an amicus, the other dealing with the relationship between nonparties and an amicus.

Parties. The Advisory Committee has given further consideration to how easily a 12-month lookback period could be administered and the drawbacks of a different period, such as the prior calendar year.

There is no doubt that it would be easier to administer a rule that required an amicus to review only its prior calendar year contributions. But the Advisory Committee fears that such a disclosure rule would be too easy to evade. It would fail to capture contributions that are of most concern: those made right at the time that the amicus brief is filed.

And the Advisory Committee does not believe that the administrative burdens are that great. First, it is crucial to see that only parties to the case are at issue. An amicus need not check to see if anyone at all has hit the 25% threshold in the past 12-months; it needs to check only whether a party to the case has done so. Second, as

a mathematical matter, only a very small number of contributors could possibly hit the 25% threshold.

For these reasons, the discussion draft includes a 12-month lookback period rather than a prior calendar year period.

Nonparties. It is important to emphasize that the current rule requires disclosure of any contribution earmarked for a particular brief—no matter how small the amount—unless the contributor is the amicus itself, its members, or its counsel. That is, the current rule broadly requires the disclosure of earmarked contributions by a nonparty.

The discussion draft includes two different options. One option, named beta in the draft, is essentially the same as the current rule with some modest changes to clarify and prevent evasion. The other option, named alpha in the draft, would make two more significant changes.

First, it would eliminate the exception for members of the amicus. The reason to do so would be to avoid the easy evasion available under the current rule to anyone who wants to make an earmarked contribution to an amicus brief: simply become a member. There are downsides, however, to eliminating the member exception: members of an amicus speak through the amicus, contributions and amicus briefs might be chilled by disclosure, and there would be a differential impact on organizations depending on whether they budget for amicus briefs in advance or pass the hat if and when they see a need to file a particular amicus brief.

To counterbalance these concerns and more narrowly tailor the disclosure requirement, this option would also set a dollar threshold below which an earmarked contribution would not have to be disclosed. Such a threshold would also enable crowdfunding of briefs. The current rule works to prevent crowdfunding unless the crowdfunding platform prevents anonymous contributions. As it emerged from the subcommittee, the threshold was set at $1000. But several members of the Advisory Committee think that this is too low, and that a $10,000 threshold would both reduce the burden of the disclosure requirement and achieve the purpose of identifying those with significant control over a brief and distinguishing such briefs from briefs more broadly supported by the membership of an amicus.

These two changes are linked: To eliminate the member exception without creating a dollar threshold runs the risks of imposing unnecessary burdens and chilling contributions and amicus briefs. But to establish a dollar threshold without removing the member exception would result in less disclosure than the current rule

In addition to possible amendments to the disclosure requirements, the Advisory Committee is also considering eliminating the requirement that an amicus

receive consent of the parties or permission from the court to file. The Supreme Court made such a change to its own rules. Supreme Court Rule 37.2 (effective January 1, 2023). The Advisory Committee does not see any reason not to follow the Supreme Court's lead here, and the discussion draft includes language drawn from the Supreme Court's rule. Further refinement may lead to language designed to avoid possible encouragement of amicus briefs raising waived or forfeited issues, and some provision dealing with amicus briefs at other stages, such as stay applications.

Here is the discussion draft:

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 filings during a court's initial consideration of a case on the merits.

(2) **When ~~Permitted~~ Authorized**. An amicus curiae brief that brings to the court's attention relevant matter not already brought to its attention by the parties may be of considerable help to the court. An amicus curiae brief that does not serve this purpose burdens the court, and its filing is not favored. ~~The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals 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**~~**Striking a Brief.** A court of appeals may strike an amicus brief that would result in a judge's disqualification.~~The motion must be accompanied by the proposed brief and state:~~

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

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

(4) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but 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) a table of contents, with page references;

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

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

(E) unless the amicus is the United States or its officer or agency or a state, the disclosures required by Rule 29(b) and (d)~~ curiae 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) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

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

(5) **Length.** Except by the court's permission, an amicus brief 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

63 7 days after the principal brief of the party being supported is
64 filed. An amicus curiae that does not support either party must
65 file its brief no later than 7 days after the appellant's or
66 petitioner's principal brief is filed. A court may grant leave for
67 later filing, specifying the time within which an opposing party
68 may answer.

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

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

73 **(b) Disclosing a Relationship Between the Amicus and a Party**. An
74 amicus brief must disclose:

75 (1) whether a party or its counsel authored the brief in whole or in
76 part;

77 (2) whether a party or its counsel contributed or pledged to
78 contribute money intended to fund—or intended as compensation
79 for—preparing, drafting, or submitting the brief;

80 (3) whether a party, counsel, or any combination of parties and their
81 counsel has a majority ownership interest in or majority control
82 of a legal entity submitting the brief; and

83 (4) whether a party, counsel, or any combination of parties and
84 counsel has contributed 25% or more of the gross annual revenue
85 of an amicus curiae during the 12 month period before the brief
86 was filed—disregarding amounts unrelated to the amicus curiae's
87 amicus activities that were received in the form of investments or
88 in commercial transactions in the ordinary course of business.

89 **(c) Identifying the Party or Counsel; Disclosure by a Party or**
90 **Counsel.** Any disclosure required by paragraph (b) must name the
91 party or counsel. If the party or counsel knows that an amicus has failed
92 to make the disclosure, the party or counsel must do so.

93 **(d)[alternative α] Disclosing a Relationship Between the Amicus and**
94 **a Nonparty**. An amicus brief must name any person—other than the
95 amicus or its counsel—who contributed or pledged to contribute more
96 than [$1000] [$10,000] intended to fund (or intended as compensation
97 for) preparing, drafting, or submitting the brief.

(d) [alternative β] Disclosing a Relationship Between the Amicus and a Nonparty. An amicus brief must name any person—other than the amicus, its members, or its counsel—who contributed or pledged to contribute money intended to fund (or intended as compensation for) preparing, drafting, or submitting the brief.

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

(1) **Applicability.** ~~This Rule 29(b)~~ Rule 29(a) through (d) govern~~s~~ amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, except as provided in 29(e)(2) and (3), 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.~~

~~(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.~~ The brief must not exceed 2,600 words.

~~(5)~~(3) **Time for Filing.** An amicus curiae supporting the 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 response.

B. Third-Party Litigation Funding (22-AP-C; 22-AP-D)

The Advisory Committee on Civil Rules has been looking into the issue of third-party litigation funding for years. The Advisory Committee on Appellate Rules does not think that there is anything for it to do at this point. It will await further developments from Civil.

C. IFP Status Standards—Form 4 (19-AP-C; 20-AP-D; 21-AP-B)

The Committee has been considering suggestions to establish more consistent criteria for granting IFP status and to revise the FRAP Form 4 to be less intrusive. It focused its attention on the one aspect of the issue that is clearly within the purview

of the Committee, Form 4. Form 4 is a form adopted through the Rules Enabling Act, not a form created by the Administrative Office.

The Advisory Committee has produced a working draft of a simplified Form 4. Because Supreme Court Rule 39.1 calls for the use of Appellate Form 4 by applicants for IFP status in the Supreme Court, the Advisory Committee plans to confer with the Clerk of the Supreme Court before recommending publication.

D. Joint Projects

The Advisory Committee has nothing new to report regarding:

- the joint subcommittee considering whether the deadline for electronic filing should be moved to some time prior to midnight; and
- the joint project dealing with electronic filing by pro se litigants.

It defers to the Reporter for the Standing Committee for any update.

E. New Suggestions

The Advisory Committee has received new suggestions that remain under consideration.

First, it has received a suggestion from Senator Ron Wyden that the judiciary should be doing more to protect Social Security numbers from appearing in court filings. (22-AP-E). The Advisory Committee on Appellate Rules believes that this is primarily a matter for the Bankruptcy Rules Committee and that Committee is giving the matter close attention. The Appellate Rules piggyback on other rules governing privacy protections. Appellate Rule 25(a)(5) was just amended to extend to Railroad Retirement Act cases the privacy protections provided in Social Security cases. It is keeping this item on its agenda awaiting any action by the Bankruptcy Rules Committee.

Second, it received suggestions from Professor Stephen Sachs (a former member of the Advisory Committee) and Professor Judith Resnik to consider adding a rule governing intervention on appeal. (22-AP-G, 23-AP-C). About a dozen years ago, the Advisory Committee explored the issue and decided not to take any action. Since then, the Supreme Court has observed that there is no appellate rule on this question. *Cameron v. EMW Women's Surgical Ctr.*, 142 S. Ct. 1002, 1010 (2022). A case currently pending at the Supreme Court involves intervention on appeal, and an amicus brief submitted by Professor Judith Resnik and others urges the Court not to use the case as a vehicle for creating rules governing intervention on appeal but to leave that to the rule making process. *Arizona v. Mayorkas*, 22-592. A subcommittee has been appointed to consider this issue.

Third, it received suggestions that the Advisory Committee follow the Supreme Court's lead in permitting the filing of amicus briefs without requiring the consent of the parties or the permission of the court. (23-AP-A, 23-AP-B). These suggestions have been referred to the amicus disclosure subcommittee, and the idea has already been incorporated into the working draft of Rule 29 above.

V. Items Removed from the Advisory Committee Agenda

A. Decisions on Unbriefed Grounds (19-AP-B)

In 2019, the American Academy of Appellate Lawyers suggested rulemaking to deal with decisions on unbriefed grounds. The Advisory Committee decided against rulemaking, leaving it to the then-chair of the Advisory Committee, Judge Michael Chagares, to send a letter to the chief judges of the circuits alerting them to the concern.

But the Committee also decided to revisit the matter in the spring of 2023. Upon doing so, the Committee decided that this is not an appropriate area for rulemaking, and voted without opposition to remove the item from its agenda.

B. Bar Admission (22-AP-F)

The Advisory Committee received a new suggestion that Rule 46 be amended to permit all persons to practice law, absent a compelling reason for restriction. The Committee voted without opposition to remove the item from its agenda.

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 Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), ~~35(b)(2)(A),~~ or ~~40(b)(1)~~ 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 in red; matter to be omitted is lined through.

15 on the word or line count of the word-
16 processing system used to prepare the
17 document. The certificate must state the
18 number of words—or the number of lines of
19 monospaced type—in the document.
20 (2) **Acceptable Form.** Form 6 in the Appendix
21 of Forms meets the requirements for a
22 certificate of compliance.

Committee Note

Changes to subdivision (g) reflect the consolidation of Rules 35 and 40.

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

1 **Rule 35. ~~En Banc Determination~~**
2 (Transferred to Rule 40)

3 ~~**(a) When Hearing or Rehearing En Banc May Be**~~
4 ~~**Ordered.** A majority of the circuit judges who are in~~
5 ~~regular active service and who are not disqualified~~
6 ~~may order that an appeal or other proceeding be~~
7 ~~heard or reheard by the court of appeals en banc. An~~
8 ~~en banc hearing or rehearing is not favored and~~
9 ~~ordinarily will not be ordered unless:~~
10 ~~(1) en banc consideration is necessary to~~
11 ~~secure or maintain uniformity of the~~
12 ~~court's decisions; or~~
13 ~~(2) the proceeding involves a question of~~
14 ~~exceptional importance.~~
15 ~~**(b) Petition for Hearing or Rehearing En**~~
16 ~~**Banc.** A party may petition for a hearing or~~
17 ~~rehearing en banc.~~
18 ~~(1) The petition must begin with a~~
19 ~~statement that either:~~

20 ~~(A) the panel decision conflicts~~
21 ~~with a decision of the United~~
22 ~~States Supreme Court or of~~
23 ~~the court to which the petition~~
24 ~~is addressed (with citation to~~
25 ~~the conflicting case or cases)~~
26 ~~and consideration by the full~~
27 ~~court is therefore necessary to~~
28 ~~secure and maintain~~
29 ~~uniformity of the court's~~
30 ~~decisions; or~~
31 ~~(B) the proceeding involves one~~
32 ~~or more questions of~~
33 ~~exceptional importance, each~~
34 ~~of which must be concisely~~
35 ~~stated; for example, a petition~~
36 ~~may assert that a proceeding~~
37 ~~presents a question of~~

38 ~~exceptional importance if it~~
39 ~~involves an issue on which the~~
40 ~~panel decision conflicts with~~
41 ~~the authoritative decisions of~~
42 ~~other United States Courts of~~
43 ~~Appeals that have addressed~~
44 ~~the issue.~~
45 ~~(2) Except by the court's permission:~~
46 ~~(A) a petition for an en banc~~
47 ~~hearing or rehearing produced~~
48 ~~using a computer must not~~
49 ~~exceed 3,900 words; and~~
50 ~~(B) a handwritten or typewritten~~
51 ~~petition for an en banc hearing~~
52 ~~or rehearing must not exceed~~
53 ~~15 pages.~~
54 ~~(3) For purposes of the limits in Rule~~
55 ~~35(b)(2), if a party files both a~~

56 petition for panel rehearing and a
57 petition for rehearing en banc, they
58 are considered a single document
59 even if they are filed separately,
60 unless separate filing is required by
61 local rule.

62 **(c) Time for Petition for Hearing or**
63 **Rehearing En Banc.** A petition that an
64 appeal be heard initially en banc must be filed
65 by the date when the appellee's brief is due.
66 A petition for a rehearing en banc must be
67 filed within the time prescribed by Rule 40
68 for filing a petition for rehearing.

69 **(d) Number of Copies.** The number of copies to
70 be filed must be prescribed by local rule and
71 may be altered by order in a particular case.

72 **(e) Response.** No response may be filed to a
73 petition for an en banc consideration unless

74 ~~the court orders a response. The length limits~~

75 ~~in Rule 35(b)(2) apply to a response.~~

76 ~~**(f) Call for a Vote.** A vote need not be taken to~~

77 ~~determine whether the case will be heard or~~

78 ~~reheard en banc unless a judge calls for a~~

79 ~~vote.~~

Committee Note

For the convenience of parties and counsel, the amendment addresses panel rehearing and rehearing en banc together in a single rule, consolidating what had been separate, overlapping, and duplicative provisions of Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 are transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

Claudi Barber (AP-2022-0001-0003): The rule should not provide that rehearing en banc is not favored. Petitions for rehearing should be freely granted when something unjust appears in the record.

Andrew Straw (AP-2022-0001-0004): There should be no discretion. Every petition for en banc review should have a merits decision.

Anonymous (AP-2022-0001-0008): It is somewhat unprofessional for an appellate court to determine that a certain type of hearing is unfavorable. It would be prudent to allow oral argument on whether or not to grant a petition.

J. Krell (AP-2021-0001-0005): The proposed amendments are minor and largely unobjectionable. Combining Rules 35 and 40 seems appropriate given the degree to which petitions for panel rehearing and for rehearing en banc have become intertwined, and others seem reasonable. But the rules should codify the practice of the simultaneously amending the opinion, denying rehearing en banc, and ordering that no further petitions for panel or en banc rehearing will be entertained, perhaps a caution that this should be done only if the amendment is so minor that any subsequent petition would be obviously frivolous or dilatory.

National Association of Criminal Defense Lawyers (AP-2022-0001-0009): The NACDL supports the proposed amendments, with one suggestion for improvement. Local flexibility regarding the physical presentation of rehearing petitions should be permitted, similar to the local flexibility for length and time limits.

1 **Rule 40. ~~Petition for~~ Panel Rehearing; En Banc**
2 **Determination**

3 **(a)** ~~**Time to File; Contents; Response; Action by the**~~
4 ~~**Court if Granted.**~~ **A Party's Options.** A party may
5 seek rehearing of a decision through a petition for
6 panel rehearing, a petition for rehearing en banc, or
7 both. Unless a local rule provides otherwise, a party
8 seeking both forms of rehearing must file the
9 petitions as a single document. Panel rehearing is the
10 ordinary means of reconsidering a panel decision;
11 rehearing en banc is not favored.

12 ~~(1) ***Time.*** Unless the time is shortened or~~
13 ~~extended by order or local rule, a petition for~~
14 ~~panel rehearing may be filed within 14 days~~
15 ~~after entry of judgment. But in a civil case,~~
16 ~~unless an order shortens or extends the time,~~
17 ~~the petition may be filed by any party within~~
18 ~~45 days after entry of judgment if one of the~~
19 ~~parties is:~~

20 ~~(A) the United States;~~

21 ~~(B) a United States agency;~~

22 ~~(C) a United States officer or employee~~

23 ~~sued in an official capacity; or~~

24 ~~(D) a current or former United States~~

25 ~~officer or employee sued in an~~

26 ~~individual capacity for an act or~~

27 ~~omission occurring in connection~~

28 ~~with duties performed on the United~~

29 ~~States' behalf including all~~

30 ~~instances in which the United States~~

31 ~~represents that person when the court~~

32 ~~of appeals' judgment is entered or~~

33 ~~files the petition for that person.~~

34 ~~(2) ***Contents.*** The petition must state with~~

35 ~~particularity each point of law or fact that the~~

36 ~~petitioner believes the court has overlooked~~

37 ~~or misapprehended and must argue in support~~

38 ~~of the petition. Oral argument is not~~

39 ~~permitted.~~

40 ~~(3) ***Response.*** Unless the court requests, no~~

41 ~~response to a petition for panel rehearing is~~

42 ~~permitted. Ordinarily, rehearing will not be~~

43 ~~granted in the absence of such a request. If a~~

44 ~~response is requested, the requirements of~~

45 ~~Rule 40(b) apply to the response.~~

46 ~~(4) ***Action by the Court.*** If a petition for panel~~

47 ~~rehearing is granted, the court may do any of~~

48 ~~the following:~~

49 ~~(A) make a final disposition of the case~~

50 ~~without reargument;~~

51 ~~(B) restore the case to the calendar for~~

52 ~~reargument or resubmission; or~~

53 ~~(C) issue any other appropriate order.~~

54 **(b)** ~~**Form of Petition; Length**.~~ **Content of a Petition.**

55 ~~The petition must comply in form with Rule 32.~~

56 ~~Copies must be served and filed as Rule 31~~

57 ~~prescribes. Except by the court's permission:~~

58 (1) ~~a petition for panel rehearing produced using~~

59 ~~a computer must not exceed 3,900 words; and~~

60 **Petition for Panel Rehearing.** A petition for

61 panel rehearing must:

62 (A) state with particularity each point of

63 law or fact that the petitioner believes

64 the court has overlooked or

65 misapprehended; and

66 (B) argue in support of the petition.

67 (2) ~~a handwritten or typewritten petition for~~

68 ~~panel rehearing must not exceed 15 pages.~~

69 **Petition for Rehearing En Banc.** A petition

70 for rehearing en banc must begin with a

71 statement that:

72 (A) the panel decision conflicts with a

73 decision of the court to which the

74 petition is addressed (with citation to
75 the conflicting case or cases) and the
76 full court's consideration is therefore
77 necessary to secure or maintain
78 uniformity of the court's decisions;
79 (B) the panel decision conflicts with a
80 decision of the United States Supreme
81 Court (with citation to the conflicting
82 case or cases);
83 (C) the panel decision conflicts with an
84 authoritative decision of another
85 United States court of appeals (with
86 citation to the conflicting case or
87 cases); or
88 (D) the proceeding involves one or more
89 questions of exceptional importance,
90 each concisely stated.

91 **(c) When Rehearing En Banc May Be Ordered.** On
92 their own or in response to a party's petition, a
93 majority of the circuit judges who are in regular
94 active service and who are not disqualified may order
95 that an appeal or other proceeding be reheard en
96 banc. Unless a judge calls for a vote, a vote need not
97 be taken to determine whether the case will be so
98 reheard. Rehearing en banc is not favored and
99 ordinarily will be allowed only if one of the criteria
100 in Rule 40(b)(2)(A)-(D) is met.
101 **(d) Time to File; Form; Length; Response; Oral**
102 **Argument.**
103 (1) **Time.** Unless the time is shortened or
104 extended by order or local rule, any
105 petition for panel rehearing or
106 rehearing en banc must be filed
107 within 14 days after judgment is
108 entered—or, if the panel later amends

109 its decision (on rehearing or
110 otherwise), within 14 days after the
111 amended decision is entered. But in a
112 civil case, unless an order shortens or
113 extends the time, the petition may be
114 filed by any party within 45 days after
115 entry of judgment or of an amended
116 decision if one of the parties is:
117 (A) the United States;
118 (B) a United States agency;
119 (C) a United States officer or
120 employee sued in an official
121 capacity; or
122 (D) a current or former United
123 States officer or employee
124 sued in an individual capacity
125 for an act or omission
126 occurring in connection with

127 duties performed on the
128 United States' behalf—
129 including all instances in
130 which the United States
131 represents that person when
132 the court of appeals' judgment
133 is entered or files that person's
134 petition.
135 (2) **Form of the Petition.** The petition
136 must comply in form with Rule 32.
137 Copies must be filed and served as
138 Rule 31 prescribes, except that the
139 number of filed copies may be
140 prescribed by local rule or altered by
141 order in a particular case.
142 (3) **Length.** Unless the court or a local
143 rule allows otherwise, the petition (or
144 a single document containing a

145 petition for panel rehearing and a
146 petition for rehearing en banc) must
147 not exceed:
148 (A) 3,900 words if produced using
149 a computer; or
150 (B) 15 pages if handwritten or
151 typewritten.
152 (4) ***Response.*** Unless the court so
153 requests, no response to the petition is
154 permitted. Ordinarily, the petition
155 will not be granted without such a
156 request. If a response is requested, the
157 requirements of Rule 40(d)(2)-(3)
158 apply to the response.
159 (5) **Oral Argument.** Oral argument on
160 whether to grant the petition is not
161 permitted.

162 ***(e) If a Petition is Granted.*** If a petition for panel
163 rehearing or rehearing en banc is granted, the
164 court may:
165 (1) dispose of the case without further
166 briefing or argument;
167 (2) order additional briefing or argument;
168 or
169 (3) issue any other appropriate order.
170 **(f) Panel's Authority After a Petition for**
171 **Rehearing En Banc.** The filing of a petition
172 for rehearing en banc does not limit the
173 panel's authority to take action described in
174 Rule 40(e).
175 **(g) Initial Hearing En Banc**. On its own or in
176 response to a party's petition, a court may
177 hear an appeal or other proceeding initially en
178 banc. A party's petition must be filed no later
179 than the date when its principal brief is due.

180 The provisions of Rule 40(b)(2), (c), and

181 (d)(2)-(5) apply to an initial hearing en banc.

182 But initial hearing en banc is not favored and

183 ordinarily will not be ordered.

Committee Note

For the convenience of parties and counsel, the amendment addresses panel rehearing and rehearing en banc together in a single rule, consolidating what had been separate, overlapping, and duplicative provisions of Rule 35 (hearing and rehearing en banc) and Rule 40 (panel rehearing). The contents of Rule 35 are transferred to Rule 40, which is expanded to address both panel rehearing and en banc determination.

Subdivision (a). The amendment makes clear that parties may seek panel rehearing, rehearing en banc, or both. It emphasizes that rehearing en banc is not favored and that rehearing by the panel is the ordinary means of reconsidering a panel decision. This description of panel rehearing is by no means designed to encourage petitions for panel rehearing or to suggest that they should in any way be routine, but merely to stress the extraordinary nature of rehearing en banc. Furthermore, the amendment's discussion of rehearing petitions is not intended to diminish the court's existing power to order rehearing sua sponte, without any petition having been filed. The amendment also preserves a party's ability to seek both forms of rehearing, requiring that both petitions be filed as a single document, but preserving the court's power (previously found in Rule 35(b)(3)) to provide otherwise by local rule.

Subdivision (b). Panel rehearing and rehearing en banc are designed to deal with different circumstances. The amendment clarifies the distinction by contrasting the required content of a petition for panel rehearing (preserved from Rule 40(a)(2)) with that of a petition for rehearing en banc (preserved from Rule 35(b)(1)).

Subdivision (c). The amendment preserves the existing criteria and voting protocols for ordering rehearing en banc, including that no vote need be taken unless a judge calls for a vote (previously found in Rule 35(a) and (f)).

Subdivision (d). The amendment establishes uniform time, form, and length requirements for petitions for panel rehearing and rehearing en banc, as well as uniform provisions for responses to the petition and oral argument.

Time. The amended Rule 40(d)(1) preserves the existing time limit, after the initial entry of judgment, for filing a petition for panel rehearing (previously found in Rule 40(a)(1)) or a petition for rehearing en banc (previously found in Rule 35(c)). It adds new language extending the same time limit to a petition filed after a panel amends its decision, on rehearing or otherwise.

Form of the Petition. The amended Rule 40(d)(2) preserves the existing form, service, and filing requirements for a petition for panel rehearing (previously found in Rule 40(b)), and it extends these same requirements to a petition for rehearing en banc. The amended rule also preserves the court's existing power (previously found in Rule 35(d)) to determine the required number of copies of a petition for rehearing en banc by local rule or by order in a particular case, and it extends this power to petitions for panel rehearing.

Length. The amended Rule 40(d)(3) preserves the existing length requirements for a petition for panel rehearing (previously found in Rule 40(b)) and for a petition for rehearing en banc (previously found in Rule 35(b)(2)). It also preserves the court's power (previously found in Rule 35(b)(3)) to provide by local rule for other length limits on combined petitions filed as a single document, and it extends this authority to petitions generally.

Response. The amended Rule 40(d)(4) preserves the existing requirements for a response to a petition for panel rehearing (previously found in Rule 40(a)(3)) or to a petition for rehearing en banc (previously found in Rule 35(e)). Unsolicited responses to rehearing petitions remain prohibited, and the length and form requirements for petitions and responses remain identical. The amended rule also extends to rehearing en banc the existing statement (previously found in Rule 40(a)(3)) that a petition for panel rehearing will ordinarily not be granted without a request for a response. The use of the word "ordinarily" recognizes that there may be circumstances where the need for rehearing is sufficiently clear to the court that no response is needed. But before granting rehearing without requesting a response, the court should consider that a response might raise points relevant to whether rehearing is warranted or appropriate that could otherwise be overlooked. For example, a responding party may point out that an argument raised in a rehearing petition had been waived or forfeited, or it might point to other relevant aspects of the record that had not previously been brought specifically to the court's attention.

Oral argument. The amended Rule 40(d)(5) extends to rehearing en banc the existing prohibition (previously found in Rule 40(a)(2)) on oral argument on whether to grant a petition for panel rehearing.

Subdivision (e). The amendment clarifies the existing provisions empowering a court to act after granting a petition for panel rehearing (previously found in Rule 40(a)(4)), extending these provisions to rehearing en banc as well. The amended language alerts counsel that, if a petition is granted, the court might call for additional briefing or argument, or it might decide the case without additional briefing or argument. *Cf.* Supreme Court Rule 16.1 (advising counsel that an order disposing of a petition for certiorari "may be a summary disposition on the merits").

Subdivision (f). The amendment adds a new provision concerning the authority of a panel to act while a petition for rehearing en banc is pending.

Sometimes, a panel may conclude that it can fix the problem identified in a petition for rehearing en banc by, for example, amending its decision. The amendment makes clear that the panel is free to do so, and that the filing of a petition for rehearing en banc does not limit the panel's authority.

A party, however, may not agree that the panel's action has fixed the problem, or a party may think that the panel has created a new problem. If the panel amends its decision while a petition for rehearing en banc is pending, the en banc petition remains pending until its disposition by the court, and the amended Rule 40(d)(1) specifies the time during which a new rehearing petition may be filed from the amended decision. In some cases, however, there may be reasons not to allow further delay. In such cases, the court might shorten the time for filing a new petition under the amended Rule 40(d)(1), or it might shorten the time for issuance of the mandate or might order the immediate issuance of the mandate under Rule 41. In addition, in some cases, it may be clear that any additional petition for panel

rehearing would be futile and would serve only to delay the proceedings. In such cases, the court might use Rule 2 to suspend the ability to file a new petition for panel rehearing. Before doing so, however, the court ought to consider the difficulty of predicting what a party filing a new petition might say.

Subdivision (g). The amended Rule 40 largely preserves the existing requirements concerning the rarely invoked initial hearing en banc (previously found in Rule 35). The time for filing a petition for initial hearing en banc (previously found in Rule 35(c)) is shortened, for an appellant, to the time for filing its principal brief. The other requirements and voting protocols, which were identical as to hearing and rehearing en banc, are incorporated by reference. The amendment adds new language to remind parties that initial hearing en banc is not favored and ordinarily will not be ordered.

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

Claudi Barber (AP-2022-0001-0003): The rule should not provide that rehearing en banc is not favored. Petitions for rehearing should be freely granted when something unjust appears in the record.

Andrew Straw (AP-2022-0001-0004): There should be no discretion. Every petition for en banc review should have a merits decision.

Anonymous (AP-2022-0001-0008): It is somewhat unprofessional for an appellate court to determine that a certain type of hearing is unfavorable. It would be prudent to allow oral argument on whether or not to grant a petition.

J. Krell (AP-2021-0001-0005): The proposed amendments are minor and largely unobjectionable. Combining Rules 35 and 40 seems appropriate given the degree to which petitions for panel rehearing and for rehearing en banc have become intertwined, and others seem reasonable. But the rules should codify the practice of the simultaneously amending the opinion, denying rehearing en banc, and ordering that no further petitions for panel or en banc rehearing will be entertained, perhaps a caution that this should be done only if the amendment is so minor that any subsequent petition would be obviously frivolous or dilatory.

National Association of Criminal Defense Lawyers (AP-2022-0001-0009): The NACDL supports the proposed amendments, with one suggestion for improvement. Local flexibility regarding the physical presentation of rehearing petitions should be permitted, similar to the local flexibility for length and time limits.

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

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:

- In computing these limits, you can exclude the items listed in Rule 32(f).
- If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
- For the limits in Rules 5, 21, 27, ~~35,~~ and 40:

* * * * *

	Rule	Document type	Word limit	Page limit	Line limit

* * * * *

Rehearing and en banc filings	~~35(b)(2) & 40(b)~~ 40(d)(3)	• Petition for initial hearing en banc • Petition for panel rehearing; petition for rehearing en banc • Response if requested by the court	3,900	15	Not applicable

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

1 **Rule 6. Appeal in a Bankruptcy Case or**
2 **Proceeding**

3 **(a) Appeal From a Judgment, Order, or Decree of a**
4 **District Court Exercising Original Jurisdiction in**
5 **a Bankruptcy Case or Proceeding.** An appeal to a
6 court of appeals from a final judgment, order, or
7 decree of a district court exercising original
8 jurisdiction in a bankruptcy case or proceeding under
9 28 U.S.C. § 1334 is taken as any other civil appeal
10 under these rules. But the reference in
11 Rule 4(a)(4)(A) to the time allowed for motions
12 under certain Federal Rules of Civil Procedure must
13 be read as a reference to the time allowed for the
14 equivalent motions under the applicable Federal

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

15 Rule of Bankruptcy Procedure, which may be shorter
16 than the time allowed under the Civil Rules.

17 **(b) Appeal From a Judgment, Order, or Decree of a**
18 **District Court or Bankruptcy Appellate Panel**
19 **Exercising Appellate Jurisdiction in a**
20 **Bankruptcy Case or Proceeding.**

21 (1) **Applicability of Other Rules.** These rules
22 apply to an appeal to a court of appeals under
23 28 U.S.C. § 158(d)(1) from a final judgment,
24 order, or decree of a district court or
25 bankruptcy appellate panel exercising
26 appellate jurisdiction in a bankruptcy case or
27 proceeding under 28 U.S.C. § 158(a) or (b),
28 but with these qualifications:

29 * * * * *

30 (C) when the appeal is from a bankruptcy
31 appellate panel, ''district court,'' as

32 used in any applicable rule, means
33 ‘‘bankruptcy appellate panel’’; and
34 * * * * *
35 (2) **Additional Rules.** In addition to the rules
36 made applicable by Rule 6(b)(1), the
37 following rules apply:
38 (A) **Motion for Rehearing.**
39 * * * * *
40 (ii) If a party intends to challenge
41 the order disposing of the
42 motion—or the alteration or
43 amendment of a judgment,
44 order, or decree upon the
45 motion—then the party, in
46 ~~compliance~~ accordance with
47 Rules 3(c) and 6(b)(1)(B),
48 must file a notice of appeal or
49 amended notice of appeal.

50 The notice or amended notice
51 must be filed within the time
52 prescribed by Rule 4—
53 excluding Rules 4(a)(4) and
54 4(b)—measured from the
55 entry of the order disposing of
56 the motion.

57 * * * * *

58 (C) **Making the Record Available.**

59 * * * * *

60 (ii) All parties must do whatever
61 else is necessary to enable the
62 clerk to assemble the record
63 and make it available. When
64 the record is made available in
65 paper form, the court of
66 appeals may provide by rule
67 or order that a certified copy

68 of the docket entries be made
69 available in place of the
70 redesignated record. But at
71 any time during the appeal's
72 pendency, any party may
73 request ~~at any time during the~~
74 ~~pendency of the appeal~~ that
75 the redesignated record be
76 made available.

77 (D) **Filing the Record.** When the district
78 clerk or bankruptcy-appellate-panel
79 clerk has made the record available,
80 the circuit clerk must note that fact on
81 the docket. The date as noted ~~on the~~
82 ~~docket~~ serves as the filing date of the
83 record. The circuit clerk must
84 immediately notify all parties of that
85 ~~the filing~~ date.

(c) Direct Appeal ~~Review~~ from a Judgment, Order, or Decree of a Bankruptcy Court by ~~Permission~~ Authorization Under 28 U.S.C. § 158(d)(2).

(1) **Applicability of Other Rules.** These rules apply to a direct appeal from a judgment, order, or decree of a bankruptcy court by ~~permission~~ authorization under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3–4, 5~~(a)(3)~~ (except as provided in this subdivision (c)), 6(a), 6(b), 8(a), 8(c), 9–12, 13–20, 22–23, and 24(b) do not apply; and

(B) as used in any applicable rule, ''district court'' or ''district clerk'' includes—to the extent appropriate—a bankruptcy court or bankruptcy appellate panel or its clerk~~; and~~

103 ~~(C) the reference to ‘‘Rules 11 and~~
104 ~~12(c)’’ in Rule 5(d)(3) must be read~~
105 ~~as a reference to Rules 6(c)(2)(B) and~~
106 ~~(C)~~.
107 (2) **Additional Rules.** In addition to the rules
108 made applicable by (c)(1), the following rules
109 apply:
110 (A) **Petition to Authorize a Direct**
111 **Appeal.** Within 30 days after a
112 certification of a bankruptcy court's
113 order for direct appeal to the court of
114 appeals under 28 U.S.C. § 158(d)(2)
115 becomes effective under Bankruptcy
116 Rule 8006(a), any party to the appeal
117 may ask the court of appeals to
118 authorize a direct appeal by filing a
119 petition with the circuit clerk under
120 Bankruptcy Rule 8006(g).

121 (B) **Contents of the Petition.** The
122 petition must include the material
123 required by Rule 5(b)(1) and an
124 attached copy of:
125 (i) the certification; and
126 (ii) the notice of appeal of the
127 bankruptcy court's judgment,
128 order, or decree filed under
129 Bankruptcy Rule 8003 or
130 8004.
131 (C) **Answer or Cross-Petition; Oral**
132 **Argument.** Rule 5(b)(2) governs an
133 answer or cross-petition. Rule 5(b)(3)
134 governs oral argument.
135 (D) **Form of Papers; Number of**
136 **Copies; Length Limits.** Rule 5(c)
137 governs the required form, number of
138 copies to be filed, and length limits

139 applicable to the petition and any
140 answer or cross-petition.
141 (E) **Notice of Appeal; Calculating**
142 **Time.** A notice of appeal to the court
143 of appeals need not be filed. The date
144 when the order authorizing the direct
145 appeal is entered serves as the date of
146 the notice of appeal for calculating
147 time under these rules.
148 (F) **Notification of the Order**
149 **Authorizing Direct Appeal; Fees;**
150 **Docketing the Appeal.**
151 (i) When the court of appeals
152 enters the order authorizing
153 the direct appeal, the circuit
154 clerk must notify the
155 bankruptcy clerk and the
156 district court clerk or

157 bankruptcy-appellate-panel
158 clerk of the entry.
159 (ii) Within 14 days after the order
160 authorizing the direct appeal
161 is entered, the appellant must
162 pay the bankruptcy clerk any
163 unpaid required fee,
164 including:
165 • the fee required for the
166 appeal to the district court
167 or bankruptcy appellate
168 panel; and
169 • the difference between the
170 fee for an appeal to the
171 district court or
172 bankruptcy appellate
173 panel and the fee required

174 for an appeal to the court
175 of appeals.
176 (iii) The bankruptcy clerk must
177 notify the circuit clerk once
178 the appellant has paid all
179 required fees. Upon receiving
180 the notice, the circuit clerk
181 must enter the direct appeal on
182 the docket.
183 (G) **Stay Pending Appeal.** Bankruptcy
184 Rule 8007 applies to any stay pending
185 appeal.
186 ~~(A)~~(H) **The Record on Appeal.** Bankruptcy
187 Rule 8009 governs the record on
188 appeal. If a party has already filed a
189 document or completed a step
190 required to assemble the record for
191 the appeal to the district court or

192 bankruptcy appellate panel, the party
193 need not repeat that filing or step.
194 ~~(B)~~(I) **Making the Record Available.**
195 Bankruptcy Rule 8010 governs
196 completing the record and making it
197 available. When the court of appeals
198 enters the order authorizing the direct
199 appeal, the bankruptcy clerk must
200 make the record available to the
201 circuit clerk.
202 ~~(C)~~ ~~**Stays Pending Appeal.** Bankruptcy~~
203 ~~Rule 8007 applies to stays pending~~
204 ~~appeal.~~
205 ~~(D)~~(J) **Duties of the Circuit Clerk.** When
206 the bankruptcy clerk has made the
207 record available, the circuit clerk
208 must note that fact on the docket. The
209 date as noted ~~on the docket~~ serves as

210 the filing date of the record. The
211 circuit clerk must immediately notify
212 all parties of that ~~the filing~~ date.
213 ~~(E)~~(K) **Filing a Representation Statement.**
214 Unless the court of appeals designates
215 another time, within 14 days after
216 ~~entry of~~ the order ~~granting permission~~
217 ~~to appeal~~ authorizing the direct appeal
218 is entered, the attorney for each party
219 to the appeal ~~the attorney who sought~~
220 ~~permission~~ must file a statement with
221 the circuit clerk naming the parties
222 that the attorney represents on appeal.

Committee Note

Subdivision (a). Minor stylistic and clarifying changes are made to subdivision (a). In addition, subdivision (a) is amended to clarify that, when a district court is exercising original jurisdiction in a bankruptcy case or proceeding under 28 U.S.C. § 1334, the time in which to file post-judgment motions that can reset the time to appeal under Rule 4(a)(4)(A) is controlled by the Federal Rules of

Bankruptcy Procedure, rather than the Federal Rules of Civil Procedure.

The Bankruptcy Rules partially incorporate the relevant Civil Rules but in some instances shorten the deadlines for motions set out in the Civil Rules. *See* Fed. R. Bankr. P. 9015(c) (any renewed motion for judgment under Civil Rule 50(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 7052 (any motion to amend or make additional findings under Civil Rule 52(b) must be filed within 14 days of entry of judgment); Fed. R. Bankr. P. 9023 (any motion to alter or amend the judgment or for a new trial under Civil Rule 59 must be filed within 14 days of entry of judgment).

Motions for attorney's fees in bankruptcy cases or proceedings are governed by Bankruptcy Rule 7054(b)(2)(A), which incorporates without change the 14-day deadline set in Civil Rule 54(d)(2)(B). Under Appellate Rule 4(a)(4)(A)(iii), such a motion resets the time to appeal only if the district court so orders pursuant to Civil Rule 58(e), which is made applicable to bankruptcy cases and proceedings by Bankruptcy Rule 7058.

Motions for relief under Civil Rule 60 in bankruptcy cases or proceedings are governed by Bankruptcy Rule 9024. Appellate Rule 4(a)(4)(A)(vi) provides that a motion for relief under Civil Rule 60 resets the time to appeal only if the motion is made within the time allowed for filing a motion under Civil Rule 59. In a bankruptcy case or proceeding, motions under Civil Rule 59 are governed by Bankruptcy Rule 9023, which, as noted above, requires such motions to be filed within 14 days of entry of judgment.

Civil Rule	Bankruptcy Rule	Time Under Bankruptcy Rule
50(b)	9015(c)	14 days
52(b)	7052	14 days
59	9023	14 days
54(d)(2)(B)	7054(b)(2)(A)	14 days
60	9024	14 days

Of course, the Bankruptcy Rules may be amended in the future. If that happens, the time allowed for the equivalent motions under the applicable Bankruptcy Rule may change.

Subdivision (b). Minor stylistic and clarifying changes are made to the header of subdivision (b) and to subdivision (b)(1). Subdivision (b)(1)(C) is amended to correct the omission of the word "bankruptcy" from the phrase "bankruptcy appellate panel." Stylistic changes are made to subdivision (b)(2)(D).

Subdivision (c). Subdivision (c) was added to Rule 6 in 2014 to set out procedures governing discretionary direct appeals from orders, judgments, or decrees of the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2).

Typically, an appeal from an order, judgment, or decree of a bankruptcy court may be taken either to the district court for the relevant district or, in circuits that have established bankruptcy appellate panels, to the bankruptcy appellate panel for that circuit. 28 U.S.C. § 158(a). Final orders of the district court or bankruptcy appellate panel resolving appeals under § 158(a) are then appealable as of right to the court of appeals under § 158(d)(1).

That two-step appeals process can be redundant and time-consuming and could in some circumstances potentially jeopardize the value of a bankruptcy estate by impeding quick resolution of disputes over disposition of estate assets. In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress enacted 28 U.S.C. § 158(d)(2) to provide that, in certain circumstances, appeals may be taken directly from orders of the bankruptcy court to the courts of appeals, bypassing the intervening appeal to the district court or bankruptcy appellate panel.

Specifically, § 158(d)(2) grants the court of appeals jurisdiction of appeals from any order, judgment, or decree of the bankruptcy court if (a) the bankruptcy court, the district court, the bankruptcy appellate panel, or all parties to the appeal certify that (1) "the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance"; (2) "the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions"; or (3) "an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken" *and* (b) "the court of appeals authorizes the direct appeal of the judgment, order, or decree." 28 U.S.C. § 158(d)(2).

Bankruptcy Rule 8006 governs the procedures for certification of a bankruptcy court order for direct appeal to the court of appeals. Among other things, Rule 8006 provides that, to become effective, the certification must be filed in the appropriate court, the appellant must file a notice of appeal of the bankruptcy court order to the district court or bankruptcy appellate panel, and the notice of appeal must become effective. Fed. R. Bankr. P. 8006(a). Once the certification becomes effective under Rule 8006(a), a

petition seeking authorization of the direct appeal must be filed with the court of appeals within 30 days. *Id.* 8006(g).

Rule 6(c) governs the procedures applicable to a petition for authorization of a direct appeal and, if the court of appeals grants the petition, the initial procedural steps required to prosecute the direct appeal in the court of appeals.

As promulgated in 2014, Rule 6(c) incorporated by reference most of Rule 5, which governs petitions for permission to appeal to the court of appeals from otherwise non-appealable district court orders. It has become evident over time, however, that Rule 5 is not a perfect fit for direct appeals of bankruptcy court orders to the courts of appeals. The primary difference is that Rule 5 governs discretionary appeals from district court orders that are otherwise non-appealable, and an order granting a petition for permission to appeal under Rule 5 thus initiates an appeal that otherwise would not occur. By contrast, an order granting a petition to authorize a direct appeal under Rule 6(c) means that an appeal that has already been filed and is pending in the district court or bankruptcy appellate panel will instead be heard in the court of appeals. As a result, it is not always clear precisely how to apply the provisions of Rule 5 to a Rule 6(c) direct appeal.

The new amendments to Rule 6(c) are intended to address that problem by making Rule 6(c) self-contained. Thus, Rule 6(c)(1) is amended to provide that Rule 5 is not applicable to Rule 6(c) direct appeals except as specified in Rule 6(c) itself. Rule 6(c)(2) is also amended to include the substance of applicable provisions of Rule 5, modified to apply more clearly to Rule 6(c) direct appeals. In addition, stylistic and clarifying amendments are made to conform to other provisions of the Appellate Rules and Bankruptcy

Rules and to ensure that all the procedures governing direct appeals of bankruptcy court orders are as clear as possible to both courts and practitioners.

Subdivision (c)—Title. The title of subdivision (c) is amended to change "Direct Review" to "Direct Appeal" and "Permission" to "Authorization," to be consistent with the language of 28 U.S.C. § 158(d)(2). In addition, the language "from a Judgment, Order, or Decree of a Bankruptcy Court" is added for clarity and to be consistent with other subdivisions of Rule 6.

Subdivision (c)(1). The language of the first sentence is amended to be consistent with the title of subdivision (c). In addition, the list of rules in subdivision (c)(1)(A) that are inapplicable to direct appeals is modified to include Rule 5, except as provided in subdivision (c) itself. Subdivision (c)(1)(C), which modified certain language in Rule 5 in the context of direct appeals, is therefore deleted. As set out in more detail below, the provisions of Rule 5 that are applicable to direct appeals have been added, with appropriate modifications to take account of the direct appeal context, as new provisions in subdivision (c)(2).

Subdivision (c)(2). The language "to the rules made applicable by ~~Rule 6~~(c)(1)" is added to the first sentence for consistency with other subdivisions of Rule 6.

Subdivision (c)(2)(A). Subdivision (c)(2)(A) is a new provision that sets out the basic procedure and timeline for filing a petition to authorize a direct appeal in the court of appeals. It is intended to be substantively identical to Bankruptcy Rule 8006(g), with minor stylistic changes made in light of the context of the Appellate Rules.

Subdivision (c)(2)(B). Subdivision (c)(2)(B) is a new provision that specifies the contents of a petition to

authorize a direct appeal. It provides that, in addition to the material required by Rule 5, the petition must include an attached copy of the certification under § 158(d)(2) and a copy of the notice of appeal to the district court or bankruptcy appellate panel.

Subdivision (c)(2)(C). Subdivision (c)(2)(C) is a new provision. For clarity, it specifies that answers or cross-petitions are governed by Rule 5(b)(2) and oral argument is governed by Rule 5(b)(3).

Subdivision (c)(2)(D). Subdivision (c)(2)(D) is a new provision. For clarity, it specifies that the required form, number of copies to be filed, and length limits applicable to the petition and any answer or cross-petition are governed by Rule 5(c).

Subdivision (c)(2)(E). Subdivision (c)(2)(E) is a new provision that incorporates the substance of Rule 5(d)(2), modified to take into account that the appellant will already have filed a notice of appeal to the district court or bankruptcy appellate panel. It makes clear that a second notice of appeal to the court of appeals need not be filed, and that the date of entry of the order authorizing the direct appeal serves as the date of the notice of appeal for the purpose of calculating time under the Appellate Rules.

Subdivision (c)(2)(F). Subdivision (c)(2)(F) is a new provision. It largely incorporates the substance of Rules 5(d)(1)(A) and 5(d)(3), with some modifications.

Subdivision (c)(2)(F)(i) now requires that when the court of appeals enters an order authorizing a direct appeal, the circuit clerk must notify the bankruptcy clerk and the clerk of the district court or the clerk of the bankruptcy appellate panel of the order.

Subdivision (c)(2)(F)(ii) requires that, within 14 days of entry of the order authorizing the direct appeal, the appellant must pay the bankruptcy clerk any required filing or docketing fees that have not yet been paid. Thus, if the appellant has not yet paid the required fee for the initial appeal to the district court or bankruptcy appellate panel, the appellant must do so. In addition, the appellant must pay the bankruptcy clerk the difference between the fee for the appeal to the district court or bankruptcy appellate panel and the fee for an appeal to the court of appeals, so that the appellant has paid the full fee required for an appeal to the court of appeals.

Subdivision (c)(2)(F)(iii) then requires the bankruptcy clerk to notify the circuit clerk that all fees have been paid, which triggers the circuit clerk's duty to docket the direct appeal.

Subdivision (c)(2)(G). Subdivision (c)(2)(G) was formerly subdivision (c)(2)(C). It is substantively unchanged, continuing to provide that Bankruptcy Rule 8007 governs stays pending appeal, but reflects minor stylistic revisions.

Subdivision (c)(2)(H). Subdivision (c)(2)(H) was formerly subdivision (c)(2)(A). It continues to provide that Bankruptcy Rule 8009 governs the record on appeal, but adds a sentence clarifying that steps taken to assemble the record under Bankruptcy Rule 8009 before the court of appeals authorizes the direct appeal need not be repeated after the direct appeal is authorized.

Subdivision (c)(2)(I). Subdivision (c)(2)(I) was formerly subdivision (c)(2)(B). It continues to provide that Bankruptcy Rule 8010 governs provision of the record to the court of appeals. It adds a sentence clarifying that when the

court of appeals authorizes the direct appeal, the bankruptcy clerk must make the record available to the court of appeals.

Subdivision (c)(2)(J). Subdivision (c)(2)(J) was formerly subdivision (c)(2)(D). It is unchanged other than a stylistic change and being renumbered.

Subdivision (c)(2)(K). Subdivision (c)(2)(K) was formerly subdivision (c)(2)(E). Because any party may file a petition to authorize a direct appeal, it is modified to provide that the attorney for each party—rather than only the attorney for the party filing the petition—must file a representation statement. In addition, the phrase "granting permission to appeal" is changed to "authorizing the direct appeal" to conform to the language used throughout the rest of subdivision (c), and a stylistic change is made.

Rule 39. Costs

(a) ~~Against Whom Assessed~~ Allocating Costs Among the Parties. The following rules apply to allocating costs among the parties unless the law provides, the parties agree, or the court orders otherwise:

(1) if an appeal is dismissed, costs are ~~taxed~~ allocated against the appellant~~, unless the parties agree otherwise~~;

(2) if a judgment is affirmed, costs are ~~taxed~~ allocated against the appellant;

(3) if a judgment is reversed, costs are ~~taxed~~ allocated against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, each party bears its own costs ~~costs are taxed only as the court orders~~.

(b) Reconsideration. Once the allocation of costs is established by the entry of judgment, a party may

19 seek reconsideration of that allocation by filing a
20 motion in the court of appeals within 14 days after
21 the entry of judgment. But issuance of the mandate
22 under Rule 41 must not be delayed awaiting a
23 determination of the motion. The court of appeals
24 retains jurisdiction to decide the motion after the
25 mandate issues.

26 **(c) Costs Governed by Allocation Determination.** The
27 allocation of costs applies both to costs taxable in the
28 court of appeals under (e) and to costs taxable in
29 district court under (f).

30 ~~(b)~~**(d)** **Costs For and Against the United States.** Costs for
31 or against the United States, its agency, or officer
32 will be ~~assessed~~ allocated under ~~Rule 39~~(a) only if
33 authorized by law.

34 **(e) Costs on Appeal Taxable in the Court of Appeals.**

35 (1) **Costs Taxable.** The following costs on
36 appeal are taxable in the court of appeals for
37 the benefit of the party entitled to costs:
38 (A) the production of necessary copies of
39 a brief or appendix, or copies of
40 records authorized by Rule 30(f);
41 (B) the docketing fee; and
42 (C) a filing fee paid in the court of
43 appeals.
44 ~~(c)~~ (2) **Costs of Copies.** Each court of appeals must,
45 by local rule, set ~~fix~~ the maximum rate for
46 taxing the cost of producing necessary copies
47 of a brief or appendix, or copies of records
48 authorized by Rule 30(f). The rate must not
49 exceed that generally charged for such work
50 in the area where the clerk's office is located
51 and should encourage economical methods of
52 copying.

53 ~~**(d)**~~ (3) **Bill of Costs: Objections; Insertion in**
54 **Mandate.**
55 ~~(1)~~ (A) A party who wants costs taxed in the
56 court of appeals must—within 14
57 days after ~~entry of~~ judgment is
58 entered—file with the circuit clerk
59 and serve an itemized and verified bill
60 of those costs.
61 ~~(2)~~ (B) Objections must be filed within 14
62 days after ~~service of~~ the bill of costs
63 is served, unless the court extends the
64 time.
65 ~~(3)~~ (C) The clerk must prepare and certify an
66 itemized statement of costs for
67 insertion in the mandate, but issuance
68 of the mandate must not be delayed
69 for taxing costs. If the mandate issues
70 before costs are finally determined,

71 the district clerk must—upon the
72 circuit clerk's request—add the
73 statement of costs, or any amendment
74 of it, to the mandate.

75 ~~(e)~~**(f)** **Costs on Appeal Taxable in the District Court.**
76 The following costs on appeal are taxable in the
77 district court for the benefit of the party entitled to
78 costs ~~under this rule~~:

79 * * * * *

Committee Note

In *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), the Supreme Court held that Rule 39 does not permit a district court to alter a court of appeals' allocation of the costs listed in subdivision (e) of that Rule. The Court also observed that "the current Rules and the relevant statutes could specify more clearly the procedure that such a party should follow to bring their arguments to the court of appeals." *Id*. at 1638. The amendment does so. Stylistic changes are also made.

Subdivision (a). Both the heading and the body of the Rule are amended to clarify that allocation of the costs among the parties is done by the court of appeals. The court may allow the default rules specified in subdivision (a) to operate based on the judgment, or it may allocate them differently based on the equities of the situation. Subdivision

(a) is not concerned with calculating the amounts owed; it is concerned with who bears those costs, and in what proportion. The amendment also specifies a default for mixed judgments: each party bears its own costs.

Subdivision (b). The amendment specifies a procedure for a party to ask the court of appeals to reconsider the allocation of costs established pursuant to subdivision (a). A party may do so by motion in the court of appeals within 14 days after the entry of judgment. The mandate is not stayed pending resolution of this motion, but the court of appeals retains jurisdiction to decide the motion after the mandate issues.

Subdivision (c). Codifying the decision in *Hotels.com*, the amendment also makes clear that the allocation of costs by the court of appeals governs the taxation of costs both in the court of appeals and in the district court.

Subdivision (d). The amendment uses the word "allocated" to match subdivision (a).

Subdivision (e). The amendment specifies which costs are taxable in the court of appeals and clarifies that the procedure in that subdivision governs the taxation of costs taxable in the court of appeals. The docketing fee, currently $500, is established by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913. The reference to filing fees paid in the court of appeals is not a reference to the $5 fee paid to the district court required by 28 U.S.C. § 1917 for filing a notice of appeal from the district court to the court of appeals. Instead, the reference is to filing fees paid in the court of appeals, such as the fee to file a notice of appeal from a bankruptcy appellate panel.

Subdivision (f). The provisions governing costs taxable in the district court are lettered (f) rather than (e). The filing fee referred to in this subdivision is the $5 fee required by 28 U.S.C. § 1917 for filing a notice of appeal from the district court to the court of appeals.

TAB 3B

Minutes of the Spring Meeting of the

Advisory Committee on the Appellate Rules

March 29, 2023

West Palm Beach, Florida

Judge Jay Bybee, Chair, Advisory Committee on the Appellate Rules, called the meeting of the Advisory Committee on the Appellate Rules to order on Wednesday, March 29, 2023, at 9:00 a.m. EDT.

In addition to Judge Bybee, the following members of the Advisory Committee on the Appellate Rules were present in person: George Hicks, Judge Carl J. Nichols, Judge Richard C. Wesley, and Lisa Wright. Solicitor General Elizabeth Prelogar was represented by Mark Freeman, Director of Appellate Staff, Civil Division, Department of Justice. Professor Bert Huang, Justice Leondra R. Kruger, Danielle Spinelli, and Judge Paul Watford, attended via Teams.

Also present in person were: Judge John D. Bates, Chair, Standing Committee on the Rules of Practice and Procedure; Judge Daniel Bress, Member, Advisory Committee on the Bankruptcy Rules and Liaison to the Advisory Committee on the Appellate Rules; Andrew Pincus, Member, Standing Committee on the Rules of Practice and Procedure, and Liaison to the Advisory Committee on the Appellate Rules; H. Thomas Byron, Secretary to the Standing Committee, Rules Committee Staff (RCS); Bridget M. Healy, Counsel, RCS; Marie Leary, Federal Judicial Center; Chris Pryby, Rules Law Clerk, RCS; and Professor Edward A. Hartnett, Reporter, Advisory Committee on the Appellate Rules.

Professor Catherine T. Struve, Reporter, Standing Committee on the Rules of Practice and Procedure; Professor Daniel R. Coquillette, Consultant, Standing Committee on the Rules of Practice and Procedure; and Tim Reagan, Federal Judicial Center, attended via Teams.

I. Introduction

Judge Bybee opened the meeting and welcomed everyone, particularly the new member of the Committee, George Hicks, and the new liaison from the Bankruptcy Rules Committee, Judge Daniel Bress.

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II. Approval of the Minutes

The Reporter noted that Tom Byron had submitted some typographical corrections to the draft minutes of the October 13, 2022, Advisory Committee meeting. (Agenda book page 74). With those corrections, the minutes were approved.

III. Discussion of Matter Published for Public Comment

Judge Bybee presented the subcommittee report about the proposed amendments to Rule 35 and 40 that have been published for public comment. (Agenda book page 95). These amendments transfer the material from Rule 35 to Rule 40 and eliminate redundancies. We have received few comments. The subcommittee considered those comments, and for the reasons explained in the subcommittee memo, made no changes in the amendments as published. The matter is now before the Committee for final approval.

Judge Bybee invited discussion and comment. The Committee had nothing to add, and it voted unanimously to give its final approval to these amendments and recommend that the Standing Committee give final approval to them as well.

IV. Discussion of Matters Before Subcommittees

A. Costs on Appeal—Rule 39 (21-AP-D)

Judge Nichols presented the report of the amicus subcommittee. (Agenda book page 133). He noted that there is an updated draft after input from the style consultants. (Agenda book page 236). He explained that this project was a response to the Supreme Court's decision in *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021). There, the Court held that Rule 39 does not permit a district court to alter a court of appeals' allocation of the costs and observed that the Rule could be clearer.

The subcommittee dealt with three concerns. First, it sought to make clearer the distinction between the allocation of costs among the parties and the taxation of costs. Allocation is done by the court of appeals, while taxation is done in whatever court is closest to where the costs were incurred. Second, the subcommittee sought to not hold up the mandate while the allocation of costs is being revisited. The mandate issues, but the court of appeals retains jurisdiction to decide the question of allocation. Third, the subcommittee looked for ways to make sure that the judgment winner in the district court knows the cost of a supersedeas bond—which can be quite substantial—early enough to ask the court of appeals to reallocate the costs. The subcommittee did not find a good way to deal with this concern in the Appellate Rules. (Agenda book page 135). The Reporter for this Committee has spoken to the Reporter for the Civil Rules Committee about the possibility of that Committee considering an amendment to the Civil Rules to call for such disclosure in the district court when the bond is procured.

Draft

Along the way, the subcommittee discovered other issues, such as a weird lack of parallelism that it sought to clean up. And the style consultants provided their comments.

Judge Nichols then worked through the draft proposal.

Subdivision (a) provides the default rules for allocating costs: who pays and in what percentage. It uses the word "allocated" rather than "taxed," saving "taxed" for deciding the amount. It leaves the parties free to decide otherwise. It also preserves the power of the court of appeals to order otherwise and depart from these default rules.

Subdivision (b) is new. It is not intended to be a substantive change, but to clarify how a party can ask the court of appeals to reconsider the allocation of costs. It makes clear that the mandate is not delayed and that the court of appeals retains jurisdiction to decide a motion to reconsider the allocation of costs.

Subdivision (c) is also new. It makes clear that the allocation of costs by the court of appeals applies both to costs taxed in the court of appeals and costs taxed in the district court.

In subdivision (d), the word "assessed" is changed to "allocated" in keeping with the distinction between allocation and taxation.

The first part of subdivision (e) is new, fixing a lack of parallelism in the current rule between the costs taxable in the court of appeals, which are not listed in the current rule, and the costs taxable in the district courts, which are listed in the current rule. The rest of subdivision (e) is unchanged, except for clarifying and conforming amendments.

Subdivision (f) is unchanged, other than being relettered (f).

At the last meeting of this Committee, there was discussion of whether this project is worth it. Given the directive from the Supreme Court that the Rule could be clearer, the subcommittee took one more shot. The subcommittee has addressed as many issues as it thinks we can. A big caveat is that the proposal does not include a requirement for the timely disclosure of the cost of a supersedeas bond. Instead, that issue is left for further discussions with the Civil Rules Committee.

Judge Nichols noted that the subcommittee thinks it landed in the right place and that the proposed amendment is ready for publication, and he invited discussion. Judge Bates noted that there is an extra "that" in the Committee Note. (Agenda book page 238). A liaison member suggested a more descriptive title for subdivision (c), and the Committee settled on "Costs Governed by Allocation Determination." Mr. Freeman suggested that the Committee Note be expanded to clarify the distinction

Draft

between the docketing fee taxable in the court of appeals under 39(e)(1) and the filing fee for the notice of appeal taxable in the district court under 39(f)(4). The Reporter agreed. A judge member noted that 39(f) does not specify a procedure for taxing costs in the district court. The Reporter noted that the rule would leave that to the district court, and Judge Nichols added that litigants would look somewhere other than the Federal Rules of Appellate Procedure for any such rule. The judge member was satisfied with this explanation and observed that the proposed amendment provides clarity.

The Committee unanimously approved the text of the proposed amendment for publication, with the Reporter to come back later in the meeting with a revised Committee Note.

At the end of the meeting, the Reporter presented the revised Committee Note and it was approved without dissent.

B. Direct Appeals in Bankruptcy—Rule 6 (21-AP-D)

Danielle Spinelli presented the report of the subcommittee on direct appeals in bankruptcy. (Agenda book page 141). She explained that Appellate Rule 6(c) governs direct appeals to the court of appeals in bankruptcy cases. Typically, a bankruptcy court decision is appealable to the district court or bankruptcy appellate panel ("BAP") before it can be appealed to the court of appeals. This two-step takes time, and sometimes bankruptcy appeals need speed. In 2005, Congress added 28 U.S.C. § 158(d)(2), which allows direct appeals from a bankruptcy court to the court of appeals.

There are three steps in this process. First, the bankruptcy court, the district court, the BAP, or all of the parties can certify that the statutory criteria for a direct appeal are present. These criteria are similar to those set forth in 28 U.S.C. § 1292(b), but looser, joined by "or" rather than "and." Second, the appellant must file a notice of appeal. Once these two steps are taken, any party may request the court of appeals authorize a direct appeal.

Appellate Rule 5 was originally designed to deal with permission to appeal under 28 U.S.C. § 1292(b). In 2014, Appellate Rule 6 was amended so that Rule 5 would largely cover direct appeals in bankruptcy as well. It's become clear, however, that Rule 5 doesn't work that well. Rule 5 was written for the situation where there is no appeal at all without authorization by the court of appeals. But in the context of direct appeals in bankruptcy, there is an appeal; the question is which court will hear that appeal.

The subcommittee decided to make Rule 6(c) largely self-contained rather than broadly incorporate Rule 5. It does, however, refer to Rule 5 where necessary.

Draft

Judge Bybee observed that a lot of work went into this proposal and that the Committee is fortunate to have Ms. Spinelli. Professor Struve added that she has watched the progress of this project with admiration; it's a beautiful job, fantastic work. She did have one concern: proposed Rule 6(c)(2)(J) refers only to "sending the record." Back in 2014, this Committee deliberately decided to use the phrase "making the record available"; Rule 6(b)(2)(C) has "make the record available" all over it. She suggested that there was no need for an additional sentence calling for particular action once the court of appeals authorizes a direct appeal.

Ms. Spinelli observed that there could be situations where the district court or BAP has ordered paper records and then the court of appeals authorizes a direct appeal after the record has been sent to the district court or BAP. Professor Struve responded that Bankruptcy Rule 8010 puts the burden on the appellant. Ms. Spinelli asked if we could count on the court to make the record available to the court of appeals. The Reporter stated that a reviewing court of appeals does not necessarily have access to an electronic record unless someone makes it available. Professor Struve noted that this part of the Rule could be short because it is written for the clerks. Mr. Byron stated that "make available" is broader because it encompasses both paper records and various electronic ways.

After some detailed wordsmithing on a shared screen, the Committee reached a tentative consensus on using the title ("Making the Record Available") and the first sentence ("Bankruptcy Rule 8010 governs completing the record and making it available.") from the existing Rule and changing the second sentence in (J) to "When the court of appeals enters the order authorizing the direct appeal, the bankruptcy clerk must make the record available to the circuit clerk." This creates some redundancy with Bankruptcy Rule 8010, but the redundancy doesn't hurt, and it is much simpler than what appears in the agenda book.

The Reporter stated that we had started this discussion by jumping right into the weeds of proposed Rule 6(c)(2)(J) and suggested that we step back and get everyone up to speed. He thought it might make sense for Ms. Spinelli to walk through the rest of the proposal.

She began with Rule 6(b)(1)(C), which inadvertently lacks the word "bankruptcy" before "appellate panel."

Turning to Rule 6(c), the title is changed to match section 158(d)(2).

In Rule6(c)(1), the key change is to make Rule 5 inapplicable except as provided in Rule 6 itself. This reduces the confusion of having to figure out how Rule 5 and Rule 6 go together. It also makes it possible to eliminate the confusing provision in current Rule 6(c)(1)(C).

Rule 6(c)(2) provides the additional rules applicable to direct appeals. Rule 6(c)(2)(A) provides for the petition authorizing a direct appeal. The petition is also provided for in Bankruptcy Rule 8006, but it is useful to have it in the Appellate Rules as well. Rule 6(c)(2)(B) describes the contents of the petition, requiring the material required by Rule 5(b)(1), the certification, and the notice of appeal. Rules 6(c)(2)(C) and (D) refer to Rule 5. Rule 6(c)(2)(E) clarifies what is implicit in the existing rule, that no new notice of appeal is required. Rule 6(c)(2)(F) takes some material from Rule 5, but modified for the circumstances of a direct appeal. In particular, it makes clear how to handle filing fees if a fee has already been paid for the appeal to a district court or BAP.

Judge Bybee wondered if the fee for an appeal to a district court or BAP might ever be higher than the fee for an appeal to a court of appeals. No one seemed to think that was a likely possibility.

Mr. Freeman suggested that there was no need for Rule 6(c)(2)(G), dealing with bonds for costs on appeal. He noted that Rule 6(c)(1) makes Rule 7 applicable and provides that references in Rule 7 include a bankruptcy court or BAP. Ms. Spinelli agreed that it should be taken out; unlike Rule 5, there is no deadline set.

Rule 6(c)(2)(H) provides that Bankruptcy Rule 8007 governs any stay pending appeal. Professor Struve suggested that it would be better if this said that Bankruptcy Rule 8007 "applies to" stays pending appeal, language chosen in the past so as not to suggest that it governs exclusively. Ms. Spinelli noted how helpful Professor Struve's institutional memory is.

Mr. Freeman noted that there sometimes can be a bit of a jurisdictional hole where a party seeks a stay of a bankruptcy order in the district court and the district court either denies it or doesn't act on it. There's no obvious way under the Federal Rules to seek a stay directly in the court of appeals when there is no appeal pending in the court of appeals. Ms. Spinelli agreed that this is a nightmare that she's been through.

Mr. Freeman noted that the Supreme Court can grant a stay directed to a court of appeals before a cert petition has been filed, relying on 28 U.S.C. § 2101(f). But there's no analogous provision for the courts of appeals; the All Writs Act requires jurisdiction before issuing a stay. The only solution they have come up with is to file a mandamus petition to create jurisdiction in the court of appeals and then seek a stay to preserve the status quo so the court of appeals can hear an eventual appeal. Maybe this is sufficiently obscure that we don't need to deal with it. Or maybe this isn't something that the rules can deal with anyway.

Ms. Spinelli responded that the issue is broader than direct appeals. It may not be something that can be fixed by the rules, but it is worth thinking about in the future.

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Rule 6(c)(2)(I) deals with the record on appeal. The proposed amendment adds a sentence providing that if a party has already filed a document or completed a step required to assemble the record, it need not repeat that step.

We have already discussed Rule 6(c)(2)(J). Rule 6(c)(2)(K) is already in the Rule, as is Rule 6(c)(2)(L), but it is expanded to require each party to file a representation statement. Mr. Byron noted the word "after" was deleted and asked if that was intentional. Ms. Spinelli responded that it should not be deleted.

After a short break, Judge Bybee asked if the subcommittee is confident enough of this that they are prepared to ask the Committee to refer this to the Standing Committee for publication. Ms. Spinelli said that she believed so. Judge Bybee then opened the floor for discussion on that question.

Mr. Freeman asked how a representation statement differs from an appearance in the court of appeals. Ms. Spinelli said that she didn't know, but that since Rule 12 calls for a representation statement in appeals generally, the subcommittee did not want to delete it here without knowing exactly what the courts of appeals use them for. The Reporter added that this was one of two areas (the other, dealing with the record, has already been discussed) where the bankruptcy reporters, who were otherwise very happy with this proposal, had concerns. In particular, they asked why switch from the current rule, which requires the attorney who sought permission to appeal to file the representation statement, to requiring the attorney for each party to do so.

The Reporter stated that he looked at various local circuit rules, and almost every one requires each counsel to submit a notice of appearance. Some specifically reference Rule 12 and say don't worry about Rule 12; the notice of appearance covers the Rule 12 requirement. Others don't say that, but maybe as a matter of practice it does. It appears that the Ninth Circuit uses the representation statement to require the appellant to provide all of the information. The reason to require both sides to file the representation statement is the unique status of direct appeals. We don't know which party is going to be asking for a direct appeal. The idea that any party might seek direct review is what's driving this whole project.

What's the big deal with asking both sides to file a representation statement? They are already filing notices of appearance. Why not simply delete the requirement of a representation statement? That would require revisiting Rule 12, and why do we want to open that up?

Judge Bybee asked if there were any other questions or comments. The Reporter stated that Bridget Healy had alerted him to a style issue in Rule 6(b)(2)(D). The style consultants suggested modest changes to proposed Rule 6(c)(2)(L), and there is virtually identical language in Rule 6(b)(2)(D). It would seem to make sense to make the same style changes there. Ms. Spinelli agreed.

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An academic member returned to the issue of whether there might be a situation where the filing fee for an appeal to a district court or BAP might be higher than the fee for an appeal to the court of appeals and suggested using the word "excess" rather than the word "difference" in Rule 6(c)(2)(F)(ii)(II). Ms. Spinelli responded that such a change would grammatically require other changes. In addition, you've filed the appeal and need to pay the fee for the appeal to the BAP, so that there wouldn't be any circumstances in which you'd get a refund. It's simpler to just say "difference."

Professor Struve returned to the issue of representation statements. She was intrigued by them, and looked back at the Committee Note from 1993 that explained that they were adopted as a useful accompaniment to the amendment to Rule 3(c). The idea is to shed more light on who exactly is taking the appeal. For that reason, it might be worth keeping it limited to the party taking the appeal.

Ms. Spinelli was initially attracted to the idea, noting that the appellant is the appellant, regardless of who seeks leave for the direct appeal. The Reporter asked what's the harm in asking everybody to do it, since almost everybody is going to be filing a notice of appearance anyway. Professor Struve thought that there might be cases where there are a lot of parties but few appellants and that this would impose a paperwork requirement, perhaps even on people who haven't retained counsel; she added that perhaps that's not realistic. Ms. Spinelli noted that she initially thought about just deleting this requirement because she has never done it and doesn't understand the point. But given that it's a rule in all appeals, this doesn't seem to be the place to start deleting it; it's fine to limit it to the appellant.

A judge member stated that he has no idea what utility this might have to the clerk, making him loath to change something and running unintended consequences. Ms. Spinelli agreed, noting that in every other situation, it is just the appellant who has to file, so let's keep it limited to the appellant.

In attempting to revise the proposal in this way, however, the Committee struggled. One possibility was to say the attorney who filed the notice of appeal, but there is no notice of appeal filed in the court of appeals. Another was to say the attorney who filed the petition, but that could be the appellee. Another was to say the attorney who filed the notice of appeal in the bankruptcy court, but there may be multiple notices of appeal and sometimes it's necessary to work out who's across the "v." from whom; it may scramble some things and may be more ambiguous as to who's responsible for filing.

Judge Bybee suggested leaving it as drafted even though it is a little overinclusive. Ms. Spinelli agreed that that made sense, noting that there is no way to really make it align with Rule 12. Professor Struve concluded that this approach makes sense and thanked the Committee for considering the issue.

Judge Bybee invited any further comments. The Reporter noted that we had accommodated virtually everything suggested by the style consultants. Professor Struve said that she admires the work done on this rule. Judge Bybee thanked the subcommittee, particularly Ms. Spinelli for taking the laboring oar.

The Committee agreed, without opposition, to approve the proposed rule as amended at this meeting, with the Committee Note revised to conform to those changes.

C. Amicus Briefs—Rule 29 (21-AP-C; 21-AP-G; 21-AP-H; 22-AP-A)

Judge Bybee presented the report of the amicus-disclosure subcommittee. (Agenda book page 163). He noted that we have been working on this for several years and received very good feedback from the Standing Committee at its January 2023 meeting. The subcommittee met to consider that feedback.

There are three issues to discuss.

The first is a new issue. The Supreme Court has recently changed its rules to no longer require consent before filing an amicus brief. The subcommittee thinks it makes sense for the appellate rules to conform in this regard to the Supreme Court rules.

The second issue involves disclosure of the relationship between a party and an amicus. Working draft Rule 29(b) has four requirements, two of which are in the existing rule. The working draft adds a requirement to disclose whether a party, counsel, or any combination of parties and counsel has contributed 25% or more of the gross annual revenue of an amicus curiae during the 12-month period before the brief was filed. The Standing Committee discussed other approaches, such as banding, but found the 25% level to be reasonable. It expressed some concern about the administrative feasibility of a 12-month lookback period, but the subcommittee is concerned that a prior-calendar-year approach would open too big a loophole.

The third issue involves disclosure of the relationship between a nonparty and an amicus. The current rule calls for the disclosure of earmarked contributions by any person other than the amicus, its members, or its counsel. The Standing Committee expressed great doubt about requiring disclosure of the relationship between a nonparty and an amicus. The subcommittee offers two alternatives for discussion. Alternative beta is the same as the existing rule, with some modest tightening. Alternative alpha does two things: it removes the exemption for member contributions, and it requires disclosure only of earmarked contributions that exceed $1000. This alternative closes the member loophole but, by creating a de minimis exception, enables crowdfunding.

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A judge member stated that we have been round and round on this, and this is a reasonable alternative. It will draw attention and fire. Where it ends up is another matter.

A liaison member noted that the phrasing of 26(b)—"party, counsel, or any combination of parties and counsel"—leaves open the possibility that this may include people on opposite sides of the case. This may not be a big issue, but it may be a glitch worth thinking about. There isn't an obvious solution. In response to a question by Judge Bybee, the liaison member stated that pro bono briefs are treated as a contribution by counsel and therefore don't have to be disclosed.

Judge Bates asked if the issue would be solved by referring to a "party, its counsel, or any combination of parties and their counsel"? The liaison member said no because there might be a trade association that has five significant members, one of which is on one side and one on the other in a case. The Reporter wondered whether that's a problem that needs to be worried about; presumably such a disclosure would enhance the credibility of the amicus. The liaison member responded maybe not, but the current perception is that disclosure is bad, and people don't like to do it. Maybe it's not an overwhelming obstacle, but a speed bump.

A lawyer member asked for a 15-second summary of what the problem is. Judge Bybee called on the Reporter who provided some background on the proposed Amicus Act and the referral by the Supreme Court. Judge Bybee noted that the concern has not so much been on recusal issues, but on what may be useful for judges to know about who is behind a brief, particularly a party. A judge member added that there is a concern about the inequity of effectively letting a party generate four briefs while his adversary has one. A liaison member emphasized the difference between parties and nonparties; where a party has substantial control, that's worth flagging either because of extra pages or manufactured support. It makes sense to have some standard there; the question is coming up with the right standard. That's very different from where we are dealing with nonparties.

A different lawyer member said that the examples of problems pointed to by the drafters of the Amicus Act mostly involved nonparties, leading this member to favor more nonparty disclosure. A judge member added that, while there does not seem to be much evidence of a problem involving parties, disclosures about party relationships are a lot less problematic. Questions about nonparty relationships open up lots of other concerns.

Judge Bybee stated that the Committee had spent quite a bit of time trying to craft a rule about nonparties. The general, but not universal, sense has been that it was not as productive. And we certainly got the view from the Standing Committee that the rule should not go that far.

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Mr. Freeman noted that the working draft eliminates the exemption that the government has from these disclosures and suggested that it be restored. A liaison member noted that it could be added to 29(e). The Reporter noted that the subcommittee had considered this and didn't expect it to be a problem for the national government or state governments, but if there was a problem in some offbeat little town, we'd want to know about it. Mr. Freeman noted that the existing rule did not exempt little towns. An academic member added that there might also be various kinds of private–public partnerships. The Reporter asked if the Committee is completely confident that no state attorney-general would ever allow a party to draft a brief in whole or in part.

In response to a question by Judge Bybee, Mr. Freeman stated that while there are borderline questions about what counts as an agency of the United States, there is a lot of substantive content on the question with regard to state action. A lawyer member noted that disclosure by the government is not a burden and this deals with the rare case.

Judge Bates asked if the subcommittee decided not to exempt the state government. Some but not all members of the subcommittee recalled that it had, on the theory that it can't hurt because there is no burden and on the off chance something weird happens, you sure would want to know about it.

A liaison member predicted that the states would see this as a sort of sovereignty question and view it as quite provocative. Mr. Freeman agreed. While he is most interested in the United States and can file a template footnote if needed, it seems unnecessary and likely to provoke. The liaison member predicted that all the states would be pretty upset.

The Committee settled on restoring the exemption by adding it to the beginning of 29(e). (Agenda book page 170, line 45).

Judge Bates asked about the use of the adjective "considerable" in working draft Rule 29(a)(2). Are we asking anyone to make that assessment? Is it wise to ask anyone to make the assessment that a brief is of considerable help? The Reporter stated that he believed that this was taken from the Supreme Court rule.

A liaison member suggested that "when warranted" or "when justified" would be a better header than "when helpful."

Mr. Freeman worried whether the phrase "relevant matter not already brought to its attention by the parties" might invite amici to submit arguments that had been forfeited or waived by the parties. This is more of an issue in the courts of appeals than in the Supreme Court, from which this provision was drawn. Judge Bybee responded that as far as he was concerned, a waived argument would not be relevant.

A lawyer member observed that if all these disclosures are required, the footnote will become very long. Perhaps the rule could state that if no disclosures are required, that is all that needs to be said. A judge member suggested adding "if applicable" to 29(e). Ms. Spinelli responded that there is value in having to actually say, "No party wrote this brief." She wouldn't want to add "if applicable." The lawyer member agreed because the result might be that there is no footnote and people will wonder whether the requirement was overlooked. The judge member agreed that made sense.

The Rules law clerk asked whether the requirement in 29(c) for a party or counsel who knows that an amicus has failed to make a required disclosure to do so applies to disclosures about adverse parties. Judge Bybee noted that it would be in the interest of an adverse party to do so. The Rules law clerk asked about exempting the United States from this requirement, noting that the exemption as currently framed extends to this provision as well. Mr. Freeman suggested changing the government's exemption so that it would be exempt from 29(b) and (d), but not from (c). Mr. Byron noted that there may not be a problem here because the United States could voluntarily disclose.

Judge Bybee raised a concern about what counts as government knowledge: The IRS might know something that the DOJ does not. Mr. Freeman stated that he is troubled by the knowledge point. Mr. Byron suggested that if the government is going to be exempt from (b) and (d) but not (c), it might make sense to switch (c) and (d).

Ms. Spinelli stated that she is a bit concerned about making a general requirement that applies to all parties and counsel. The purpose was to put an obligation on the specific person who needs to be disclosed to do so if the amicus does not. She would narrow the provision to make clear that we are talking about the party or counsel whose relationship to the amicus is required to be disclosed.

To make this clear, the phrase "a party or counsel" in line 98 could be changed to "the party or counsel." With this change, there is no need to swap (c) and (d).

Judge Bates asked whether the phrase "except as provided in 29(e)(2) and (3)" made sense given the extensive deletions in the rest of 29(e). The Reporter responded that he had the same question last night even though he had typed this up, but it's just the way the redline works. It's hard to see, but there is still a small surviving part of (e)(2) so that the exception still makes sense.

The Committee took a lunch break from 12:15 until approximately 12:45.

The Committee then turned to alternative drafts dealing with the relationship between an amicus and a nonparty. (Agenda book page 171). The alpha version is a

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little more aggressive than the existing provision; the beta version is very similar to the current rule with some tweaks.

A liaison member asked the committee to consider two situations. In the first, a group is putting together its 2024 budget and plans to file two or three amicus briefs supporting patent protection. So it puts $150,000 in the budget and, based on the number of members, adds $5000 to everybody's dues. In the second, a group is mostly a lobbying or communication organization that doesn't plan to file amicus briefs. But all of a sudden, the Supreme Court grants cert in a critical patent case that is very important to its members. So it has to pass the hat. One group has to disclose, and one doesn't. That's the problem, especially since the perception is that disclosure is not positive.

Mr. Freeman asked if it was clear that disclosure wouldn't be required in the first situation. The liaison member had understood the rule to refer to a particular brief in a case rather than some hypothetical brief that was contemplated. Otherwise, all members would be disclosed all the time, which would be a lengthy footnote for many organizations. Others agreed with the narrower reading.

A lawyer member asked how much a fancy brief costs and how much has to be put in the hat. The liaison member stated that there's a wide range. Law firms sometimes do them at low cost as a business development opportunity; a medium may be in the $35,000 to $75,000 range. How much gets put in the hat really depends on the organization.

The Reporter asked if the concern would be met by a higher dollar threshold. The liaison member said no. A person can become a member the day after. It's like campaign finance: it's really, really hard to draft ironclad rules.

The Rules law clerk asked about contributions in kind. Judge Bybee said that neither version seems to be directed to services in kind.

A liaison member said that this will affect behavior because people will decline to contribute to avoid disclosure. Ms. Spinellli noted that the current rule requires disclosure by nonmembers, even of $1, so it already has that potential effect on behavior. The difference is that the alpha version extends disclosure to members as well, while raising the threshold to $1000.

Mr. Freeman stated that it will deter briefs in the pass the hat category. A liaison member stated that a consortium of contributors usually consists of two or three in his experience, maybe five or six, and that he was not aware of crowd-sourced briefs. A lawyer member added that the Supreme Court bounced a crowd-sourced brief where people had given $50 anonymously.

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A judge member stated that he favored the alpha version but suggested that the $1000 threshold is too low. That doesn't give the judge much information. But a much more substantial contribution, $10,000 or $25,000 perhaps, would be more material to weighing the brief. Judge Bybee added that one challenge for any amount would be that it wouldn't be indexed.

Ms. Spinelli joked that the result of such a rule would be that firms would be writing briefs for just under $25,000. A lawyer member suggested that it's about how many people have to get together to pay for the brief; if the number is small enough, it brings into question whether it is really the view of the amicus. This distinguishes the budgeted situation. Judge Bybee added that this is also the problem with amici that are formed with indistinct names and purposes.

A liaison member suggested treating the crowd sourcing issue separately. An academic member raised the possibility of a percentage threshold rather than a dollar threshold. The Reporter suggested borrowing the same 25% from the earlier provision. Ms. Spinelli noted that one problem with a percentage is that you may not know the cost of a brief until after it is filed. She suggested disaggregating the threshold question from the member exemption question.

Mr. Freeman suggested that there are different purposes in play. If the purpose is to make sure that a brief is really on behalf of the organization rather than one or two members, then some test for concentration is appropriate. If we are just trying to inform the public who paid for the brief, then everybody above $1000 is in.

Judge Bybee suggested that a high-enough dollar threshold gets at both: who is in control and represented, and who may be pushing this brief. Mr. Freeman asked, if 50 members each contributed $1000, would we be comfortable with knowing that it is a bona fide brief on behalf of the organization and not need to know the names of the 50 people? Ms. Spinelli suggested that, based on her experience, you would want the number to be closer to $10,000 to be helpful. Firms sometimes do briefs for pretty nominal fees.

Judge Bybee stated that the discussion has been helpful, but it probably makes sense to send it back to the subcommittee for further thinking and discussion.

The Committee then turned to (b)(4) and the issues of the 25% and 12-month look back. A judge member said that a time period set by the date a brief is due is good because it is not within the filer's control. Another judge member agreed that this is the best lookback period. It's not that hard to administer because there aren't many contributors at the 25% level. A liaison member agreed as well.

A lawyer member noted that we are supposed to be tightening the rules, yet we are considering going from zero to $10,000. Judge Bybee noted that we would pick up members. Perhaps there should be a different threshold for members and

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nonmembers. A liaison member noted a presumption that those in the organization are affiliated with the organization and are different from strangers. A lawyer member responded that this was true unless they just joined for that purpose. A different lawyer member asked whether the value of such disclosure depends on people knowing who a particular funder is. And if this is designed for known funders, they are more sophisticated about evading the rules. So, is the game worth the candle? A different lawyer member suggested that it would deter briefs that aren't what they appear to be.

A liaison member said that amicus briefs in the courts of appeals almost always come from organizations that are well-known.

Mr. Freeman added one issue for the subcommittee to consider: the possibility of a rule that addresses amicus briefs at other stages of the case, particularly on stay applications.

Judge Bybee concluded that we had a very productive discussion to take back to the subcommittee.

V. Discussion of Pending or Deferred Matters

A. Third-Party Litigation Funding (22-AP-C; 22-AP-D)

Judge Bybee introduced the topic of third-party litigation funding. (Agenda book page 175). He does not think that there is anything for this Committee to do at this point. He noted that the Civil Rules Committee is looking at this issue and we are tagging along for now. As he sees it, this is sort of an information item. He invited others to speak on the issue, but no one did.

B. Decisions on Unbriefed Grounds (19-AP-B)

Judge Bybee introduced the topic of decisions on unbriefed grounds. (Agenda book page 190). There is a suggestion that we should prescribe rules governing when courts decide cases on unbriefed grounds. The question is whether we need a subcommittee to consider this.

The Reporter added some background. When this matter was before the Committee before, the consensus was that this was not appropriate for rulemaking, but that it was appropriate for the then-chair of the Committee to send a letter to the chief judges of the circuits alerting them to the issue. But the Committee also decided to revisit the issue at this time. That's why it is back. Current members of the Committee might think it inappropriate for rulemaking or might think that we should have a subcommittee look into whether it is appropriate for rulemaking. In response to a question by Mr. Freeman, the Reporter stated that he did not think that the suggestion was prompted by the Supreme Court decision about the importance of

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party presentation but instead was prompted by the views of the members of the American Academy of Appellate Lawyers. Judge Chagares attended one of their meetings and saw everyone raise a hand in response to the question whether a decision on an unbriefed ground had ever happened to them.

Judge Bybee said that he thinks it is very hard to write a rule about this. When a panel perceives an issue that hasn't been briefed, it usually calls for additional briefing, unless the issue is obvious like the parties not being diverse. He is sure that if you asked district judges if the court of appeals ever addressed issues that had not been before the district court they would say yes, because he has watched arguments in the Supreme Court and wondered, "When did that become an issue? It wasn't in the case when I wrote the opinion in the court of appeals." He invited discussion.

A judge member said that he would not continue discussion on this issue. If parties miss something, jurisdictional or otherwise, that a court feels duty bound to consider, the parties may get annoyed, but it's their fault. That's not always what's going on, but it's not an insubstantial part.

A lawyer member stated that he can't think of a time it happened, although there are shades of grey. Sure, if you take an informal poll at the AAAL meeting you will get lots of people to say yes. But if you followed up to get more detail, you would find a whole lot less. And what would be the authority or enforcement mechanism?

Judge Bybee said that it feels like a best-practices suggestion. Mr. Freeman added that panel rehearing is available and that, at least in the outer ranges, there is binding legal authority. *United States v. Sineneng-Smith* [2020] is the most recent significant case. Judge Bybee noted that, in the middle range that calls for a judgment call whether something is an elaboration or fuller exploration of something that was presented, it is very difficult to reduce it to a rule. It was tabled three years ago.

A judge member, stating that three years is long enough, moved to remove the item from the agenda. The motion carried without opposition.

VI. Discussion of Recent Suggestions

A. Social Security Numbers in Court Filings (22-AP-E)

The Reporter presented a suggestion by Senator Ron Wyden that the judiciary should be doing more to protect Social Security numbers from appearing in court filings. (Agenda book page 197). This is primarily a matter for the Bankruptcy Rules Committee, and that Committee is giving the matter close attention. The Appellate Rules piggyback on other rules governing privacy protections. Appellate Rule 25(a)(5) was just amended to extend to Railroad Retirement Act cases the privacy protections provided in Social Security cases. Seeing nothing for this Committee to do here, the Reporter, with some discomfort, recommended removing the item from the agenda.

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Mr. Byron suggested instead that the matter be tabled until the Bankruptcy Rules Committee considers the question. If they act, that might prompt rulemaking by other committees. Judge Bybee decided, without objection, to simply keep the item on the agenda.

B. Bar Admission (22-AP-F)

The Reporter presented a suggestion that Rule 46 be amended to permit all persons to practice law, absent a compelling reason for restriction. (Agenda book page 201). The Reporter suggested removing the item from the agenda. A motion to remove the item from the agenda was approved unanimously.

C. Intervention on Appeal (22-AP-G, 23-AP-C)

The Reporter presented two suggestions that the Committee consider adding a rule governing intervention on appeal. (Agenda book page 205). About a dozen years ago, the Committee explored the issue and decided not to take any action. In the spring of 2022, Professor Stephen Sachs noted that the Supreme Court had recently pointed out that there is no appellate rule on this question, and he suggested we should look into it. Professor Judith Resnik has also informed us of an amicus brief that she submitted in a pending Supreme Court case urging the Court not to use the case as a vehicle for creating rules governing intervention on appeal but to leave that to the rulemaking process. That case was listed and then removed from the argument calendar, but the Solicitor General's motion for divided argument has been granted. The case may become moot. If the Court decides the case, its decision will be relevant to anything this Committee does; if the case is dismissed as moot, the issue doesn't go away. The Committee may think that there is value in exploring the issue to see whether what was found inappropriate a dozen years ago is appropriate now. Judge Bybee invited discussion.

A liaison member noted that the issue arises a lot, particularly with changes in administration in the states and the federal government. Some guidance could be really useful. Mr. Freeman agreed.

Judge Bybee appointed a subcommittee consisting of Mr. Freeman, Professor Huang, and Justice Kruger.

D. Consent to Amicus Briefs (23-AP-A, 23-AP-B)

The Reporter presented two suggestions that the Committee follow the Supreme Court's lead in permitting the filing of amicus briefs without requiring the consent of the parties or the permission of the Court. The amicus-disclosure subcommittee has already incorporated this idea into the working draft. The formal action is probably to refer these to the same subcommittee. Judge Bybee did so.

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E. Resetting Time to Appeal in Bankruptcy Cases

The Reporter presented a suggestion from the Bankruptcy Rules Committee to amend Appellate Rule 6 to deal with resetting the time to appeal. (Agenda book page 217). The question involves the interaction of the Appellate Rules, the Civil Rules, and the Bankruptcy Rules. Under Appellate Rule 4, certain postjudgment motions reset the time to appeal. The time to make such motions under the Civil Rules is 28 days. But the time to make similar motions under the Bankruptcy Rules is 14 days. Appellate Rule 6(a) tells us that when there is an appeal from a district court exercising original jurisdiction in a bankruptcy case, just use the Civil Rules. But applied literally, this would mean that the relevant timeframe is 28 days, rather than the 14 days called for by the Bankruptcy Rules.

The Bankruptcy Rules Committee looked into all kinds of ways to amend the Bankruptcy Rules to fix the problem and didn't see a good way to do so. It considered asking this Committee to amend Appellate Rule 4(a)(4)(A), but that rule is already so complicated that making it even more complicated, particularly to add something that applies only to bankruptcy cases, didn't make a lot of sense. So they are suggesting amending Appellate Rule 6(a)—which deals with appeals from district courts exercising original jurisdiction in a bankruptcy case—to direct that the reference in Appellate Rule 4(a)(4)(A) to the time allowed by the Civil Rules be read as a reference to the time as shortened for some types of motions, by the Bankruptcy Rules.

The Reporter noted that if the Committee had not approved the other amendments to Rule 6, this proposal could simply be referred to the bankruptcy-appeals subcommittee. But since those amendments were approved earlier in this meeting, if the Committee is sufficiently comfortable with this amendment, it could simply be folded into the other amendments to Rule 6 approved earlier.

Ms. Spinelli stated that she was comfortable with folding it in, but wondered why it referred to the time allowed by the Civil Rules as shortened by the Bankruptcy Rules rather than simply the time allowed by the Bankruptcy Rules. Professor Struve responded that not all of them are shortened. Both Ms. Spinelli and the Reporter thought that a direct reference to the Bankruptcy Rules would work, but worried that if Professor Struve is putting in language and they aren't seeing why, then there is a good reason that they are not seeing. Professor Struve, in turn, expressed concern with not having the Bankruptcy Rules reporters on the line. Ms. Spinelli does not want to wrongly suggest that the Civil Rules govern; she has seen people make that mistake.

A liaison member suggested simply listing the particular motions in the rule. Is that too cumbersome? A lawyer member suggested that the relationship among the three sets of rules is a great vexing problem and suggested being more explicit. A

judge member said that adding something to the language in the agenda book seems right, but he was not in a position to vote on the right language sitting here today.

Ms. Spinelli suggested that this part go back to the bankruptcy-appeals subcommittee to come up with something.

Judge Bates observed that the changes approved earlier in the meeting are going to be before the Standing Committee in June, but that these additional changes would lag behind, and we try to avoid doing that. A vote by email is appropriate if the issue is simple enough and narrow enough that the committee feels that it gets a full airing.

The matter was referred to the subcommittee with the hope that it can unanimously come up with a fix that could be approved by the full Committee by email and folded into the rest of the proposal in time to go to the Standing Committee this June.

VII. Joint Committee Business—Self-Represented Litigants

Professor Struve provided an update on the project about e-filing by self-represented litigants. (Agenda book page 224). Tim Reagan led the research underlying the memo in the agenda book.

One main question under investigation is whether there continues to be any reason to require that someone who files on paper must serve other parties via traditional means—as opposed to relying on service by CM/ECF once the papers are scanned into the system. Based on the information gathered so far, documents always get entered into CM/ECF and are therefore available. A question arose about sealed filings, and the answer is that access is the same whether the filing is done by a lawyer or a self-represented party. The remaining loose end is what happens if there is more than one self-represented party not on CM/ECF: how do you know whether someone else needs traditional service? The people we spoke to in six different districts were nonplussed. It's just quite rare for there to be two pro se litigants in the same case who aren't co-parties who are closely coordinating. But the working group might explore ways to draft for this problem.

Those who allow CM/ECF access are fans, praising its benefits. It's a net gain for clerk's offices because they save on processing paper filings and serving court orders in paper form. Some districts offer an alternative, such as submission by email or upload apart from CM/ECF. Most did not see any particular implementation problems, but one was more equivocal. Courts that have adopted electronic noticing love it because it saves them from mailing court orders and the debates about whether litigants received them.

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Professor Struve invited Committee members to submit suggestions for any questions that should be asked of the folks in the districts.

VIII. Review of Impact and Effectiveness of Recent Rule Changes

Judge Bybee directed the Committee's attention to a table of recent amendments to the Appellate Rules. (Agenda book page 135). He called for any comments or concerns about these recent amendments. The Committee did not raise any particular concerns.

IX. New Business

Judge Bybee asked if anyone had anything else to raise for the Committee. No one did.

X. Adjournment

Judge Bybee announced that the next meeting will be held on October 19, 2023, in Washington, D.C.

He thanked everyone, noting that a lot of people with a lot of important things to do have put in a lot of time. Courts can impose enormous transaction costs on people. The work of this Committee is to try to reduce those transaction costs. If we have reduced transaction costs and saved litigants and courts from misunderstanding, our time has been very, very well spent.

The Committee adjourned at approximately 3:15 p.m.

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TAB 4

TAB 4A

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Honorable John D. Bates, Chair
Standing Committee on Rules of Practice and Procedure

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

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 17, 2023

I. Introduction

The Advisory Committee on Bankruptcy Rules met in West Palm Beach, Florida, on March 30, 2023. Two Committee members were unable to attend; the rest of the Committee met in person. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to rule and form amendments that were published for comment last August. They consist of (1) the restyled Bankruptcy Rules; (2) amendments to Rule 1007(b)(7) (Schedules, Statements, and Other Documents Required) and conforming amendments to six other rules; (3) an amendment to Rule 7001 (Types of Adversary Proceedings); (4) new Rule 8023.1 (Substitution of Parties); and (5) an amendment to Official Form 410A (Mortgage Proof of Claim Attachment).

The Advisory Committee also voted to seek republication for comment of amendments to Bankruptcy Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and related forms. Previously, at the fall 2022 meeting, the Advisory Committee voted to seek publication for comment of proposed amendments to Bankruptcy Rule 8006(g) (Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification).

Part II of this report presents those action items and is organized as follows:

A. Items for Final Approval
- The restyled Bankruptcy Rules;
- Rule 1007; conforming amendments to Rules 4004, 5009, 9006; and abrogation of Official Form 423;
- Rule 7001;
- Rule 8023.1; and
- Official Form 410A.

B. Items for Publication
- Rule 3002.1;
- Rule 8006(g); and
- Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R.

Part III of the report presents four information items. The first concerns the Advisory Committee's decision with respect to a suggestion to remove redacted social security numbers from filed documents. The next reports on the Advisory Committee's decision to defer consideration of a suggestion to adopt a national rule addressing electronic debtor signatures. The third item is a report on the Advisory Committee's consideration of proposed amendments to Rule 5009(b) (Notice of Failure to File Rule 1007(b)(7) Statement). The final item reports on a suggestion to amend Rule 1007(h) to require a broader disclosure of postpetition assets in chapter 12 and 13 and in some chapter 11 cases.

II. Action Items

A. Items for Final Approval

The Advisory Committee recommends that the Standing Committee approve the proposed rule and form amendments that were published for public comment in 2022 and are discussed below. Bankruptcy Appendix A includes the rules and the form that are in this group.

Action Item 1. The Restyled Bankruptcy Rules. This submission marks the culmination of the Advisory Committee's Restyling Project. Parts I and II of the restyled Federal Rules of Bankruptcy Procedure were given approval after publication by the Advisory Committee in March 2021 and by the Standing Committee in June 2021. Parts III–VI were given approval after

publication by the Advisory Committee in March 2022 and by the Standing Committee in June 2022. Parts VII–IX were given final approval after publication by the Advisory Committee in March 2023 and are being presented for final approval by the Standing Committee at this meeting.

Since they were approved, Parts I–VI have been modified in minor respects for three reasons:

- there have been substantive amendments made to the existing Federal Rules of Bankruptcy Procedure that needed to be reflected in the restyled versions of those rules;

- the style consultants did a "top-to-bottom" review of all the rules and made additional stylistic and conforming changes; and

- in reviewing the proposed changes of the style consultants, the Restyling Subcommittee suggested its own additional corrections and minor changes, which the Advisory Committee approved.

A copy of Parts I–VI showing changes from the versions that were previously approved is included in the appendix to this report.

With respect to Parts VII–IX, extensive comments were submitted on the restyled rules from the National Bankruptcy Conference, and comments were also submitted by several others. After discussion with the style consultants and consideration by the Restyling Subcommittee, the Advisory Committee incorporated some of those suggested changes into the revised rules and rejected others. Comments and changes since publication are noted on the restyled rules in the appendix to this report.

Action Item 2. Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 4004 (Granting or Denying a Discharge), 5009(b) (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), 9006 (Computing and Extending Time; Motions), and the Abrogation of Official Form 423 (Certification About a Financial Management Course).

Bankruptcy Code § 727(a)(11) provides, subject to limited exceptions, that a debtor will not receive a discharge if "after filing the petition, the debtor failed to complete an [approved] instructional course concerning personal financial management." This restriction applies to individual debtors in chapter 7, in certain chapter 11 cases (*see* § 1141(d)(3)), and in chapter 13 (*see* § 1328(g)(1)). The amendment to Rule 1007(b)(7) would eliminate the requirement that the debtor file a statement on Official Form 423 to certify satisfaction of this requirement. Instead, it would require the filing of the certificate of course completion provided by the approved course provider. The amendments would also eliminate the requirement that a debtor who has been excused from taking such a course file Official Form 423, indicating the court's waiver of the requirement. The form would be abrogated, and references in Rules 1007, 4004, 5009, and 9006 that refer to the "statement" described in current Rule 1007(b)(7) would be amended to refer to a "certificate."

There were no comments on the proposed amendments, and the Advisory Committee approved them as published.

<u>Action Item 3</u>. Rule 7001 (Types of Adversary Proceedings). In August 2022 the Standing Committee published a proposed amendment to Rule 7001 that would allow the turnover of certain estate property to be sought by motion rather than by adversary proceeding. The original suggestion for an amendment was prompted by Justice Sotomayor's concurring opinion in *City of Chicago v. Fulton*, 141 S. Ct. 585, 595 (2021), in which she wrote that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned." The proposed amendment would add an exception to Rule 7001(a)'s general requirement that the recovery of money or property be sought by adversary proceeding. It would allow a debtor to proceed by motion to require the turnover of tangible personal property under § 542(a), thereby permitting a swifter resolution of the matter.

Only one comment on the proposed amendment was submitted in response to publication. Bonial & Associates, P.C., a creditor law firm, wrote that it supported the amendment because it "will streamline the turnover process and should create consistency nationally." The comment noted the inconsistencies in current turnover practices from one district to another and stated that "[c]reditors would benefit from one national and consistent approach to turnovers across all jurisdictions."

The Advisory Committee approved the amendment to Rule 7001 as published.

<u>Action Item 4</u>. New Rule 8023.1 (Substitution of Parties). Rule 8023.1 deals with the substitution of parties in the appeal of a bankruptcy case to a district court or a bankruptcy appellate panel. Bankruptcy Rule 7025, Fed. R. Civ. P. 25, and Fed. R. App. P. 43 do not apply to such appeals, and the new rule is intended to fill that gap. It is modeled on Fed. R. App. P. 43.

No comments were submitted on the proposed new rule. The Advisory Committee approved it with changes suggested by the style consultants.

<u>Action Item 5</u>. Official Form 410A (Mortgage Proof of Claim Attachment). The amendment replaces the first line in Form 410A's Attachment A, Part 3 (Arrearage as of Date of the Petition), which currently asks for "Principal & Interest" in a single line. The amended form would have two lines, one for "Principal" and one for "Interest." Because under Bankruptcy Code § 1322(e) the amount necessary to cure a default is "determined in accordance with the underlying agreement and applicable nonbankruptcy law," it may be necessary for a debtor who is curing arrearages under § 1325(a)(5) to know which portion of the total arrearages is principal and which is interest. The amendment puts the burden on the claim holder to identify the elements of its claim.

The Advisory Committee received one comment on the proposed amendment from attorney William M.E. Powers III. Mr. Powers suggested that the change is unnecessary because the Bankruptcy Reform Act of 1994 abrogated *Rake v. Wade*, 508 U.S. 464 (1993). He also said that mortgage servicers do not routinely separate interest and principal components for delinquent

installments and that this amendment will require them either to upgrade their systems to accommodate the form change or to make manual calculations.

In *Rake v. Wade* the Supreme Court held that an oversecured mortgagee was entitled to postpetition interest on arrearages paid off under a chapter 13 plan, even when the mortgage itself was silent and state law would not have provided for interest to be paid. Section 1322(e) now provides that the amount necessary to cure a default under a chapter 13 plan "shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law," thereby abrogating *Rake*.

The Advisory Committee concluded that the proposed amendment furthers the requirements of § 1322(e). To the extent that the underlying agreement provides for interest only on principal amounts that are in arrears, but not on interest or other amounts payable under the agreement, the court must be able to determine how much of the arrearages is principal. The amended form will facilitate that determination.

The Advisory Committee approved the form as published.

B. Items for Publication

The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2023. The rules and forms in this group appear in Bankruptcy Appendix B.

Action Item 6. Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case). In response to suggestions submitted by the National Association of Chapter Thirteen Trustees and the American Bankruptcy Institute's Commission on Consumer Bankruptcy, the Advisory Committee proposed amendments to Rule 3002.1 that were published for comment in 2021. The amendments were intended to encourage a greater degree of compliance with the rule's provisions and to provide a more straightforward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. The amended rule as published provided for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that might have occurred. Provisions were added to prescribe the effective date of late payment-change notices and to provide more detailed provisions about notice of payment changes for home equity lines of credit ("HELOC"). The assessment of the status of the mortgage at the end of a chapter 13 case was changed from a notice to a motion procedure that would result in a binding order.

Twenty-seven comments were submitted on the proposed amendments. They included a letter from a group of 68 chapter 13 trustees who questioned whether there was a need for the amendments. They were particularly concerned about the midcase review because they said that it would impose an unnecessary burden on them and that the needed information about home mortgages is already available. They and other trustees also contended that the new requirements for the end-of-case motion would not work well in a case in which the debtor made mortgage payments directly to the servicer because the trustee would lack records about the postpetition

payments. The comments from some debtors' attorneys, on the other hand, welcomed the requirement of a midcase review. They pointed out that mortgage servicers' records are often inconsistent with trustees' and debtors' records and that an earlier opportunity to reconcile them would be beneficial. The National Conference of Bankruptcy Judges, while stating that it did not oppose the amendments, raised questions about the authority to promulgate several provisions. It also questioned whether the benefits of a midcase assessment and the revised end-of-case procedures were sufficient to outweigh the added burden on courts and parties imposed by the provisions.

At the fall 2022 meeting and by email afterwards, the Advisory Committee approved republication changes to the proposed Rule 3002.1 amendments in response to the comments. Among the changes were the following:

- The provision for giving only annual notices of HELOC payment changes was made optional. The provision is intended to be for the benefit of the claim holder, so if such a claim holder prefers to provide notices more frequently, there would be no reason not to allow it to do so.

- Significant changes were made to subdivision (f), which as published required a midcase review of the status of the mortgage claim. As revised, it would be optional, not mandatory; could be initiated by either the trustee or the debtor, not just the trustee; could be sought at any time during the case, not just between 18 and 24 months after the petition was filed; and would be initiated by a motion, not a notice. The claim holder would have to respond to the motion only if it disagreed with the facts set forth in the motion, rather than in all cases.

- Rather than starting with a motion by the trustee, as the published rule did, the end-of-case procedure would, like the current rule, start with a notice by the trustee indicating whether and in what amounts he or she had cured any prepetition arrearage and made any payments to the claim holder that came due postpetition. Rather than being triggered by the debtor's final cure payment, the notice would have to be filed "within 45 days after the debtor completes all payments due to the trustee" under the plan. As under the current rule, the claim holder would be required to file a response to the notice.

- If thereafter the trustee or debtor wanted the court to determine whether the debtor had cured all defaults and paid all required postpetition amounts, either one could file a motion for a court determination.

- In subdivision (h), authorization is given for "noncompensatory sanctions" in appropriate circumstances. Several comments suggested this addition in response to the Second Circuit's decision in *PHH Mortg. Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503, 515 (2021), which held that "[p]unitive sanctions do not fall within the 'appropriate relief' authorized by Rule 3002.1." The Advisory Committee agreed with commenters that noncompensatory relief, whether punitive, declaratory, or injunctive, could be appropriate under some circumstances and therefore should be expressly authorized.

The Advisory Committee approved a few additional substantive and stylistic changes at the spring meeting.

Because the changes to the originally published amendments are substantial and further public input would be beneficial, the Advisory Committee asks to have the proposed amendments to Rule 3002.1 republished.

<u>Action Item 7</u>. **Rule 8006(g) (Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification).** Rule 8006(g) currently requires that, within 30 days after the date the certification becomes effective, "a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c)." The rule is written in the passive voice and does not specify who is supposed to file that request for permission to take a direct appeal.

Bankruptcy Judge A. Benjamin Goldgar suggested that the rule be rewritten to clarify the existing meaning, which he (and the Advisory Committee) believes is that any party to the judgment, order, or decree can file the request for permission to take a direct appeal, not just the appellant who initiated the appeal.

At the spring 2022 meeting of the Advisory Committee, the Subcommittee on Privacy, Public Access, and Appeals recommended an amendment to Rule 8006(g) for publication. The reporter to the Standing Committee was concerned that the revised Rule 8006(g) might not work properly with Fed. R. App. P. 6(c)—which also addresses direct appeals from a bankruptcy court to a court of appeals—and asked the reporters for the Bankruptcy Rules Committee and the Appellate Rules Committee to work with their respective committees to ensure that the rules worked in a coordinated fashion.

An amendment to Rule 8006(g) that was the product of that collaboration was approved by the Advisory Committee at its fall 2022 meeting. Because the Appellate Rules Committee at its fall meeting created a subcommittee to consider related amendments to Fed. R. App. P. 6(c) and to report back at its spring meeting, the Advisory Committee decided to wait to seek approval from the Standing Committee for publication of Rule 8006(g) until publication was also sought for amendments to the appellate rule. The Appellate Rules Committee has now completed its work and is presenting amendments to Fed. R. App. P. 6 at this meeting for publication.

<u>Action Item 8</u>. **Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R.** In 2021 the Standing Committee published five forms drafted to implement proposed amendments to Rule 3002.1 (Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, 410C13-10R). The Advisory Committee deferred considering the comments submitted on the forms until after it approved changes to the rule in response to comments.

At the spring 2023 meeting, the Advisory Committee approved for publication 6 new forms to implement the revised amendments to Rule 3002.1. The new forms no longer include a mandatory midcase-trustee notice of the status of the mortgage. Instead, either the trustee or the debtor may choose to file a motion to determine the status of the mortgage claim at any point

during the case prior to the trustee's Final Notice of Payments Made. Official Form 410C13-M1 was drafted for that purpose. No distinction is made between cases in which the trustee makes postpetition mortgage payments and those in which the debtor does so. The moving party—either the trustee or debtor—must only provide the information that she has knowledge of. Official Form 410C13-M1R is the form for the claim holder's response to that motion.

After the debtor completes all payments due to the trustee under a chapter 13 plan, the trustee must file a notice of payments made on the mortgage. Official Form 410C13-N was drafted for that purpose. The claim holder then must file a response, using Official Form 410C13-NR.

If either the trustee or debtor wants a final determination of the mortgage's status at the end of the case, he can file a Motion to Determine Final Cure and Payment, using Official Form 410C13-M2. The claim holder, if it disputes any facts in the motion, must then file a response, using Official Form 410C13-M2R.

III. Information Items

Information Item 1. Suggestion to Require Complete Redaction of Social Security Numbers from Filed Documents. Senator Ron Wyden of Oregon sent a letter to the Chief Justice of the United States in August 2022, in which he suggested that federal court filings should be "scrubbed of personal information before they are publicly available." Portions of his letter, suggesting that the rules committees reconsider a proposal to redact the entire social security number ("SSN") from court filings, have been filed as a suggestion with each of the committees.

To a limited extent, the requirement that SSNs be included on bankruptcy documents, either in whole or in redacted form, is set forth in the Bankruptcy Code. Section 342(c)(1) provides that notices required to be given by a debtor to a creditor must contain the last 4 digits of the taxpayer identification number of the debtor. Section 110 requires disclosure of the complete SSN of a bankruptcy petition preparer ("BPP") on documents, such as the petition and schedules, prepared by the BPP. Changing those requirements must be left to Congress.

As to other situations in which the debtor's SSN (or a truncated version) is used on bankruptcy filings, the Advisory Committee has been informed that the Committee on Court Administration and Case Management of the Judicial Conference of the United States ("CACM") has requested the Federal Judicial Center ("FJC") to design and conduct studies regarding the inclusion of sensitive personal information in court filings and in social security and immigration opinions. Those studies would update the 2015 FJC privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings. The Advisory Committee has elected to defer consideration of the suggestion until those studies are completed.

Information Item 2. Deferral of Consideration of a Suggestion to Adopt a National Rule Addressing Debtor's Electronic Signatures. Attorney A. Bradley Goodman submitted a suggestion for the adoption of a national rule that would allow debtors to sign petitions and schedules electronically without the retention by their attorneys of the original documents with wet signatures. He says that "it is time to take everything electronic, without exception."

At the spring 2022 meeting, the Advisory Committee decided to take no further action on a suggestion by CACM that a national rule on electronic signatures of non-CM/ECF users be considered. The Advisory Committee decided that a period of experience under local rules allowing the use of e-signature products would help inform any later decision to promulgate a national rule. It reasoned that electronic signature technology will also likely develop and improve in the interim.

In light of that decision, the Advisory Committee decided to defer action on Mr. Goodman's suggestion. Not enough has changed since last year to provide the experience that the Advisory Committee seeks, and the rules committees' ongoing consideration of electronic filing by self-represented litigants may also have implications for the e-signature issue.

Information Item 3. Consideration of Suggestions Regarding the Required Course on Personal Financial Management. The Consumer Subcommittee has been considering a suggestion to change the timing of the notice to chapter 7 and 13 debtors under Rule 5009(b)—which reminds them of their need to file a statement of completion of a course on personal financial management—and a related suggestion to change the deadline for chapter 13 debtors to file the statement. As discussed at Action Item 3, the Bankruptcy Code generally requires individual debtors in chapter 7, in certain chapter 11 cases, and in chapter 13 to complete a course in personal financial management in order to receive a discharge. Rule 1007(c) provides the deadline for filing a statement certifying course completion: in a chapter 7 case, 60 days after the first date set for the meeting of creditors; in a chapter 11 or 13 case, no later than the date that the debtor makes the last payment as required by the plan or a motion is filed for a hardship discharge. In order to promote the debtor's compliance with these requirements, Rule 5009(b) provides that, if an individual debtor in a chapter 7 or 13 case who is required to file a statement under Rule 1007(b)(7) fails to do so by 45 days after the first date set for the meeting of creditors, the court must promptly notify the debtor of the obligation to do so by the prescribed deadline. The notice must also explain that the failure to comply will result in the case being closed without a discharge.

Professor Bartell submitted the first suggestion. Based on her research that revealed that in a recent year over 6000 cases were closed without a discharge because of the failure to file the required statement, she suggested that the Rule 5009(b) notice be sent just after the conclusion of the § 341 meeting and that, to the extent possible, a specific filing deadline should be stated. She suggested that, with the current timing, the notice may not reach the debtor or may be delayed by changes in address or circumstances and that the debtor's attorney may no longer be in contact with the debtor at that time. A notice sent at the conclusion of the meeting of creditors, she said, is more likely to reach the debtor and to be acted on, especially if it specifies a date by which compliance must occur.

The other suggestion, submitted by chapter 13 trustee Tim Truman, focuses on the deadlines in Rule 1007(c) for filing the statement of course completion. He suggested that the deadline for chapter 13 debtors be the same as the one for chapter 7 debtors—60 days after the first date set for the meeting of creditors—rather than when the debtor makes the last payment required by the plan. He explained that "[c]ompletion of the personal financial management course

at the beginning of the process rather than at the end is more beneficial to the debtor and better insures the successful completion of the plan."

In considering these suggestions, the Consumer Subcommittee has discussed a number of issues, including the following:

- Should the Rule 5009(b) notice be sent earlier?
- Should more than one reminder notice be sent?
- What date or dates should be selected?
- Should the timing of the 5009(b) notice be the same for chapter 7 and chapter 13 debtors?
- Should the deadlines for filing the certificates of course completion be changed?

At the spring meeting, the Subcommittee presented several options to the Advisory Committee for discussion, including proposals that the deadlines for filing certificates of completion be eliminated and that two reminder notices be sent: one relatively early in the case and a follow-up notice to those who did not file a certificate after the first notice. Based on the input it received, the Subcommittee will continue its deliberation and report back to the Advisory Committee at the fall meeting.

Information Item 4. Proposed amendment to Rule 1007(h) to Require Disclosure of Postpetition Assets. Bankruptcy Judge Catherine McEwen, a member of the Advisory Committee, submitted a suggestion to require the reporting of a debtor's acquisition of postpetition property in the chapter 11 case of an individual or in a chapter 12 or 13 case. She noted that Rule 1007(h) (Interests Acquired or Arising After Petition) requires the filing of a supplemental schedule only for property covered by § 541(a)(5)—that is, property acquired within 180 days after the filing of the petition by bequest, devise, or inheritance; as a result of a property settlement with a spouse or a divorce; or as a beneficiary of a life insurance policy. Not included within Rule 1007(h) are other postpetition property interests that become property of the estate under § 1115, 1207, or 1306. Judge McEwen suggested that the rules should impose a deadline for the disclosure of these other postpetition property acquisitions. She pointed out that a number of bankruptcy courts have imposed such requirements by local rule or administrative order.

Sections 1115, 1207, and 1306 of the Bankruptcy Code bring into the bankruptcy estate property that the debtor acquires after commencement of the case and before the case is closed, dismissed, or converted, as well as earnings for services performed by the debtor during that same period. No Code or Bankruptcy Rule provision expressly requires that a debtor disclose the acquisition of such property, although some disclosure is required by § 521(f). That provision requires a chapter 7, 11, or 13 individual debtor to file with the court, upon request, a copy of his or her federal income tax returns while the case is pending.

The Consumer Subcommittee considered the suggestion and recommended at the spring meeting that no further action be taken on it. The Subcommittee had concluded that currently there is not a problem that needs to be resolved by a national rule. Courts are not being prevented from requiring chapter 12 and 13 debtors and individual debtors in chapter 11 cases to supplement their schedules to report acquisitions of property or income increases while their cases are pending.

Indeed, courts impose such a requirement by several means, such as by local rule, administrative order, or model chapter 13 plan. The Subcommittee also considered the challenge of drafting an effective amendment to Rule 1007(h) to include property under §§ 1115, 1207, and 1306. It is not feasible to include within a supplementation requirement all postpetition property that comes within those provisions. Either specific types of property need to be stated, or the rule needs to describe some degree of impact on the debtor's financial condition, such as substantial or significant. A specification of types of property gives greater guidance, but it runs the risk of being underinclusive.

After the Subcommittee presented its recommendation at the meeting, Judge McEwen explained why she thought a national rule is needed. She noted that in the Eleventh Circuit there is a well-developed body of judicial estoppel law that is driven by nondisclosure in chapter 13 cases. Debtors lose the right to pursue undisclosed claims, and creditors lose the benefit of those claims. She noted that courts apply a rule of reasonableness to disclosure, even with respect to the initial statements and schedules in a case. Disclosure applies to meaningful assets. She said that she was asking for guidance not only for uniformity, but also to bring to the attention of debtors' counsel the importance of disclosure because it may end up hurting their own clients.

After a full discussion by the Advisory Committee, the matter was sent back to the Consumer Subcommittee for further consideration.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1000 Series

ORIGINAL	REVISION
Rule 1001. Scope of Rules and Forms; Short Title	**Rule 1001. Scope; Title; Citations; References to a Specific Form**
The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.	**(a) In General.** These rules, together with the Official ~~bankruptcy~~ Bankruptcy ~~forms~~Forms, govern the procedure in cases under the Bankruptcy Code, Title 11 of the United States Code. They must be construed, administered, and employed by both the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding. **(b) Titles.** These rules should be referred to as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. **(c) Citations.** In these rules, the Bankruptcy Code is cited with a section sign and number (§ 101). A rule is cited with "Rule" followed by the rule number (Rule 1001(a)). **(d) References to a Specific Form.** A reference to a "Form" followed by a number is a reference to an Official Bankruptcy Form.

Committee Note

The Bankruptcy Rules are the fifth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence took effect in 2011. The restyled Bankruptcy Rules apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, Civil, and Evidence Rules.

General Guidelines. Guidance in drafting, usage, and style was provided by Bryan A. Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1996) and Bryan A. Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). *See also* Joseph Kimble, *Guiding Principles for Restyling the Civil Rules*, in Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure, at Michigan Bar Journal, page 52 (Feb. 2005) (available at https://www.michbar.org/file/barjournal/article/documents/ pdf4article909.pdf and https://www.michbar.org/file/barjournal/article/documents/ pdf4article921.pdf); Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 Scribes J. Legal Writing 25 (2008-2009).

Formatting Changes. Many of the changes in the restyled Bankruptcy Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. "Hanging indents" are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed.

Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words. The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. The restyled rules also minimize the use of inherently ambiguous words. The restyled rules minimize the use of redundant "intensifiers." These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. The restyled rules also remove words and concepts that are outdated or redundant.

Rule Numbers. The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

No Substantive Change. The style changes to the rules are intended to make no changes in substantive meaning. The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee also declined to modify "sacred phrases"—those that have become so familiar in practice that to alter them would be unduly disruptive to practice and expectations. An example in the Bankruptcy Rules would be "meeting of creditors."

Legislative Rules. In those cases in which Congress enacted a rule by statute, in particular Rule 2002(n) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357), Rule 3001(g) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 361), and Rule 7004(b) and (h) (Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), the Committee has not restyled the rule.

ORIGINAL	REVISION
PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF	**PART I. COMMENCING A BANKRUPTCY CASE; THE PETITION, THE ORDER FOR RELIEF, AND RELATED MATTERS**
Rule 1002. Commencement of Case	**Rule 1002. Commencing a Bankruptcy Case**
(a) PETITION. A petition commencing a case under the Code shall be filed with the clerk.	**(a) In General.** A bankruptcy case is commenced by filing a petition with the clerk.
(b) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of this rule.	**(b) Copy to the United States Trustee.** The clerk must promptly send a copy of the petition to the United States trustee.

Committee Note

The language of Rule 1002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1003. Involuntary Petition	**Rule 1003. Involuntary Petition: Transferred Claims; Joining Other Creditors; Additional Time to Join**
(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.	**(a) Transferred Claims.** An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case under Chapter 7 or Chapter 11 is not a qualified petitioner. A petitioner that has transferred or acquired a claim must attach to the petition and to any copy: (1) all documents evidencing the transfer, whether it was unconditional, for security, or otherwise; and (2) a signed statement that: (A) affirms that the claim was not transferred for the purpose of commencing the case; and (B) sets forth the consideration for the transfer and its terms.
(b) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.	**(b) Joining Other Creditors After Filing.** If an involuntary petition is filed by fewer than 3 creditors and the debtor's answer alleges the existence of 12 or more creditors as provided in § 303(b), the debtor must attach to the answer: (1) the names and addresses of all creditors; and (2) a brief statement of the nature and amount of each creditor's claim. **(c) Additional Time to Join.** If there appear to be 12 or more creditors, the court must allow a reasonable time for other creditors to join the petition before holding a hearing on it.

Committee Note

The language of Rule 1003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent

throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1004. Involuntary Petition Against a Partnership	**Rule 1004. Involuntary Petition Against a Partnership**
After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.	A petitioner who files an involuntary petition against a partnership under § 303(b)(3) must promptly send a copy of the petition to—or serve a copy on—each general partner who is not a petitioner. The clerk must promptly issue a summons for service on any general partner who is not a petitioner. Rule 1010 governs the form and service of the summons.

Committee Note

The language of Rule 1004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1004.1. Petition for an Infant or Incompetent Person	**Rule 1004.1. Voluntary Petition on Behalf of an Infant or Incompetent Person**
If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.	**(a) Represented Infant or Incompetent Person.** If an infant or an incompetent person has a representative—such as a general guardian, committee, conservator, or similar fiduciary—the representative may file a voluntary petition on behalf of the infant or incompetent person. **(b) Unrepresented Infant or Incompetent Person.** If an infant or an incompetent person does not have a representative: (1) a next friend or guardian ad litem may file the petition; and (2) the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the infant debtor or incompetent debtor.

Committee Note

The language of Rule 1004.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1004.2. Petition in Chapter 15 Cases	**Rule 1004.2. Petition in a Chapter 15 Case**
(a) DESIGNATING CENTER OF MAIN INTERESTS. A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.	**(a) Designating the Center of Main Interests.** A petition under Chapter 15 for recognition of a foreign proceeding must: (1) designate the country where the debtor has its center of main interests; and (2) identify each country in which a foreign proceeding ~~is pending~~ against, by, or regarding the debtor is pending.
(b) CHALLENGING DESIGNATION. The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition. The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor was a party as of the time the petition was filed, and such other entities as the court may direct.	**(b) Challenging the Designation.** The United States trustee or a party in interest may~~, by~~ file a motion~~,challenge~~ challenging the designation. If the motion is filed by a party in interest, a copy must be sent to the United States trustee. Unless the court orders otherwise, the motion must be filed at least 7 days before the date set for the hearing on the petition. The motion must be served on: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entity as the court orders.

Committee Note

The language of Rule 1004.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1005. Caption of Petition	**Rule 1005. Caption of a Petition; Title of the Case**
The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social-security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.	**(a) Caption and Title; Required Information.** A petition's caption must contain the name of the court, the title of the case, and the case number (if known). The title must include the following information about the debtor: (1) name; (2) employer-identification number; (3) the last 4 digits of the social-security number or individual taxpayer-identification number; (4) any other federal taxpayer-identification number; and (5) all other names the debtor has used within 8 years before the petition was filed. **(b) Petition Not Filed by the Debtor.** A petition not filed by the debtor must include all names that the petitioner knows have been used by the debtor.

Committee Note

The language of Rule 1005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1006. Filing Fee	**Rule 1006. Filing Fee**
(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as provided in subdivisions (b) and (c) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)–(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.	**(a) In General.** Unless (b) or (c) applies, every petition must be accompanied by the filing fee. In this rule "filing fee" means: (1) the filing fee required by 28 U.S.C. § 1930(a)(1)–(5); and (2) any other fee that the Judicial Conference of the United States requires under 28 U.S.C. § 1930(b) to be paid upon filing.
(b) PAYMENT OF FILING FEE IN INSTALLMENTS. (1) *Application to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments. (2) *Action on Application.* Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. (3) *Postponement of Attorney's Fees.* All installments of the filing fee must be paid in full before the debtor orchapter 13 trustee may make further payments to an attorney or any other	**(b) Paying by Installment.** (1) ***Application to Pay by Installment.*** The clerk must accept for filing an individual's voluntary petition, regardless of whether any part of the filing fee is paid, if it is accompanied by a completed and signed application to pay in installments (Form 103A). (2) ***Court Decision on Installments.*** Before the meeting of creditors, the court may order payment of the entire filing fee or may order the debtor to pay it in installments, designating the number of installments (not to exceed 4), the amount of each one, and payment dates. ~~The number of payments must not exceed 4, and a~~All payments must be made within 120 days after the petition is filed. The court may, for cause, extend the time to pay an installment, but the last one must be paid within 180 days after the petition is filed. (3) ***Postponing Other Payments.*** Until the filing fee has been paid in full, the debtor or Chapter 13 trustee must not make any further payment to an attorney or any other person who provides services to the debtor in connection with the case.

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person who renders services to the debtor in connection with the case.	
(c) WAIVER OF FILING FEE. A voluntary chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.	**(c) Waiving the Filing Fee.** The clerk must accept for filing an individual's voluntary Chapter 7 petition if it is accompanied by a completed and signed application to waive the filing fee (Form 103B).

Committee Note

The language of Rule 1006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits	**Rule 1007. Lists, Schedules, Statements, and Other Documents; Time to File**
(a) CORPORATE OWNERSHIP STATEMENT, LIST OF CREDITORS AND EQUITY SECURITY HOLDERS, AND OTHER LISTS. (1) *Voluntary Case.* In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate. (2) *Involuntary Case.* In an involuntary case, the debtor shall file, within seven days after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. (3) *Equity Security Holders.* In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within 14 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each	**(a) Lists of Names and Addresses.** (1) ***Voluntary Case.*** In a voluntary case, the debtor must file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official ~~Bankruptcy~~ Forms. Unless it is a governmental unit, a corporate debtor must: (A) include a corporate-ownership statement containing the information described in Rule 7007.1; and (B) promptly file a supplemental statement if changed circumstances make the original statement inaccurate. (2) ***Involuntary Case.*** Within 7 days after the order for relief has been entered in an involuntary case, the debtor must file a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H of the Official ~~Bankruptcy~~ Forms. (3) ***Chapter 11—List of Equity Security Holders.*** Unless the court orders otherwise, a Chapter 11 debtor must, within 14 days after the order for relief is entered, file a list of the debtor's equity security holders by class. The list must show the number and type of interests registered in each holder's name, along with the holder's last known address or place of business.

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<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>holder, and the last known address or place of business of each holder.

(4) Chapter 15 Case. In addition to the documents required under § 1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code.

(5) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.</td><td>(4) Chapter 15—Information Required from a Foreign Representative. If a foreign representative files a petition under Chapter 15 for recognition of a foreign proceeding, the representative must—in addition to the documents required by § 1515—include with the petition:

(A) a corporate-ownership statement containing the information described in Rule 7007.1; and

(B) unless the court orders otherwise, a list containing the names and addresses of:

(i) all persons or bodies authorized to administer the debtor's foreign proceedings;

(ii) all entities against whom provisional relief is sought under § 1519; and

(iii) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed.

(5) Extending the Time to File. On motion and for cause, the court may extend the time to file any list required by this Rule 1007(a). Notice of the motion must be given to:

• the United States trustee;

• any trustee;

• any committee elected under § 705 or appointed under § 1102; and

• any other party as the court orders.</td></tr>
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(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED. (1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any: (A) schedules of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social-security number or individual taxpayer-identification number; and (F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code. (2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be	**(b) Schedules, Statements, and Other Documents.** (1) ***In General.*** Except in a Chapter 9 case or when the court orders otherwise, the debtor must file—prepared as prescribed by the appropriate Official Form, if any— (A) ~~a~~ schedules of assets and liabilities; (B) a schedule of current income and expenditures; (C) a schedule of executory contracts and unexpired leases; (D) a statement of financial affairs; (E) copies of all payment advices or other evidence of payment that the debtor received from any employer within 60 days before the petition was filed—with all but the last 4 digits of the debtor's social-security number or individual taxpayer-identification number deleted; and (F) a record of the debtor's interest, if any, in an account or program of the type specified in § 521(c). (2) ***Statement of Intention.*** In a Chapter 7 case, an individual debtor must: (A) file the statement of intention required by § 521(a) (Form 108); and (B) before or upon filing, serve a copy on the trustee and the creditors named in the statement. (3) ***Credit-Counseling Statement.*** Unless the United States trustee has determined that the requirement to file a credit-counseling statement under § 109(h) does not apply in the district, an individual debtor must file a statement of compliance (included in Form 101). The debtor must include

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served on the trustee and the creditors named in the statement on or before the filing of the statement. (3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which must include one of the following: (A) an attached certificate and debt repayment plan, if any, required by § 521(b); (B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b); (C) a certification under § 109(h)(3); or (D) a request for a determination by the court under § 109(h)(4). (4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form. (5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as	one of the following: (A) a certificate and any debt-repayment plan required by § 521(b); (B) a statement that the debtor has received the credit-counseling briefing required by § 109(h)(1), but does not have a § 521(b) certificate; (C) a certification under § 109(h)(3); or (D) a request for a court determination under § 109(h)(4). (4) ***Current Monthly Income—Chapter 7.*** Unless § 707(b)(2)(D) applies, an individual debtor in a Chapter 7 case must: (A) file a statement of current monthly income (Form 122A-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 7 means-test calculation (Form 122A-2). (5) ***Current Monthly Income—Chapter 11.*** An individual debtor in a Chapter 11 case (unless under ~~subchapter~~ Subchapter V) must file a statement of current monthly income (Form 122B). (6) ***Current Monthly Income—Chapter 13.*** A debtor in a Chapter 13 case must: (A) file a statement of current monthly income (Form 122C-1); and (B) if that income exceeds the median family income for the debtor's state and household size, file the Chapter 13 calculation of disposable income (Form 122C-2).

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prescribed by the appropriate Official Form. (6) A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, a calculation of disposable income made in accordance with § 1325(b)(3), prepared as prescribed by the appropriate Official Form. (7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition: (A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and (B) An individual debtor in a chapter 11 case shall file the statement if § 1141(d)(3) applies. (8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtor shall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).	(7) ***Personal Financial-Management Course.*** Unless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition, an individual debtor in a Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a statement that such a course has been completed (Form 423). (8) ***Limitation on a Homestead Exemption.*** This Rule 1007(b)(8) applies if an individual debtor in a Chapter 11, 12, or 13 case claims an exemption under § 522(b)(3)(A) in property of the type described in § 522(p)(1) and the property value exceeds the amount specified in § 522(q)(1). The debtor must file a statement about any pending proceeding in which the debtor may be found: (A) guilty of the type of felony described in § 522(q)(1)(A); or (B) liable for the type of debt described in § 522(q)(1)(B).

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(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B),	**(c) Time to File.** (1) ***Voluntary Case—Various Documents.*** Unless (d), (e), (f), or (h) provides otherwise, the debtor in a voluntary case must file the documents required by (b)(1), (b)(4), (b)(5), and (b)(6) with the petition or within 14 days after it is filed. (2) ***Involuntary Case—Various Documents.*** In an involuntary case, the debtor must file the documents required by (b)(1) within 14 days after the order for relief is entered. (3) ***Credit-Counseling Documents.*** In a voluntary case, the documents required by (b)(3)(A), (C), or (D) must be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under (b)(3)(B) must file the documents required by (b)(3)(A) within 14 days after the order for relief is entered. (4) ***Financial-Management Course.*** Unless the court extends the time to file, an individual debtor must file the statement required by (b)(7) as follows: (A) in a Chapter 7 case, within 60 days after the first date set for the meeting of creditors under § 341; and (B) in a Chapter 11 or Chapter 13 case, ~~before~~ no later than the date the last payment is made under the plan~~,~~ or ~~before~~the date a motion for a discharge is filed under § 1141(d)(5)(B) or § 1328(b).

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1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.	(5) ***Limitation on Homestead Exemption.*** The debtor must file the statement required by (b)(8) no earlier than the date of the last payment made under the plan, or the date a motion for a discharge is filed under § 1141(d)(5)(B), 1228(b), or 1328(b). (6) ***Documents in a Converted Case.*** Unless the court orders otherwise, a document filed before a case is converted to another chapter is considered filed in the converted case. (7) ***Extending the Time to File.*** Except as § 1116(3) provides otherwise, the court, on motion and for cause, may extend the time to file a document under this rule. The movant must give notice of the motion to: • the United States trustee; • any committee elected under § 705 or appointed under § 1102; and • any trustee, examiner, and other party as the court ~~directs~~orders. If the motion is granted, notice must be given to the United States trustee and to any committee, trustee, and other party as the court orders.

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(d) LIST OF 20 LARGEST CREDITORS IN CHAPTER 9 MUNICIPALITY CASE OR CHAPTER 11 REORGANIZATION CASE. In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.	**(d) List of the 20 Largest Unsecured Creditors in a Chapter 9 or Chapter 11 Case.** In addition to the lists required by (a), a debtor in a Chapter 9 case or in a voluntary Chapter 11 case must file with the petition a list containing the names, addresses, and claims of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form (Form 104 or 204). In an involuntary Chapter 11 case, the debtor must file the list within 2 days after the order for relief is entered under § 303(h).
(e) LIST IN CHAPTER 9 MUNICIPALITY CASES. The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.	**(e) Chapter 9 Lists.** In a Chapter 9 case, the court must set the time for the debtor to file ~~a~~ the list required by (a). If a proposed plan requires ~~the~~ real estate assessments ~~on real estate~~ to be revised so that the proportion of special assessments or special taxes for some property will be different from the proportion in effect when the petition is filed, the debtor must also file a list that shows—for each adversely affected property—the name and address of each known holder of title, both legal and equitable. On motion and for cause, the court may modify the requirements of this Rule 1007(e) and those of (a).

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(f) STATEMENT OF SOCIAL SECURITY NUMBER. An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number. In a voluntary case, the debtor shall submit the statement with the petition. In an involuntary case, the debtor shall submit the statement within 14 days after the entry of the order for relief.	**(f) Social-Security Number.** In a voluntary case, an individual debtor must submit with the petition a verified statement that gives the debtor's social-security number or states that the debtor does not have one (Form 121). In an involuntary case, the debtor must submit the statement within 14 days after the order for relief is entered.
(g) PARTNERSHIP AND PARTNERS. The general partners of a debtor partnership shall prepare and file the list required under subdivision (a), schedules of the assets and liabilities, schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.	**(g) Partnership Case.** The general partners of a debtor partnership must file for the partnership the list required by (a) and the documents required by (b)(1)(A)–(D). The court may order any general partner to file a statement of personal assets and liabilities and may set the deadline for doing so.
(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. This duty to file a supplemental schedule continues even	**(h) Interests in Property Acquired or Arising After a Petition Is Filed.** After the petition is filed in a Chapter 7, 11, 12, or 13 case, if the debtor acquires—or becomes entitled to acquire—an interest in property described in § 541(a)(5), the debtor must file a supplemental schedule and include any claimed exemption. Unless the court allows additional time, the debtor must file the schedule within 14 days after learning about the property interest. This duty continues even after the case is closed but does not apply to property acquired after an order is entered: (1) confirming a Chapter 11 plan (other than one confirmed under § 1191(b)); or (2) discharging the debtor in a Chapter 12 case, a Chapter 13 case, or a case

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after the case is closed, except for property acquired after an order is entered: (1) confirming a chapter 11 plan (other than one confirmed under § 1191(b)); or (2) discharging the debtor in a chapter 12 case, a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b).	under Subchapter V of Chapter 11 in which the plan is confirmed under § 1191(b).~~the case is closed, except for property acquired after a plan is confirmed in a Chapter 11 case or a discharge is granted in a Chapter 12 or 13 case.~~
(i) DISCLOSURE OF LIST OF SECURITY HOLDERS. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.	**(i) Security Holders Known to Others.** After notice and a hearing and for cause, the court may direct an entity other than the debtor or trustee to: (1) disclose any list of the debtor's security holders in its possession or under its control by: (A) producing the list or a copy of it; (B) allowing inspection or copying; or (C) making any other disclosure; and (2) indicate the name, address, and security held by each listed holder.
(j) IMPOUNDING OF LISTS. On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.	**(j) Impounding Lists.** On a party in interest's motion ~~of a party in interest~~ and for cause, the court may impound any list filed under this rule and may refuse inspection. But the court may permit a party in interest to inspect or use an impounded list on terms prescribed by the court.

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(k) PREPARATION OF LIST, SCHEDULES, OR STATEMENTS ON DEFAULT OF DEBTOR. If a list, schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.	**(k) Debtor's Failure to File a Required Document.** If a debtor fails to properly prepare and file a list, schedule, or statement (other than a statement of intention) as required by this rule, the court may order: (1) that the trustee, a petitioning creditor, a committee, or other party do so within the time set by the court; and (2) that the cost incurred be reimbursed as an administrative expense.
(l) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of every list, schedule, and statement filed pursuant to subdivision (a)(1), (a)(2), (b), (d), or (h) of this rule.	**(l) Copies to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of every list, schedule, or statement filed under (a)(1), (a)(2), (b), (d), or (h).
(m) INFANTS AND INCOMPETENT PERSONS. If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).	**(m) Infant or Incompetent Person.** If a debtor knows that a person named in a list of creditors or in a schedule is an infant or is incompetent, the debtor must also include the name, address, and legal relationship of ~~any person~~ anyone on whom process would be served in an adversary proceeding against that person under Rule 7004(b)(2).

Committee Note

The language of Rule 1007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1008. Verification of Petitions and Accompanying Papers	**Rule 1008. Requirement to Verify Petitions and Accompanying Documents**
All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.	A petition, list, schedule, statement, and any amendment must be verified or must contain an unsworn declaration under 28 U.S.C. § 1746.

Committee Note

The language of Rule 1008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements	**Rule 1009. Amending a Voluntary Petition, List, Schedule, or Statement**
(a) GENERAL RIGHT TO AMEND. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.	**(a) In General.** (1) ***By a Debtor.*** A debtor may amend a voluntary petition, list, schedule, or statement at any time before the case is closed. The debtor must give notice of the amendment to the trustee and any affected entity. (2) ***By a Party in Interest.*** On a party in interest's motion ~~of a party in interest~~ and after notice and a hearing, the court may order a voluntary petition, list, schedule, or statement to be amended. The clerk must give notice of the amendment to entities that the court designates.
(b) STATEMENT OF INTENTION. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.	**(b) Amending a Statement of Intention.** A debtor may amend a statement of intention at any time before the time provided in § 521(a)(2) expires. The debtor must give notice of the amendment to the trustee and any affected entity.
(c) STATEMENT OF SOCIAL SECURITY NUMBER. If a debtor becomes aware that the statement of social security number submitted under Rule 1007(f) is incorrect, the debtor shall promptly submit an amended verified statement setting forth the correct social security number. The debtor shall give notice of the amendment to all of the entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).	**(c) ~~Incorrect~~ Amending a Statement of Social-Security Number.** If a debtor learns that a social-security number shown on the statement submitted under Rule 1007(f) is incorrect, the debtor must: (1) promptly submit an amended verified statement with the correct number (Form 121); and (2) give notice of the amendment to all entities required to be listed under Rule 1007(a)(1) or (a)(2).
(d) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall promptly transmit to the United States trustee a copy of every amendment filed	**(d) Copy to the United States Trustee.** The clerk must promptly send a copy of every amendment filed under this rule to the United States trustee.

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or submitted under subdivision (a), (b), or (c) of this rule.	

Committee Note

The language of Rule 1009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1010. Service of Involuntary Petition and Summons	**Rule 1010. Serving an Involuntary Petition and Summons**
(a) SERVICE OF INVOLUNTARY PETITION AND SUMMONS. On the filing of an involuntary petition, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(l) F.R.Civ.P. apply when service is made or attempted under this rule.	**(a) In General.** After an involuntary petition has been filed, the clerk must promptly issue a summons for service on the debtor. The summons must be served with a copy of the petition in the manner that Rule 7004(a) and (b) provide for service of a summons and complaint. If service cannot be so made, the court may order service by mail to the debtor's last known address, and by at least one publication as the court orders. Service may be made anywhere. Rule 7004(e) and Fed. R. Civ. P. 4(l) govern service under this rule.
(b) CORPORATE OWNERSHIP STATEMENT. Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.	**(b) Corporate-Ownership Statement.** A corporation that files an involuntary petition must file and serve with the petition a corporate-ownership statement containing the information described in Rule 7007.1.

Committee Note

The language of Rule 1010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1011. Responsive Pleading or Motion in Involuntary Cases	**Rule 1011. Responsive Pleading in an Involuntary Case; Effect of a Motion**
(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.	**(a) Who May Contest a Petition.** A debtor may contest an involuntary petition filed against it. In a partnership case under Rule 1004, a nonpetitioning general partner—or a person who is alleged to be a general partner but denies the allegation—may contest the petition.
(b) DEFENSES AND OBJECTIONS; WHEN PRESENTED. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 21 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.	**(b) Defenses and Objections; Time to File.** A defense or objection to the petition must be presented as prescribed by Fed. R. Civ. P. 12. It must be filed and served within 21 days after the summons is served. But if service is made by publication on a party or partner who does not reside in—or cannot be found in—the state where the court sits, the court must set the time to file and serve the answer.
(c) EFFECT OF MOTION. Service of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P.	**(c) Effect of a Motion.** Serving a motion under Fed. R. Civ. P. 12(b) extends the time to file and serve an answer as Fed. R. Civ. P. 12(a) permits.
(d) CLAIMS AGAINST PETITIONERS. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.	**(d) Limitation on Asserting a Debtor's Claim Against a Petitioning Creditor.** A debtor's answer must not assert a claim against a petitioning creditor except to defeat the petition.
(e) OTHER PLEADINGS. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.	**(e) Limit on Pleadings.** No pleading other than an answer to the petition is allowed, but the court may order a reply to an answer and set the time for filing and service.

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(f) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the involuntary petition is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.	**(f) Corporate-Ownership Statement.** A corporation that responds to the petition must file a corporate-ownership statement containing the information described in Rule 7007.1. The corporation must do so with its first appearance, pleading, motion, or response, or other first request to the court.

Committee Note

The language of Rule 1011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1012. Responsive Pleading in Cross-Border Cases	**Rule 1012. Contesting a Petition in a Chapter 15 Case**
(a) WHO MAY CONTEST PETITION. The debtor or any party in interest may contest a petition for recognition of a foreign proceeding.	**(a) Who May Contest the Petition.** A debtor or a party in interest may contest a Chapter 15 petition for recognition of a foreign proceeding.
(b) OBJECTIONS AND RESPONSES; WHEN PRESENTED. Objections and other responses to the petition shall be presented no later than seven days before the date set for the hearing on the petition, unless the court prescribes some other time or manner for responses.	**(b) Time to File a Response.** Unless the court sets a different time, a response to the petition must be filed at least 7 days before the date set for a hearing on the petition.
(c) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the petition is a corporation, then the entity shall file a corporate ownership statement containing the information described in Rule 7007.1 with its first appearance, pleading, motion, response, or other request addressed to the court.	**(c) Corporate-Ownership Statement.** A corporation that responds to the petition must file a corporate-ownership statement containing the information described in Rule 7007.1. The corporation must do so with its first appearance, pleading, motion, or response, or other first request to the court.

Committee Note

The language of Rule 1012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case	**Rule 1013. Contested Petition in an Involuntary Case; Default**
(a) CONTESTED PETITION. The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.	**(a) Hearing and Disposition.** When a petition in an involuntary case is contested, the court must: (1) rule on the issues presented at the earliest practicable time; and (2) promptly issue an order for relief, dismiss the petition, or issue any other appropriate order.
(b) DEFAULT. If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition.	**(b) Default.** If the petition is not contested within the time allowed by Rule 1011, the court must issue the order for relief on the next day or as soon as practicable.
[(c) ORDER FOR RELIEF]	

Committee Note

The language of Rule 1013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1014. Dismissal and Change of Venue	**Rule 1014. Transferring a Case to Another District; Dismissing a Case Improperly Filed**
(a) DISMISSAL AND TRANSFER OF CASES. (1) *Cases Filed in Proper District.* If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties. (2) *Cases Filed in Improper District.* If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.	**(a) Dismissal or Transfer.** (1) ***Petition~~s~~ Filed in the Proper District.*** If a petition is filed in the proper district, the court may transfer the case to another district in the interest of justice or for the ~~parties'~~ convenience of the parties. The court may do so: (A) on its own or on ~~timely~~ a party in interest's timely motion ~~of a party in interest~~; and (B) only after a hearing on notice to the petitioner, United States trustee, and other entities as the court orders. (2) ***Petition~~s~~ Filed in an Improper District.*** If a petition is filed in an improper district, the court may dismiss the case or may transfer it to another district on the same grounds and under the same procedures as stated in (1).
(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, the court in the district in which the first-filed petition is pending may determine, in the interest of justice or	**(b) Petitions Involving the Same or Related Debtors Filed in Different Districts.** (1) ***Scope.*** This Rule 1014(b) applies if petitions commencing cases or seeking recognition under Chapter 15 are filed in different districts by, regarding, or against: (A) the same debtor; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate.

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for the convenience of the parties, the district or districts in which any of the cases should proceed. The court may so determine on motion and after a hearing, with notice to the following entities in the affected cases: the United States trustee, entities entitled to notice under Rule 2002(a), and other entities as the court directs. The court may order the parties to the later-filed cases not to proceed further until it makes the determination.	(2) ***Court Action.*** The court in the district where the first petition is filed may determine the district or districts in which the cases should proceed in the interest of justice or for the ~~parties'~~ convenience of the parties. The court may do so on timely motion and after a hearing on notice to: • the United States trustee; • entities entitled to notice under Rule 2002(a); and • other entities as the court orders. (3) ***Later-Filed Petitions.*** The court in the district where the first petition is filed may order the parties to the later-filed cases not to proceed further until the motion is decided.

Committee Note

The language of Rule 1014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court	**Rule 1015. Consolidating or Jointly Administering Cases Pending in the Same District**
(a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.	**(a) Consolidating Cases Involving the Same Debtor.** The court may consolidate two or more cases that are regarding or brought by or against the same debtor and that are pending in its district.
(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the otherhas elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).	**(b) Jointly Administering Cases Involving Related Debtors; Exemptions of Spouses; Protective Orders to Avoid Conflicts of Interest.** (1) ***In General.*** The court may order joint administration of the estates in a joint case or in two or more cases pending in the court if they are brought by or against: (A) spouses; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate. (2) ***Potential Conflicts of Interest.*** Before issuing a joint-administration order, the court must consider how to protect the creditors of different estates against potential conflicts of interest. (3) ***Exemptions in Cases Involving Spouses.*** If spouses have filed separate petitions—with one electing exemptions under § 522(b)(2) and the other under § 522(b)(3)—and the court orders joint administration, that order must: (A) set a reasonable time for the debtors to elect the same exemptions; and

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	(B) advise the debtors that if they fail to do so, they will be considered to have elected exemptions under § 522(b)(2).
(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.	**(c) Protective Orders to Avoid Unnecessary Costs and Delay.** When cases are consolidated or jointly administered, the court may issue orders to avoid unnecessary costs and delay while still protecting the parties' rights under the Code.

Committee Note

The language of Rule 1015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1016. Death or Incompetency of Debtor	**Rule 1016. Death or Incompetency of a Debtor**
Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.	**(a) Chapter 7 Case.** In a Chapter 7 case, the debtor's death or incompetency does not abate the case. The case continues, as far as possible, as though the death or incompetency had not occurred. **(b) Chapter 11, 12, or 13 Case.** Upon the debtor's death or incompetency in a Chapter 11, 12, or 13 case, the court may dismiss the case or may permit it to continue ~~it~~ if further administration is possible and is in the parties' best interests. If the ~~court chooses to~~case continues, ~~it must do so, as far as possible,~~it must proceed and be concluded in the same manner as though the death or incompetency had not occurred.

Committee Note

The language of Rule 1016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1017. Dismissal or Conversion of Case; Suspension	**Rule 1017. Dismissing a Case; Suspending Proceedings; Converting a Case to Another Chapter**
(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.	**(a) Dismissing a Case—In General.** Except as provided in § 707(a)(3), 707(b), 1208(b), or 1307(b), or in Rule 1017(b), (c), or (e), the court must conduct a hearing on notice under Rule 2002 before dismissing a case on the petitioner's motion~~, of the petitioner,~~ for want of prosecution or other cause, or by the parties' consent~~ of the parties~~. For the purpose of the notice, a debtor who has not already ~~done so must, before the court's deadline, file~~filed a list of creditors and their addresses must do so before the deadline set by the court. If the debtor fails to timely file the list, the court may order the debtor or another entity to do so.
(b) DISMISSAL FOR FAILURE TO PAY FILING FEE. (1) If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case. (2) If the case is dismissed or closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.	**(b) Dismissing a Case for Failure to Pay an Installment Toward the Filing Fee.** If the debtor fails to pay any installment toward the filing fee, the court may dismiss the case after a hearing on notice to the debtor and trustee. If the court dismisses or closes the case without full payment of the filing fee, previous installment payments must be distributed as if full payment had been made.

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(c) DISMISSAL OF VOLUNTARY CHAPTER 7 OR CHAPTER 13 CASE FOR FAILURE TO TIMELY FILE LIST OF CREDITORS, SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS. The court may dismiss a voluntary chapter 7 or chapter 13 case under § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United States trustee on the debtor, the trustee, and any other entities as the court directs.	**(c) Dismissing a Voluntary Chapter 7 or Chapter 13 Case for Failure to File a Document on Time.** On motion of the United States trustee, the court may dismiss a voluntary Chapter 7 case under § 707(a)(3), or a Chapter 13 case under § 1307(c)(9), for a failure to timely file the information required by § 521(a)(1). But the court may do so only after a hearing on notice served by the United States trustee on the debtor, trustee, and any other entity as the court orders.
(d) SUSPENSION. The court shall not dismiss a case or suspend proceedings under § 305 before a hearing on notice as provided in Rule 2002(a).	**(d) Dismissing a Case or Suspending Proceedings Under § 305.** The court may dismiss a case or suspend proceedings under § 305 only after a hearing on notice under Rule 2002(a).
(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE, OR CONVERSION TO A CASE UNDER CHAPTER 11 OR 13, FOR ABUSE. The court may dismiss or, with the debtor's consent, convert an individual debtor's case for abuse under § 707(b) only on motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entity as the court directs. (1) Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse.	**(e) Dismissing an Individual Debtor's Chapter 7 Case for Abuse~~;~~ or Converting ~~the Case~~ It to Chapter 11 or 13.** (1) ***In General.*** On motion under § 707(b), the court may dismiss an individual debtor's Chapter 7 case for abuse or, with the debtor's consent, convert it to Chapter 11 or 13. The court may do so only after a hearing on notice to: • the debtor~~,~~; • the trustee~~,~~; • the United States trustee~~,~~; and • any other entity as the court orders. (2) ***Time to File a Motion; Content.*** Except as § 704(b)(2) provides otherwise, a motion to dismiss a case for abuse under § 707(b) or (c) must be filed within 60 days after the first date set for the meeting of creditors under § 341(a). On request made within the 60-day period, the court may, for

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(2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing.	cause, extend the time to file. The motion must: (A) set forth all matters to be considered at the hearing; and (B) if made under § 707(b)(1) and (3), state with particularity the circumstances alleged to constitute abuse. (3) ***Hearing on the Court's Own Motion; Serving Notice.*** If the hearing is set on the court's own motion, the clerk must serve notice on the debtor within 60 days after the first date set for the meeting of creditors under § 341(a). The notice must set forth all matters to be considered at the hearing.
(f) PROCEDURE FOR DISMISSAL, CONVERSION, OR SUSPENSION. (1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b). (2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013. (3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.	**(f) Procedures for Dismissing, Suspending, or Converting a Case.** (1) ***In General.*** Rule 9014 governs a proceeding to dismiss or suspend a case or to convert it to another chapter—except under § 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b). (2) ***Cases Requiring a Motion.*** Dismissing or converting a case under § 706(a), 1112(a), 1208(b), or 1307(b) requires a motion filed and served as required by Rule 9013. (3) ***Conversion ~~Date~~ in a Chapter 12 or 13 Case.*** If the debtor files a conversion notice under § 1208(a) or § 1307(a), the case will be converted without court order.~~, and t~~The ~~filing date of the~~ notice date becomes the date of the conversion ~~date~~ order in applying § 348(c) or Rule 1019. The clerk must promptly send a copy of the notice to the United States trustee.

Committee Note

The language of Rule 1017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings	**Rule 1018. Contesting a Petition in an Involuntary or Chapter 15 Case; Vacating an Order for Relief; Applying Part VII Rules**
Unless the court otherwise directs and except as otherwise prescribed in Part I of these rules, the following rules in Part VII apply to all proceedings contesting an involuntary petition or a chapter 15 petition for recognition, and to all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings contesting an involuntary petition or a chapter 15 petition for recognition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.	**(a) Applying Part VII Rules.** Unless the court orders or a Part I rule provides otherwise, Rules 7005, 7008–10, 7015–16, 7024–26, 7028–37, 7052, 7054, 7056, and 7062—together with any other Part VII rules as the court may ~~direct~~order—apply to the following: (1) a proceeding that ~~contesting~~ contests either an involuntary petition or a Chapter 15 petition for recognition; and (2) a proceeding to vacate an order for relief. **(b) References to an "Adversary Proceeding~~s~~."** Any reference to an "adversary proceeding~~s~~" in the rules listed in (a) is a reference to the proceedings listed in (a)(1)–(2). **(c) "Complaint" Means "Petition."** For the proceedings described in (a), a reference to the "complaint" in the Federal Rules of Civil Procedure must be read as a reference to the petition.

Committee Note

The language of Rule 1018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case	**Rule 1019. Converting or Reconverting a Chapter 11, 12, or 13 Case to Chapter 7**
When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case: (1) *Filing of Lists, Inventories, Schedules, Statements.* (A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7. (B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.	**(a)** **Filing Various ~~Papers~~Documents ~~Previously Filed~~; ~~New Filing Dates;~~Filing a Statement of Intention.** (1) ***~~Papers Previously Filed~~Lists, Inventories, Schedules, Statements of Financial Affairs.*** Unless the court orders otherwise, when a Chapter 11, 12, or 13 case is converted or reconverted to Chapter 7, the lists, inventories, schedules, and statements of financial affairs previously filed are considered filed in the Chapter 7 case. If they have not been previously filed, the debtor must comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the same date as the order directing that the case continue under Chapter 7. (2) ***Statement of Intention.*** A statement of intention, if required, must be filed within 30 days after the conversion order is entered or before the first date set for the meeting of creditors, whichever is earlier. The court may, for cause, extend the time to file only on motion filed—or on oral request made during a hearing—before the time has expired. Notice of an extension must be given to the United States trustee and to any committee, trustee, or other party as the court orders.

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(2) *New Filing Periods.* (A) A new time period for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case. (B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless: (i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.	**(b) New ~~Period~~ Time to File a § 707(b) or (c) Motion, a Proof of Claim, a~~n~~ ~~Objection to a~~ Complaint Objecting to Discharge, or a Complaint to Determine Dischargeability.** (1) ***When a New ~~Period~~ Time Begins.*** When a case is converted to Chapter 7, a new ~~period~~ time begins under Rule 1017, 3002, 4004, or 4007 to file: (A) a motion under § 707(b) or (c); (B) a proof of claim; (C) a complaint objecting to ~~a~~ discharge; or (D) a complaint to determine whether a specific debt may be discharged. (2) ***When a New ~~Period~~ Time Does Not Begin.*** No new ~~period~~ time to file begins when a case is reconverted to Chapter 7 after a previous conversion to Chapter 11, 12, or 13 if the time to file in the original Chapter 7 case has expired. (3) ***New ~~Period~~ Time to Object to a Claimed Exemption.*** When a case is converted to Chapter 7, a new ~~period~~ time begins under Rule 4003(b) to object to a claimed exemption unless: (A) more than 1 year has elapsed since the court issued the first order confirming a plan under Chapter 11, 12, or 13~~,~~; or (B) the case was previously pending in Chapter 7 and time has expired to object to a claimed exemption in the original Chapter 7 case.

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(3) *Claims Filed Before Conversion.* All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.	**(c) Proof of Claim Filed Before Conversion.** A proof of claim filed by a creditor before conversion is considered filed in the Chapter 7 case.
(4) *Turnover of Records and Property.* After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.	**(d) Turning Over ~~Records~~ Documents and Property.** Unless the court orders otherwise, after a trustee in the Chapter 7 case qualifies or assumes duties, the debtor in possession—or the previously acting trustee~~ in the Chapter 11, 12, or 13 case~~—must promptly turn over to the Chapter 7 trustee all ~~Records~~ documents and property of the estate that are in its possession or control.
(5) *Filing Final Report and Schedule of Postpetition Debts.* (A) Conversion of Chapter 11 or Chapter 12 Case. Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall: (i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and (ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account; (B) Conversion of Chapter 13 Case. Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7, (i) the debtor, not later than 14 days after conversion of the	**(e) Final Report and Account; Schedule of Unpaid Postpetition Debts.** (1) ***In a Chapter 11 or Chapter 12 Case.*** Unless the court orders otherwise, when a Chapter 11 or 12 case is converted to Chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion must: (A) within 14 days after conversion, file a schedule of unpaid debts incurred after the petition was filed but before conversion and include the name and address of each claim holder; and (B) within 30 days after conversion, file and send to the United States trustee a final report and account. (2) ***In a Chapter 13 Case.*** Unless the court orders otherwise, when a Chapter 13 case is converted to Chapter 7: (A) within 14 days after conversion, the debtor must file a schedule of unpaid debts incurred after the petition was filed but before conversion and include the name

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case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and (ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account; (C) Conversion After Confirmation of a Plan. Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file: (i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and § 348(f)(2) does not apply; (ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and (iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion. (D) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).	and address of each claim holder; and (B) within 30 days after conversion, the trustee must file and send to the United States trustee a final report and account. (3) ***Converting a Case to Chapter 7 After a Plan Has Been Confirmed.*** Unless the court orders otherwise, if a case under Chapter 11, 12, or 13 is converted to a case under Chapter 7 ~~After~~ after a plan is confirmed, the debtor must file: (A) a schedule of property that was acquired after the petition was filed but before conversion and was not listed in the final report and account, except when a Chapter 13 case is converted to Chapter 7 and § 348(f)(2) does not apply; (B) a schedule of unpaid debts that were incurred after confirmation but before conversion and were not listed in the final report and account; and (C) a schedule of executory contracts and unexpired leases that were entered into or assumed after the petition was filed but before conversion. (4) ***Copy to the United States Trustee.*** The clerk must promptly send to the United States trustee a copy of any schedule filed under this Rule 1019(e).

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(6) *Postpetition Claims; Preconversion Administrative Expenses; Notice.* A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in § 348(d) may be filed in accordance with Rules 3001(a)–(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in § 348(d).	**(f) Preconversion Administrative Expenses; Postpetition Claims~~; Preconversion Administrative Expenses~~.** (1) ***Request to Pay an Administrative Expense; Time to File.*** A request to pay an administrative expense incurred before conversion is timely filed under § 503(a) if it is filed before conversion or within a time set by the court. Such a request by a governmental unit is timely if it is filed: (A) before conversion; or (B) within 180 days after conversion or within a time set by the court, whichever is later. (2) ***Proof of Claim Against the Debtor or the Estate.*** A proof of claim under § 348(d) against either the debtor or the estate may be filed as specified in Rules 3001(a)–(d) and 3002. (3) ***Giving Notice of Certain Time Limits.*** After the filing of a schedule of debts incurred after the case was commenced but before conversion, the clerk, or the court's designee, must notify the entities listed on the schedule of: (A) the time to request payment of an administrative expense; and (B) the time to file a proof of claim under § 348(d), unless a notice of insufficient assets to pay a dividend has been mailed under Rule 2002(e).

Committee Note

The language of Rule 1019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors	**Rule 1020. Designating a Chapter 11 Debtor as a Small Business Debtor**
(a) SMALL BUSINESS DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply. The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.	**(a) In General.** In a voluntary Chapter 11 case, the debtor must state in the petition whether the debtor is a small business debtor and, if so, whether the debtor elects to have Subchapter V of Chapter 11 apply. In an involuntary Chapter 11 case, the debtor must provide the same information in a statement filed within 14 days after the order for reliefentered. The do so in a statement filed within14 days after the order for relief is entered. Unless (c) provides otherwise, the case must proceed in accordance with the debtor's statement, unless and until the court issues an order finding that the debtor's statement is incorrect.
(b) OBJECTING TO DESIGNATION. The United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.	**(b) Objecting to the Designation.** Unless (c) provides otherwise, tThe United States trustee or a party in interest may object to the debtor's designation. The objection must be filed within 30 days after the conclusion of the meeting of creditors held under § 341(a) or within 30 days after an amendment to the designation is filed, whichever is later.

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

Committee Note

The language of Rule 1020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 1021. Health Care Business Case	**Rule 1021. Designating a Chapter 7, 9, or 11 Case as a Health Care Business Case**
(a) HEALTH CARE BUSINESS DESIGNATION. Unless the court orders otherwise, if a petition in a case under chapter 7, chapter 9, or chapter 11 states that the debtor is a health care business, the case shall proceed as a case in which the debtor is a health care business.	**(a) In General.** If a petition in a Chapter 7, 9, or 11 case designates the debtor as a health care business, the case must proceed in accordance with the designation unless the court orders otherwise.
(b) MOTION. The United States trusteeor a party in interest may file a motion to determine whether the debtor is a health care business. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as thecourt directs. The motion shall be governed by Rule 9014.	**(b) Seeking a Court Determination.** The United States trustee or a party in interest may move the court to determine whether the debtor is a health care business. Proceedings on the motion are governed by Rule 9014. If the motion is filed by a party in interest, a copy must be sent to the United States trustee. The motion must be served on: • the debtor; • the trustee; • any committee elected under § 705 or appointed under § 1102, or its authorized agent; • in a Chapter 9 or Chapter 11 case in which an unsecured creditors' committee has not been appointed under § 1102, the creditors on the list filed under Rule 1007(d); and • any other entity as the court orders.

Committee Note

The language of Rule 1021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

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PART II—OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS	**PART II. OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS AND APPOINTMENTS; FINAL REPORT; COMPENSATION**
Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case	**Rule 2001. Appointing an Interim Trustee Before the Order for Relief in an Involuntary Chapter 7 Case**
(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.	**(a) Appointing an Interim Trustee.** After an involuntary Chapter 7 case commences but before an order for relief, the court may, on a party in interest's motion, order the United States trustee to appoint an interim trustee under § 303(g). The motion must set forth the need for the appointment and may be granted only after a hearing on notice to: • the debtor; • the petitioning creditors; • the United States trustee; and • other parties in interest as the court orders.
(b) BOND OF MOVANT. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.	**(b) Bond Required.** An interim trustee may be appointed only if the movant furnishes a bond, in an amount that the court approves, to indemnify the debtor for any costs, attorney's fees, expenses, and damages allowable under § 303(i).
(c) ORDER OF APPOINTMENT. The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.	**(c) The Order's Content.** The court's order must state the reason the appointment is needed and specify the trustee's duties.

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(d) TURNOVER AND REPORT. Following qualification of the trustee selected under § 702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.	**(d) The Interim Trustee's Final Report.** Unless the court orders otherwise, after the qualification of a trustee selected under § 702, the interim trustee must: (1) promptly deliver to the trustee all the records and property of the estate that are in the interim trustee's possession or under its control; and (2) within 30 days after the trustee qualifies, file a final report and account.

Committee Note

The language of Rule 2001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee	**Rule 2002. Notices**
(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number; (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent; (4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for	**(a) 21-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (h), (i), (l), (p), and (q) provide otherwise, the clerk or the court's designee must give the debtor, the trustee, all creditors, and all indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b), which notice—unless the court orders otherwise—must include the debtor's: (A) employer-identification number; (B) social-security number; and (C) any other federal taxpayer-identification number; (2) a proposal to use, sell, or lease property of the estate other than in the ordinary course of business—unless the court, for cause, shortens the time or orders another method of giving notice; (3) a hearing to approve a compromise or settlement other than an agreement under Rule 4001(d)—unless the court, for cause, orders that notice not be ~~sent~~given; (4) a hearing on a motion to dismiss a Chapter 7, 11, or 12 case or to convert it to another chapter—unless the hearing is under § 707(a)(3) or § 707(b) or is on a motion to dismiss the case for failure to pay the filing fee;

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failure to pay the filing fee; (5) the time fixed to accept or reject a proposed modification of a plan; (6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000; (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; and (9) the time fixed for filing objections to confirmation of a chapter 13 plan.	(5) the time to accept or reject a proposed modification to a plan; (6) a hearing on a request for compensation or for reimbursement of expenses, if the request exceeds $1,000; (7) the time to file a proof of claim~~s~~ under Rule 3003(c); (8) the time to file an objection~~s~~ to—and the time of the hearing to consider whether to confirm—a Chapter 12 plan; and (9) the time to object to confirming a Chapter 13 plan.
(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.	**(b) 28-Day Notices to the Debtor, Trustee, Creditors, and Indenture Trustees.** Except as (l) provides otherwise, the clerk or the court's designee must give the debtor, trustee, all creditors, and all indenture trustees at least 28 days' notice by mail of: (1) the time to file an objection~~s~~ and the time of the hearing to: (A) consider approving a disclosure statement; or (B) determine under § 1125(f) whether a plan includes adequate information to make a separate disclosure statement unnecessary; (2) the time to file an objection~~s~~ to—and the time of the hearing to consider whether to confirm—a Chapter 9 or 11 plan; and (3) the time of the hearing to consider whether to confirm a Chapter 13 plan.

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(c) CONTENT OF NOTICE. (1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information. (2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested. (3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall: (A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be subject to the injunction.	**(c) Content of a Notice.** (1) ***Proposed Use, Sale, or Lease of Property.*** Subject to Rule 6004, a notice of a proposed use, sale, or lease of property under (a)(2) must include: (A) a general description of the property; (B) the time and place of any public sale; (C) the terms and conditions of any private sale; ~~and~~ (D) the time to file objections~~.~~; and (E) ~~The notice suffices if it generally describes the property. In a notice of~~for a proposed sale or lease of personally identifiable information under § 363(b)(1), ~~the notice must state~~ a statement whether the sale is consistent with any policy that prohibits transferring the information. (2) ***Hearing on an Application for Compensation or Reimbursement.*** A notice under (a)(6) of a hearing on a request for compensation or for reimbursement of expenses must identify the applicant and the amounts requested. (3) ***Hearing on Confirming a Plan That Proposes an Injunction.*** If a plan proposes an injunction against conduct not otherwise enjoined under the Code, the notice under (b)(2) must: (A) state in conspicuous language (bold, italic, or underlined text) that the plan proposes an injunction; (B) describe briefly the nature of the injunction; and (C) identify the entities that would be

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	subject to ~~the injunction~~it.
(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to § 341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.	**(d) Notice to Equity Security Holders in a Chapter 11 Case.** Unless the court orders otherwise, in a Chapter 11 case~~,~~ the clerk or the court's designee must give notice as the court orders to the equity security holders of: (1) the order for relief; (2) a meeting of equity security holders under § 341; (3) a hearing on a proposed sale of all, or substantially all, the debtor's assets; (4) a hearing on a motion to dismiss a case or convert it to another chapter; (5) the time to file an objection~~s~~ to—and the time of the hearing to consider whether to approve—a disclosure statement; (6) the time to file an objection~~s~~ to—and the time of the hearing to consider whether to confirm—a Chapter 11 plan; and (7) the time to accept or reject a proposal to modify a plan.
(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.	**(e) Giving Notice of No Dividend in a Chapter 7 Case.** In a Chapter 7 case, if it appears from the schedules that there are no assets from which to pay a dividend, the notice of the meeting of creditors may state: (1) that fact; (2) that filing proofs of claim is unnecessary; and (3) that further notice of the time to file proofs of claim will be given if enough assets become available to pay a dividend.

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(f) OTHER NOTICES. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of: (1) the order for relief; (2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (6) the waiver, denial, or revocation of a discharge as provided in Rule 4006; (7) entry of an order confirming a chapter 9, 11, 12, or 13 plan; (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500; (9) a notice under Rule 5008 regarding the presumption of abuse; (10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and (11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c)	**(f) Other Notices.** (1) ***Various Notices to the Debtor, Creditors, and Indenture Trustees.*** Except as (l) provides otherwise, the clerk, or some other person as the court may direct, must give the debtor, creditors, and indenture trustees notice by mail of: (A) the order for relief; (B) a case's dismissal or conversion to another chapter; (C) a suspension of proceedings under § 305; (D) the time to file a proof of claim under Rule 3002; (E) the time to file a complaint to object to the debtor's discharge under § 727, as Rule 4004 provides; (F) the time to file a complaint to determine whether a debt is dischargeable under § 523, as Rule 4007 provides; (G) a waiver, denial, or revocation of a discharge, as Rule 4006 provides; (H) entry of an order confirming a plan in a Chapter 9, 11, 12 or 13 case; (I) a summary of the trustee's final report in a Chapter 7 case if the net proceeds realized exceed $1,500; (J) a notice under Rule 5008 regarding the presumption of abuse; (K) a statement under § 704(b)(1) about whether the debtor's case would be presumed to be an abuse under § 707(b); and (L) the time to request a delay in granting the discharge under §§ 1141(d)(5)(C), 1228(f), or 1328(h).

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shall be given in accordance with Rule 3017(d).	(2) ***Notice of the Time to Accept or Reject a Plan.*** Notice of the time to accept or reject a plan under Rule 3017(c) must be given in accordance with Rule 3017(d).
(g) ADDRESSING NOTICES. (1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision— (A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and (B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address. (2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders. (3) If a list or schedule filed under Rule 1007 includes the name and	**(g) Addressing Notices.** (1) ***In General.*** A notice mailed to a creditor, indenture trustee, or equity security holder must be addressed as the entity or its authorized agent provided in its last request filed in the case. The request may be: (A) a proof of claim filed by a creditor or an indenture trustee designating a mailing address (unless a notice of no dividend has been given under (e) and a later notice of a possible dividend under Rule 3002(c)(5) has not been given); or (B) a proof of interest filed by an equity security holder designating a mailing address. (2) ***When No Request Has Been Filed.*** Except as § 342(f) provides otherwise, if a creditor or indenture trustee has not filed a request under (1) or Rule 5003(e), the notice must be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request, the notice must be mailed to the address shown on the list of equity security holders. (3) ***Notices to Representatives of an Infant or Incompetent Person.*** ~~If~~ This paragraph (3) applies if a list or schedule filed under Rule 1007 includes a name and address of an infant's or an incompetent person's representative, and a person other

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address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim. (4) Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law. (5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.	than that representative files a request or proof of claim designating a different name and mailing address.~~, then unless~~ Unless the court orders otherwise, the notice ~~must be mailed to both persons at their designated addresses.~~must be mailed to the designated address of: (A) the representative; and (B) the person filing the request or proof of claim. (4) ***Using an Address Agreed to Between an Entity and a Notice Provider.*** Notwithstanding (g)(1)–(3), when the court orders that ~~a~~ notice ~~provider give a notice~~be given, the notice provider may do so in the manner agreed to between the provider and an entity, and at the address or addresses the entity supplies. An address supplied by the entity is conclusively presumed to be a proper address~~ for the notice~~. But a failure to use a supplied address does not invalidate a notice that is otherwise effective under applicable law. (5) ***When a Notice Is Not Brought to a Creditor's Attention.*** A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, before the notice was issued, the creditor has filed a statement: (A) designating the name and address of the person or organizational subdivision responsible for receiving notices; and (B) describing the creditor's procedures for delivering notices to the designated person or organizational subdivision.

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(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. (1) *Voluntary Case.* In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to: • the debtor; • the trustee; • all indenture trustees; • creditors that hold claims for which proofs of claim have been filed; and • creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2). (2) *Involuntary Case.* In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to: • the debtor; • the trustee; • all indenture trustees; • creditors that hold claims for which proofs of claim have been filed; and • creditors, if any, that are still permitted to file claims because an extension was granted	**(h) Notice to Creditors ~~with~~ Who Filed Proofs of Claim in a Chapter 7, ~~Chapter~~ 12, or ~~Chapter~~ 13 Case.** (1) ***Voluntary Case.*** This paragraph (1) applies in a voluntary Chapter 7 case, or in a Chapter 12 or 13 case. After 70 days following the order for relief under that chapter or the date of the order converting the case to Chapter 12 or 13, the court may direct that all notices required by (a) be mailed only to: • the debtor; • the trustee; • indenture trustees; • creditors with claims for which proofs of claim have been filed; and • creditors that are still permitted to file proofs of claim because they have received an extension of time under Rule 3002(c)(1) or (2). (2) ***Involuntary Case.*** In an involuntary chapter 7 case, after 90 days following the order for relief ~~under that chapter~~, the court may order that all notices required by (a) be mailed only to~~:~~ ~~• the debtor;~~ ~~• the trustee;~~ ~~• indenture trustees;~~ ~~• creditors with claims for which proofs of claim have been filed; and~~ • ~~creditors that are still permitted to file proofs of claim because they have received an extension of time under Rule 3002(c)(1) or~~

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under Rule 3002(c)(1) or (c)(2). (3) *Insufficient Assets.* In a case where notice of insufficient assets to pay a dividend has been given to creditors under subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.	~~(2).~~those entities listed in (1). (3) ***When ~~a~~ Notice of Insufficient Assets Has Been Given.*** If notice of insufficient assets to pay a dividend has been given to creditors under (e), after 90 days following the mailing of a notice of the time to file proofs of claim under Rule 3002(c)(5), the court may order that notices be mailed only to those entities listed in (1).
(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.	**(i) Notice to a Committee.** (1) ***In General.*** Any notice required to be mailed under this Rule 2002 must also be mailed to a committee elected under § 705 or appointed under § 1102, or to its authorized agent. (2) ***Limiting Notices.*** The court may order that a notice required by (a)(2), (3), or (6) be: (A) sent to the United States trustee; and (B) mailed only to: (i) the committees elected under § 705 or appointed under § 1102, or to their authorized agents; and (ii) those creditors and equity security holders who file—and serve on the trustee or debtor in possession—a request that all notices be mailed to them. (3) ***Copy to a Committee.*** A notice required under (a)(1), (a)(5), (b), (f)(1)(B)–(C), or (f)(1)(H)—and any other notice as the court orders—must be sent to a committee appointed under § 1114.

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(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.	**(j) Notice to the United States.** A notice required to be mailed to all creditors under this Rule 2002 must also be mailed: (1) in a Chapter 11 case in which the Securities and Exchange Commission has filed either a notice of appearance or a request to receive notices, to the SEC at any place it designates; (2) in a commodity-broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a Chapter 11 case, to the Internal Revenue Service at the address in the register maintained under Rule 5003(e) for the district where the case is pending; (4) in a case ~~for~~ in which the ~~papers~~ documents ~~indicate~~ disclose that a debt (other than for taxes) is owed to the United States, to the United States attorney for the district where the case is pending and to the United States department, agency, or instrumentality through which the debtor became indebted; or (5) in a case ~~for~~ in which the ~~papers~~ filed documents disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

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(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et. seq.	**(k) Notice to the United States Trustee.** (1) ***In General.*** Except in a Chapter 9 case or unless the United States trustee requests otherwise, the clerk or the court's designee must send to the United States trustee notice of: (A) all matters described in (a)(2)–(4), (a)(8)–(9), (b), (f)(1)(A)–(C), (f)(1)(E), (f)(1)(G)–(I), and (q); (B) all hearings on applications for compensation or for reimbursement of expenses; and (C) any other matter if the United States trustee requests it or the court orders it. (2) ***Time to Send.*** The notice must be sent within the time that (a) or (b) prescribes. (3) ***Exception Under the Securities Investor Protection Act.*** In a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., these rules do not require any document to be sent to the United States trustee.
(*l*) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.	**(l) Notice by Publication.** The court may order notice by publication if notice by mail is impracticable or if it is desirable to supplement the notice.
(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.	**(m) Orders Concerning Notices.** Except as these rules provide otherwise, the court may designate the matters about which, the entity to whom, and the form and manner in which a notice must be sent.

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(n) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.	**(n) Notice of an Order for Relief in a Consumer Case.** In a voluntary case commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order.
(o) NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.	**(o) Caption.** The caption of a notice given under this Rule 2002 must conform to Rule 1005. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.
(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS. (1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. (2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c). (3) Unless the court for cause orders otherwise, the mailing address of	**(p) Notice to a Creditor with a Foreign Address.** (1) ***When Notice by Mail Does Not Suffice.*** At the request of the United States trustee or a party in interest, or on its own, the court may find that a notice mailed to a creditor with a foreign address within the time these rules prescribe would not give the creditor reasonable notice. The court may then order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be extended. (2) ***Notice of the Time to File a Proof of Claim.*** Unless the court, for cause, orders otherwise, a creditor with a foreign address must be given at least 30 days' notice of the time to file a proof of claim under Rule 3002(c) or Rule 3003(c). (3) ***Determining a Foreign Address.*** Unless the court, for cause, orders otherwise, the mailing address of a

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a creditor with a foreign address shall be determined under Rule 2002(g).	creditor with a foreign address must be determined under (g).
(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES. (1) *Notice of Petition for Recognition.* After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require. If the court consolidates the hearing on the petition with the hearing on a request for provisional relief, the court may set a shorter notice period, with notice to the entities listed in this subdivision. (2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being	**(q) Notice of a Petition for Recognition of a Foreign Proceeding; Notice of an Intention to Communicate with a Foreign Court or Foreign Representative.** (1) ***Timing of the Notice; Who Must Receive It.*** After a petition for recognition of a foreign proceeding is filed, the court must promptly hold a hearing on it. The clerk or the court's designee must promptly give at least 21 days' notice by mail of the hearing to: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is being sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entities as the court orders. If the court consolidates the hearing on the petition with a hearing on a request for provisional relief, the court may set a shorter notice period. (2) ***Contents of the Notice.*** The notice must: (A) state whether the petition seeks recognition as a foreign main proceeding or a foreign nonmain proceeding; and (B) include a copy of the petition and any other document the court specifies.

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sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.	(3) ***Communicating with a Foreign Court or Foreign Representative.*** If the court intends to communicate with a foreign court or foreign representative, the clerk or the court's designee must give notice by mail of the court's intention to all those listed in (q)(1).

Committee Note

The language of most provisions in Rule 2002 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. In (f) the phrase "or some other person as the court may direct" has not been restyled because it was enacted by Congress, P.L. 98-91, 97 Stat. 607, § 2 (1983). Rule 2002(n) has not been restyled because it was also enacted by Congress, P.L. 98-353, 98 Stat. 357, § 114 (1984). That subsection was erroneously redesignated as subdivision (o) in 2008, and amended to modify its time period from 20 to 21 days in 2009. Because the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language, the subdivision is now returned to the language used by Congress.

ORIGINAL	REVISION
Rule 2003. Meeting of Creditors or Equity Security Holders	**Rule 2003. Meeting of Creditors or Equity Security Holders**
(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.	**(a) Date and Place of the Meeting.** (1) ***Date.*** ~~Unless~~ Except as provided in § 341(e~~) applies~~), the United States trustee must call a meeting of creditors to be held: (A) in a Chapter 7 or 11 case, no fewer than 21 days and no more than 40 days after the order for relief; (B) in a Chapter 12 case, no fewer than 21 days and no more than 35 days after the order for relief; or (C) in a Chapter 13 case, no fewer than 21 days and no more than 50 days after the order for relief. (2) ***Effect of a Motion or an Appeal.*** The United States trustee may set a later date for the meeting if there is a motion to vacate the order for relief, an appeal from such an order, or a motion to dismiss the case. (3) ***Place; Possible Change in the Meeting Date.*** The meeting may be held at a regular place for holding court. Or the United States trustee may designate any other place in the district that is convenient for the parties in interest. If the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief.

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(b) ORDER OF MEETING. (1) *Meeting of Creditors.* The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths. (2) *Meeting of Equity Security Holders.* If the United States trustee convenes a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside. (3) *Right To Vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of the general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.	**(b) Conducting the Meeting; Agenda; Who May Vote.** (1) ***At a Meeting of Creditors.*** (A) *Generally.* The United States trustee must preside at the meeting of creditors. The meeting must include an examination of the debtor under oath. The presiding officer has the authority to administer oaths. (B) *Chapter 7 Cases.* In a Chapter 7 case, the meeting may include the election of a creditors' committee; and if the case is not under Subchapter V, the meeting may include electing a trustee. (2) ***At a Meeting of Equity Security Holders.*** If the United States trustee convenes a meeting of equity security holders under § 341(b), the United States trustee must set a date for the meeting and preside over it. (3) ***Who Has a Right to Vote; Objecting to the Right to Vote.*** (A) *In a Chapter 7 Case.* A creditor in a Chapter 7 case may vote if, at or before the meeting: (i) the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote under § 702(a); (ii) the proof of claim is not insufficient on its face; and (iii) no objection is made to the claim. (B) *In a Partnership Case.* A creditor in a partnership case may file a proof of claim or a writing evidencing a right to vote for a trustee for the general partner's estate even if a trustee for the partnership's estate

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	has previously qualified. (C) *Objecting to the Amount or Allowability of a Claim for Voting Purposes.* Unless the court orders otherwise, if there is an objection to the amount or allowability of a claim for voting purposes, the United States trustee must tabulate the votes for each alternative presented by the dispute. If resolving the dispute is necessary to determine the election's result, the United States trustee must report to the court the tabulations for each alternative.
(c) RECORD OF MEETING. Any examination under oath at the meeting of creditors held pursuant to § 341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.	**(c) Recording the Proceedings.** At the meeting of creditors under § 341(a), the United States trustee must: (1) record verbatim—using electronic sound-recording equipment or other means of recording—all examinations under oath; (2) preserve the recording and make it available for public access for 2 years after the meeting concludes; and (3) upon request, certify and provide a copy or transcript of the recording to any entity at that entity's expense.
(d) REPORT OF ELECTION AND RESOLUTION OF DISPUTES IN A CHAPTER 7 CASE. (1) *Report of Undisputed Election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.	**(d) Reporting Election Results in a Chapter 7 Case.** (1) ***Undisputed Election.*** In a Chapter 7 case, if the election of a trustee or a member of a creditors' committee is undisputed, the United States trustee must promptly file a report of the election. The report must include the name and address of the person or entity elected and a statement that the election was undisputed.

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(2) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 14 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.	(2) ***Disputed Election.*** (A) *United States Trustee's Report.* If the election is disputed, the United States trustee must: (i) promptly file a report informing the court of the nature of the dispute and listing the name and address of any candidate elected under any alternative presented by the dispute; and (ii) no later than the date on which the report is filed, mail a copy to any party in interest that has requested one. (B) *Interim Trustee.* Until the court resolves the dispute, the interim trustee continues in office. Unless a motion to resolve the dispute is filed within 14 days after the report is filed, the interim trustee serves as trustee in the case.
(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.	**(e) Adjournment.** The presiding official may adjourn the meeting from time to time by announcing at the meeting the date and time to reconvene. The presiding official must promptly file a statement showing the adjournment and the date and time to reconvene.
(f) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.	**(f) Special Meetings of Creditors.** The United States trustee may call a special meeting of creditors or may do so on request of a party in interest.

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(g) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.	**(g) Final Meeting of Creditors.** If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $1,500, the clerk must give notice of the meeting to the creditors. The notice must include a summary of the trustee's final account and a statement of the amount of the claims allowed. The trustee must attend the meeting and, if requested, report on the ~~administration of the~~ estate's administration.

Committee Note

The language of Rule 2003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2004. Examination	**Rule 2004. Examinations**
(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.	**(a) In General.** On a party in interest's motion ~~of a party in interest~~, the court may order the examination of any entity.
(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.	**(b) Scope of the Examination.** (1) ***In General.*** The examination of an entity under this Rule 2004, or of a debtor under § 343, may relate only to: (A) the debtor's acts, conduct, or property; (B) the debtor's liabilities and financial condition; (C) any matter that may affect the administration of the debtor's estate; or (D) the debtor's right to a discharge. (2) ***Other Topics in Certain Cases.*** In a Chapter 12 or 13 case, or in a Chapter 11 case that is not a railroad reorganization, the examination may also relate to: (A) the operation of any business and the desirability of its continuing; (B) the source of any money or property the debtor acquired or will acquire for the purpose of consummating a plan and the consideration given or offered; and (C) any other matter relevant to the case or to formulating a plan.
(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or electronically stored information,	**(c) Compelling Attendance and the Production of Documents or Electronically Stored Information.** Regardless of the district where the examination will be conducted, an entity may be compelled under Rule 9016 to attend and produce documents or electronically stored information. An

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whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court.	attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court.
(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.	**(d) Time and Place to Examine the Debtor.** The court may, for cause and on terms it may impose, order the debtor to be examined under this Rule 2004 at any designated time and place, in or outside the district.
(e) MILEAGE. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.	**(e) Witness Fees and Mileage.** (1) ***For a Nondebtor Witness.*** An entity, except the debtor, may be required to attend as a witness only if the lawful mileage and witness fee for 1 day's attendance are first tendered. (2) ***For a Debtor Witness.*** A debtor who is required to appear for examination more than 100 miles from the debtor's residence must be tendered a mileage fee. The fee need cover only the distance exceeding 100 miles from the nearer of where the debtor resides: (A) when the first petition was filed; or (B) when the examination takes place.

Committee Note

The language of Rule 2004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination	**Rule 2005. Apprehending and Removing a Debtor for Examination**
(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.	**(a) Compelling the Debtor's Attendance.** (1) ***Order to Apprehend the Debtor.*** ~~On motion of a party in interest~~On a party in interest's motion~~,~~ supported by an affidavit, the court may order a marshal, or other official authorized by law, to bring the debtor before the court without unnecessary delay. The affidavit must allege that: (A) the examination is necessary to properly administer the estate, and there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid the examination; (B) the debtor has evaded service of a subpoena or an order to attend the examination; or (C) the debtor has willfully disobeyed a duly served subpoena or order to attend the examination. (2) ***Ordering an Immediate Examination.*** If, after hearing, the court finds the allegations to be true, it must: (A) order the immediate examination of the debtor; and (B) if necessary, set conditions for further examination and for the debtor's obedience to any further order regarding it.
(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order	**(b) Removing a Debtor to Another District for Examination.** (1) ***In General.*** When an order is issued under (a)(1) and the debtor is found in another district, the debtor may be

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and removed in accordance with the following rules: (1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order. (2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance. (c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the relevant provisions and policies of title 18 U.S.C. § 3142.	taken into custody and removed as provided in (2) and (3). (2) ***Within 100 Miles.*** A debtor who is taken into custody less than 100 miles from where the order was issued must be brought promptly before the court that issued the order. (3) ***At 100 Miles or More.*** A debtor who is taken into custody 100 miles or more from where the order was issued must be brought without unnecessary delay for a hearing before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the judge finds that the person in custody is the debtor and is subject to an order under (a)(1), or if the person waives a hearing, the judge must order removal, and must release the person in custody on conditions ensuring prompt appearance before the court that issued the order compelling attendance. (4) ***Conditions of Release.*** The relevant provisions and policies of 18 U.S.C. § 3142 govern the court's determination of what conditions will reasonably assure attendance and obedience under this Rule 2005.

Committee Note

The language of Rule 2005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases	**Rule 2006. Soliciting and Voting Proxies in a Chapter 7 Case**
(a) APPLICABILITY. This rule applies only in a liquidation case pending under chapter 7 of the Code.	**(a) Applicability.** This Rule 2006 applies only in a Chapter 7 case.
(b) DEFINITIONS. (1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate. (2) *Solicitation of Proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.	**(b) Definitions.** (1) ***Proxy.*** A "proxy" is a written power of attorney that authorizes an entity to vote the claim or otherwise act as the holder's attorney-in-fact in connection with the administration of the estate. (2) ***Soliciting a Proxy.*** "Soliciting a proxy" means any communication by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of a Chapter 7 petition filed by or against the debtor. But such a communication is not considered soliciting a proxy if it comes from an attorney to a claim owner who is a regular client or who has requested the attorney's representation.
(c) AUTHORIZED SOLICITATION. (1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over $500 or the 100 creditors having the largest claims had at least seven days' notice in writing and of which meeting written minutes were kept and are available	**(c) Who May Solicit a Proxy.** A proxy may be solicited only in writing and only by: (1) a creditor that, on the date the petition was filed, held an allowable unsecured claim against the estate; (2) a committee elected under § 705; (3) a committee elected by creditors that hold a majority of claims in number and in total amount and that: (A) have claims that are not contingent or unliquidated; (B) are not disqualified from voting under § 702(a); and (C) were present or represented at a creditors' meeting ~~of which~~where:

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reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. (2) A proxy may be solicited only in writing.	(i) all creditors with claims over $500—or the 100 creditors with the largest claims—had at least 7 days' written notice; and (ii) written minutes are available that report the voting creditors' names and the amounts of their claims; or (4) a bona fide trade or credit association, which may solicit only creditors who, on the petition date: (A) were its members or subscribers in good standing; and (B) held allowable unsecured claims.
(d) SOLICITATION NOT AUTHORIZED. This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.	**(d) When Soliciting a Proxy Is Not Permitted.** This Rule 2006 does not permit soliciting a proxy: (1) for any interest except that of a general creditor; (2) by the interim trustee; or (3) by or on behalf of: (A) a custodian; (B) any entity not qualified to vote under § 702(a); (C) an attorney-at-law; or (D) a transferee holding a claim for collection purposes only.
(e) DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES. At any time before the voting commences at any meeting of creditors pursuant to § 341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified	**(e) Duties of Holders of Multiple Proxies.** Before voting begins at any meeting of creditors under § 341(a)—or at any other time the court orders—a holder of 2 or more proxies must file and send to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances regarding each proxy's execution and delivery. The statement must include:

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder's law firm,</td><td>(1) a copy of the solicitation;

(2) an identification of the solicitor, the forwarder (if the forwarder is neither the solicitor nor the claim owner), and the proxyholder—including their connections with the debtor and with each other—together with:

(A) if the solicitor, forwarder, or proxyholder is an association, a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were, on the petition date, members or subscribers in good standing with allowable unsecured claims; and

(B) if the solicitor, forwarder, or proxyholder is a committee of creditors, a list stating:

(i) the date and place the committee was organized;

(ii) that the committee was organized under (c)(2) or (c)(3);

(iii) the committee's members;

(iv) the amounts of their claims;

(v) when the claims were acquired;

(vi) the amounts paid for the claims; and

(vii) the extent to which the committee members' claims are secured or entitled to priority;

(3) a statement that the proxyholder has neither paid nor promised any consideration for the proxy;

(4) a statement addressing whether there is any agreement—and, if so, giving its</td></tr>
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which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate; (5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity other than a member or regular associate of the solicitor's or forwarder's law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate; (6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on the member's claim.	particulars—between the proxyholder and any other entity to: (A) pay any consideration related to voting the proxy; or (B) ~~or to~~ share with any entity (except a member or regular associate of the proxyholder's law firm) compensation that may be allowed to: (i) the trustee or any entity for services rendered in the case; or (ii) any person employed by the estate; (5) if the proxy was solicited by an entity other than the proxyholder—or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the claim owner—a statement signed and verified by the solicitor or forwarder: (A) confirming that no consideration has been paid or promised for the proxy; (B) addressing whether there is any agreement—and, if so, giving its particulars—between the solicitor or forwarder and any other entity to pay any consideration related to voting the proxy or to share with any entity (except a member or regular associate of the solicitor's or forwarder's law firm) compensation that may be allowed to: (i) the trustee or any entity for services rendered in the case; or (ii) any person employed by the estate; and (6) if the solicitor, forwarder, or

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	proxyholder is a committee, a statement signed and verified by each member disclosing the amount and source of any consideration paid or to be paid to the member in connection with the case, except a dividend on the member's claim.
(f) ENFORCEMENT OF RESTRICTIONS ON SOLICITATION. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.	**(f) Enforcing Restrictions on Soliciting Proxies.** On ~~motion of a party in interest~~a party in interest's motion or on its own, the court may determine whether there has been a failure to comply with this Rule 2006 or any other impropriety related to soliciting or voting a proxy. After notice and a hearing, the court may: (1) reject a proxy for cause; (2) vacate an order entered because a proxy was voted that should have been rejected; or (3) take other appropriate action.

Committee Note

The language of Rule 2006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case	**Rule 2007. Reviewing the Appointment of a Creditors' Committee Organized Before a Chapter 9 or 11 Case Is Commenced**
(a) MOTION TO REVIEW APPOINTMENT. If a committee appointed by the United States trustee pursuant to § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as the court may direct, the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code.	**(a) Motion to Review the Appointment.** If, in a Chapter 9 or 11 case, a committee appointed by the United States trustee under § 1102(a) consists of the members of a committee organized by creditors before the case commenced, the court may determine whether the committee's appointment satisfies the requirements of § 1102(b)(1). The court may do so on a party in interest's motion and after a hearing on notice to the United States trustee and other entities as the court orders.
(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if: (1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least seven days' notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection; (2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by	**(b) Determining Whether the Committee Was Fairly Chosen.** The court may find that the committee was fairly chosen if: (1) it was selected by a majority in number and amount of claims of unsecured creditors who are entitled to vote under § 702(a) and who were present or represented at a meeting ~~of which~~where: (A) all creditors with unsecured claims of over $1,000—~~-~~or the 100 unsecured creditors with the largest claims—~~-~~had at least 7 days' written notice; and (B) written minutes ~~are available for inspection~~ reporting the voting creditors' names and the amounts of their claims are available for inspection; (2) all proxies voted at the meeting were solicited under Rule 2006; (3) the lists and statements required by Rule 2006(e) have been sent to the

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subdivision (e) thereof have been transmitted to the United States trustee; and (3) the organization of the committee was in all other respects fair and proper.	United States trustee; and (4) the committee's organization was in all other respects fair and proper.
(c) FAILURE TO COMPLY WITH REQUIREMENTS FOR APPOINTMENT. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.	**(c) Failure to Comply with Appointment Requirements.** If, after a hearing on notice under (a), the court finds that a committee appointment fails to satisfy the requirements of § 1102(b)(1), it: (1) must order the United States trustee to vacate the appointment; and (2) may order other appropriate action.

Committee Note

The language of Rule 2007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case	**Rule 2007.1. Appointing a Trustee or Examiner in a Chapter 11 Case**
(a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.	**(a) In General.** In a Chapter 11 case, a motion to appoint a trustee or examiner under § 1104(a) or (c) must be made in accordance with Rule 9014.
(b) ELECTION OF TRUSTEE. (1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. (2) *Manner of Election and Notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006. (3) *Report of Election and Resolution of Disputes.* (A) *Report of Undisputed Election.* If no dispute arises out of the	**(b) Requesting the United States Trustee to Convene a Meeting of Creditors to Elect a Trustee.** (1) ***In General.*** A request to the United States trustee to convene a meeting of creditors to elect a trustee must be filed and sent to the United States trustee in accordance with Rule 5005 and within the time prescribed by § 1104(b). Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved under (c) below must serve as trustee. (2) ***Notice and Manner of Conducting the Election.*** A trustee's election under § 1104(b) must be conducted as Rules 2003(b)(3) and 2006 provide, and notice of the meeting of creditors must be given as Rule 2002 provides. The United States trustee must preside at the meeting. A proxy to vote in the election may be solicited only by a creditors' committee appointed under § 1102 or by another party entitled to solicit a proxy under Rule 2006. (3) ***Reporting Election Results; Resolving Disputes.*** (A) *Undisputed Election.* If the election is undisputed, the United States trustee must promptly file a report certifying the election, including

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election, the United States trustee shall promptly file a report certifying the election, including the name and address of the person elected and a statement that the election is undisputed. The report shall be accompanied by a verified statement of the person elected setting forth that person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. (B) *Dispute Arising Out of an Election.* If a dispute arises out of an election, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code.	the name and address of the person elected and a statement that the election is undisputed. The report must be accompanied by a verified statement of the person elected setting forth that person's connections with: • the debtor; • creditors; • any other party in interest; • their respective attorneys and accountants; • the United States trustee; or • any person employed in the United States trustee's office. (B) *Disputed Election.* If the election is disputed, the United States trustee must promptly file a report stating that the election is disputed, informing the court of the nature of the dispute~~,~~ and listing the name and address of any candidate elected under any alternative presented by the dispute. The report must be accompanied by a verified statement by each ~~such~~ candidate, setting forth the candidate's connections with any entity listed in (A)(i)–(vi). No later than the date on which the report ~~of the disputed election~~ is filed, the United States trustee must mail a copy ~~of the report~~ and each verified statement to: (i) any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report; and

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	(ii) any committee appointed under § 1102.
(c) APPROVAL OF APPOINTMENT. An order approving the appointment of a trustee or an examiner under § 1104(d) of the Code shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or persons employed in the office of the United States trustee. The application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	**(c) Approving an Appointment.** On application of the United States trustee, the court may approve a trustee's or examiner's appointment under § 1104(d). The application must: (1) name the person appointed and state, to the best of the applicant's knowledge, all that person's connections with any entity listed in (b)(3)(A)(i)–(vi); (2) state the names of the parties in interest with whom the United States trustee consulted about the appointment; and (3) be accompanied by a verified statement of the person appointed setting forth that person's connections with any entity listed in (b)(3)(A)(i)–(vi).

Committee Note

The language of Rule 2007.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case	**Rule 2007.2. Appointing a Patient-Care Ombudsman in a Health Care Business Case**
(a) ORDER TO APPOINT PATIENT CARE OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under § 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than 21 days after the commencement of the case or within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.	**(a) In General.** In a Chapter 7, 9, or 11 case in which the debtor is a health care business, the court must order the appointment of a patient-care ombudsman under § 333—unless the court, on motion of the United States trustee or a party in interest, finds that appointing ~~a patient-care ombudsman in that case~~one is not necessary to protect patients. The motion must be filed within 21 days after the case was commenced or at another time set by the court.
(b) MOTION FOR ORDER TO APPOINT OMBUDSMAN. If the court has found that the appointment of an ombudsman is not necessary, or has terminated the appointment, the court, on motion of the United States trustee or a party in interest, may order the appointment at a later time if it finds that the appointment has become necessary to protect patients.	**(b) ~~Deferred~~ Deferring the Appointment.** If the court has found that appointing an ombudsman is unnecessary, or has terminated the appointment, the court may, on motion of the United States trustee or a party in interest, order an appointment later if it finds that an appointment has become necessary to protect patients.
(c) NOTICE OF APPOINTMENT. If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment, including the name and address of the person appointed. Unless the person appointed is a State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office	**(c) Giving Notice.** When a patient-care ombudsman is appointed under § 333, the United States trustee must promptly file a notice of the appointment, including the name and address of the person appointed. Unless that person is a State Long-Term-Care Ombudsman, the notice must be accompanied by a verified statement of the person appointed setting forth that person's connections with: (1) the debtor; (2) creditors; (3) patients;

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of the United States trustee.	(4) any other party in interest; (5) ~~their respective~~the attorneys and accountants of those in (1)–(4); (6) the United States trustee; or (7) any person employed in the United States trustee's office.
(d) TERMINATION OF APPOINTMENT. On motion of the United States trustee or a party in interest, the court may terminate the appointment of a patient care ombudsman if the court finds that the appointment is not necessary to protect patients.	**(d) Terminating an Appointment.** On motion of the United States trustee or a party in interest, the court may terminate a patient-care ombudsman's appointment that it finds to be unnecessary to protect patients.
(e) MOTION. A motion under this rule shall be governed by Rule 9014. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct.	**(e) Procedure.** Rule 9014 governs any motion under this Rule 2007.2. The motion must be sent to the United States trustee and served on: • the debtor; • the trustee; • any committee elected under § 705 or appointed under § 1102, or its authorized agent; and • any other entity as the court orders. In a Chapter 9 or 11 case, if no committee of unsecured creditors has been appointed under § 1102, the motion must also be served on the creditors included on the list filed under Rule 1007(d).

Committee Note

The language of Rule 2007.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2008. Notice to Trustee of Selection	**Rule 2008. Notice to the Person Selected as Trustee**
The United States trustee shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter 13 case that does not notify the court and the United States trustee in writing of rejection of the office within seven days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court and the United States trustee in writing of acceptance of the office within seven days after receipt of notice of selection or shall be deemed to have rejected the office.	**(a) Giving Notice.** The United States trustee must immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. **(b) Accepting the Position of Trustee.** (1) ***Trustee Who Has Filed a Blanket Bond.*** A trustee selected in a Chapter 7, 12, or 13 case who has filed a blanket bond under Rule 2010 may reject the office by notifying the court and the United States trustee in writing within 7 days after receiving notice of selection. Otherwise, the trustee will be ~~deemed~~ considered to have accepted the office. (2) ***Other Trustees.*** Any other person selected as trustee may accept the office by notifying the court and the United States trustee in writing within 7 days after receiving notice of selection. Otherwise, the person will be ~~deemed~~ considered to have rejected the office.

Committee Note

The language of Rule 2008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2009. Trustees for Estates When Joint Administration Ordered	**Rule 2009. Trustees for Jointly Administered Estates**
(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.	**(a) Creditors' Right to Elect a Single Trustee.** Except in a case under Subchapter V of Chapter 7 or Subchapter V of Chapter 11, if the court orders that 2 or more estates be jointly administered under Rule 1015(b), the creditors may elect a single trustee for those estates.
(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.	**(b) Creditors' Right to Elect a Separate Trustee.** Except in a case under Subchapter V of Chapter 7 or Subchapter V of Chapter 11, any debtor's creditors may elect a separate trustee for the debtor's estate under § 702—even if the court orders joint administration under Rule 1015(b).
(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED. (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases. (2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases. (3) *Chapter 12 Family Farmer's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases.	**(c) United States Trustee's Right to Appoint Interim Trustees in Cases with Jointly Administered Estates.** (1) ***Chapter 7.*** Except in a case under Subchapter V of Chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in Chapter 7. (2) ***Chapter 11.*** If the court orders or the Code requires the appointment of a trustee, the United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 11. (3) ***Chapter 12 or 13.*** The United States trustee may appoint one or more trustees for estates being jointly administered in Chapter 12 or 13.

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(4) *Chapter 13 Individual's Debt Adjustment Cases*. The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.	
(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.	**(d) Conflicts of Interest.** On a showing that a common trustee's conflicts of interest will prejudice creditors or equity security holders of jointly administered estates, the court must order the selection of separate trustees for the estates.
(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.	**(e) Keeping Separate Accounts.** A trustee of jointly administered estates must keep separate accounts of each estate's property and distribution.

Committee Note

The language of Rule 2009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2010. Qualification by Trustee; Proceeding on Bond	**Rule 2010. Blanket Bond; Proceedings on the Bond**
(a) BLANKET BOND. The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.	**(a) Authorizing a Blanket Bond.** The United States trustee may authorize a blanket bond in the United States' favor—~~,~~ conditioned on the faithful performance of a trustee's official duties—to cover: (1) a person who qualifies as trustee in multiple cases; or (2) multiple trustees who ~~each qualifies~~qualify in a different case.
(b) PROCEEDING ON BOND. A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.	**(b) Proceedings on the Bond.** A party in interest may bring a proceeding in the United States' ~~name of the United States~~name on a trustee's bond for the use of the entity injured by the trustee's breach of the condition.

Committee Note

The language of Rule 2010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee	**Rule 2011. Evidence That a Debtor Is a Debtor in Possession or That a Trustee Has Qualified**
(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.	**(a) The Clerk's Certification.** Whenever evidence is required to prove that a debtor is a debtor in possession or that a trustee has qualified, the clerk may ~~issue a certificate to that effect~~so certify. The certification constitutes conclusive evidence of that fact.
(b) If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a) of the Code, the clerk shall so notify the court and the United States trustee.	**(b) Trustee's Failure to Qualify.** If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a), the clerk must so notify the court and the United States trustee.

Committee Note

The language of Rule 2011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2012. Substitution of Trustee or Successor Trustee; Accounting	**Rule 2012. Substituting a Trustee in a Chapter 11 or 12 Case; Successor Trustee in a Pending Proceeding**
(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.	**(a) Substituting a Trustee.** If a trustee is appointed in a Chapter 11 case or the debtor is removed as debtor in possession in a Chapter 12 case, tThe trustee is automatically substituted for the debtor in possession as a party in any pending action, proceeding, or matter if: (1) the trustee is appointed in a Chapter 11 case (other than under Subchapter V); or (2) the debtor is removed as debtor in possession in a Chapter 12 case or in a case under Subchapter V of Chapter 11.
(b) SUCCESSOR TRUSTEE. When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.	**(b) Successor Trustee.** When If a trustee dies, resigns, is removed, or otherwise ceases to hold office while a bankruptcy case is pending, the successor trustee is automatically substituted as a party in any pending action, proceeding, or matter. The successor trustee must prepare, file, and send to the United States trustee an accounting of the estate's prior administration.

Committee Note

The language of Rule 2012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals	**Rule 2013. Keeping a Public Record of Compensation Awarded by the Court to Examiners, Trustees, and Professionals**
(a) RECORD TO BE KEPT. The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.	**(a) In General.** (1) ***Required Items.*** The clerk must keep a public record of fees the court awards to examiners and trustees, and to attorneys, accountants, appraisers, auctioneers, and other professionals that trustees employ. The record must: (A) include the case name and ~~case~~ number, the name of the individual or firm receiving the fee, and the amount awarded~~.~~; (B) ~~The record must~~ be maintained chronologically; and (C) be kept current and open for public examination without charge. (2) ***Meaning of "Trustee."*** ~~"Trustee," as~~As used in this ~~R~~rule ~~2013~~, "trustee" does not include a debtor in possession.
(b) SUMMARY OF RECORD. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge. The clerk shall transmit a copy of the summary to the United States trustee.	**(b) Annual Summary of the Record.** At the end of each year, the clerk must prepare a summary of the public record, by individual or firm name, showing the total fees awarded during the year. The summary must be open for public examination without charge. The clerk must send a copy of the summary to the United States trustee.

Committee Note

The language of Rule 2013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2014. Employment of Professional Persons	**Rule 2014. Employing Professionals**
(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	**(a) Order Approving Employment; Application for Employment.** (1) ***Order Approving Employment.*** The court may approve the employment of an attorney, accountant, appraiser, auctioneer, agent, or other professional under § 327, § 1103, or § 1114 only on the trustee's or committee's application. (2) ***Application for Employment.*** The applicant must file the application and, except in a Chapter 9 case, must send a copy to the United States trustee. The application must state specific facts showing: (A) the ~~necessity~~ need for the employment; (B) the name of the person to be employed; (C) the reasons for the selection; (D) the professional services to be rendered; (E) any proposed arrangement for compensation; and (F) to the best of the applicant's knowledge, all the person's connections with: • the debtor; • creditors; • any other party in interest; • their respective attorneys and accountants; • the United States trustee; and • any person employed in the United States trustee's office.

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	(3) ***Verified Statement of the Person to Be Employed.*** The application must be accompanied by a verified statement of the person to be employed, setting forth that person's connections with any entity listed in (2)(F).
(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.	**(b) Services Rendered by a Member or Associate of a Law or Accounting Firm.** If a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant—or if a named attorney or accountant is employed—then any partner, member, or regular associate may act as so employed, without further court order.

Committee Note

The language of Rule 2014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status	**Rule 2015. Duty to Keep Records, Make Reports, and Give Notices**
(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall: (1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;	**(a) Duties of a Trustee or Debtor in Possession.** A trustee or debtor in possession must: (1) in a Chapter 7 case and, if the court so orders, in a Chapter 11 case (other than under Subchapter V), file and send to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file: (A) the reports and summaries required by § 704(a)(8); and (B) if payments are made to employees, a statement of the amounts of deductions for all taxes required to be withheld or paid on the employees' behalf and the place where these funds are deposited; (4) give notice of the case, as soon as possible after it commences, to the following entities, except those who know or have previously been notified of ~~the case~~it: (A) every entity known to be holding money or property subject to the debtor's withdrawal or order, including every bank, savings- or building-and-loan association, public utility company, and

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(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and (6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.	~~Landlord~~ landlord with whom the debtor has a deposit; and (B) every insurance company that has issued a policy with a cash-surrender value payable to the debtor; (5) in a Chapter 11 case (other than under Subchapter V), on or before the last day of the month after each calendar quarter during which fees must be paid under 28 U.S.C. § 1930(a)(6), file and send to the United States trustee a statement of those fees and any disbursements made during that quarter; and (6) in a Chapter 11 small business case, unless the court, for cause, sets a different schedule, file and send to the United States trustee a report under § 308, using Form 425C, for each calendar month after the order for relief ~~— on~~ with the following ~~schedule~~adjustments: • ~~If~~ if the order for relief is within the first 15 days of a calendar month, the report must be filed for the rest of that month~~.~~; or • ~~If~~ if the order for relief is after the 15th, the information for the rest of that month must be included in the report for the next calendar month. Each report must be filed within 21 days after the last day of the month following the month that the report covers. The obligation to file reports ends on the date that the plan becomes effective or the case is converted or dismissed.

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(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)–(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).	**(b) Trustee, Debtor in Possession, and Debtor in a Case Under Subchapter V of Chapter 11.** In a case under ~~subchapter~~ Subchapter V of ~~chapter~~ Chapter 11, the debtor in possession ~~shall~~ must perform the duties prescribed in (a)(2)–(4) and, if the court ~~directs~~orders, must file and send ~~shall file and transmit~~to the United States trustee a complete inventory of the debtor's property within the time ~~fixed by the court~~the court sets. If the debtor is removed as debtor in possession, the trustee ~~shall~~ must perform ~~the duties of the debtor in possession prescribed in this subdivision (b). these duties.~~ these duties. The debtor ~~shall~~ must perform the duties prescribed in (a)(6).
(c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (c).	**(c) Duties of a Chapter 12 Trustee or Debtor in Possession.** In a Chapter 12 case, the debtor in possession must perform the duties prescribed in (a)(2)–(4) ~~And~~and, if the court orders, file and send to the United States trustee a complete inventory of the debtor's property within the time the court sets. If the debtor is removed as debtor in possession, the trustee must perform these duties.
(d) CHAPTER 13 TRUSTEE AND DEBTOR. (1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)–(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete	**(d) Duties of a Chapter 13 Trustee and Debtor.** (1) ***Chapter 13 Business Case.*** In a Chapter 13 case, a debtor engaged in business must: (A) perform the duties prescribed by (a)(2)–(4); and (B) if the court so orders, file and send to the United States trustee a

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inventory of the property of the debtor within the time fixed by the court. (2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.	complete inventory of the debtor's property within the time the court sets. (2) ***Other Chapter 13 Case.*** In a Chapter 13 case in which the debtor is not engaged in business, the trustee must perform the duties prescribed by (a)(2).
(e) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.	**(e) Duties of a Chapter 15 Foreign Representative.** In a Chapter 15 case in which the court has granted recognition of a foreign proceeding, the foreign representative must file any notice required under § 1518 within 14 days after becoming aware of the ~~subsequent~~ later information.
(f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.	**(f) Making Reports Available in a Chapter 11 Case.** In a Chapter 11 case, the court may order that copies or summaries of annual reports and other reports be mailed to creditors, equity security holders, and indenture trustees. The court may also order that summaries of these reports be published. A copy of every such report or summary, whether mailed or published, must be sent to the United States trustee.

Committee Note

The language of Rule 2015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2015.1. Patient Care Ombudsman	**Rule 2015.1. Patient-Care Ombudsman**
(a) REPORTS. A patient care ombudsman, at least 14 days before making a report under § 333(b)(2) of the Code, shall give notice that the report will be made to the court, unless the court orders otherwise. The notice shall be transmitted to the United States trustee, posted conspicuously at the health care facility that is the subject of the report, and served on: the debtor; the trustee; all patients; and any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct. The notice shall state the date and time when the report will be made, the manner in which the report will be made, and, if the report is in writing, the name, address, telephone number, email address, and website, if any, of the person from whom a copy of the report may be obtained at the debtor's expense.	**(a) Notice of the Report.** Unless the court orders otherwise, a patient-care ombudsman must give at least 14 days' notice before making a report under § 333(b)(2). (1) ***Recipients of the Notice.*** The notice must be sent to the United States trustee, posted conspicuously at the health-care facility that is the report's subject, and served on: • the debtor; • the trustee; • all patients; • any committee elected under § 705 or appointed under § 1102 or its authorized agent; • in a Chapter 9 or 11 case, the creditors on the list filed under Rule 1007(d) if no committee of unsecured creditors has been appointed under § 1102; and • any other entity as the court orders. (2) ***Content~~s~~ of the Notice.*** The notice must state: (A) the date and time when the report will be made; (B) the manner in which it will be made; and (C) if it will be ~~written~~in writing, the name, address, telephone number, email address, and any website of the person from whom a copy may be obtained at the debtor's expense.

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(b) AUTHORIZATION TO REVIEW CONFIDENTIAL PATIENT RECORDS. A motion by a patient care ombudsman under § 333(c) to review confidential patient records shall be governed by Rule 9014, served on the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and transmitted to the United States trustee subject to applicable nonbankruptcy law relating to patient privacy. Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 14 days after service of the motion.	**(b) Authorization to Review Confidential Patient Records.** (1) ***Motion to Review; Service.*** ~~A~~ Rule 9014 governs a patient-care ombudsman's motion under § 333(c) to review confidential patient records ~~is governed by Rule 9014~~. The motion must: (A) be served on the patient; (B) be served on any family member or other contact person whose name and address have been given to the trustee or the debtor in order to provide information about the patient's health care; and (C) be sent to the United States trustee, subject to applicable nonbankruptcy law ~~relating~~ concerning~~to~~ patient privacy. (2) ***Time for a Hearing.*** Unless the court orders otherwise, a hearing on the motion may not commence earlier than 14 days after the motion is served.

Committee Note

The language of Rule 2015.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2015.2. Transfer of Patient in Health Care Business Case	**Rule 2015.2. Transferring a Patient in a Health Care Business Case**
Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under § 704(a)(12) of the Code unless the trustee gives at least 14 days' notice of the transfer to the patient care ombudsman, if any, the patient, and any family member or other contact person whose name and address has been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care. The notice is subject to applicable nonbankruptcy law relating to patient privacy.	Unless the court orders otherwise, if the debtor is a health care business, the trustee may transfer a patient to another health care business under § 704(a)(12) only if the trustee gives at least 14 days' notice of the transfer to: • any patient-care ombudsman; • the patient; and • any family member or other contact person whose name and address have been given to the trustee or the debtor in order to provide information about the patient's health care. The notice is subject to applicable nonbankruptcy law concerning patient privacy.

Committee Note

The language of Rule 2015.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest	**Rule 2015.3. Reporting Financial Information About Entities in Which a Chapter 11 Estate Holds a Substantial or Controlling Interest**
(a) REPORTING REQUIREMENT. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.	**(a) Reporting Requirement; Content~~s~~ of the Report.** In a Chapter 11 case, the trustee or debtor in possession must file periodic financial reports of the value, operations, and profitability of each entity in which the estate holds a substantial or controlling interest—unless the entity is a publicly traded corporation or a debtor in a bankruptcy case. The reports must be prepared as prescribed by Form 426 and be based on the most recent information reasonably available to the filer.
(b) TIME FOR FILING; SERVICE. The first report required by this rule shall be filed no later than seven days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.	**(b) Time to File; Service.** The first report must be filed at least 7 days before the first date set for the meeting of creditors under § 341. Later reports must be filed at least every 6 months, until the date a plan becomes effective or the case is converted or dismissed. A copy of each report must be served on: • the United States trustee~~,~~; • any committee appointed under § 1102~~,~~; and • any other party in interest that has filed a request for it.

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(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.	**(c) Presumption of a Substantial or Controlling Interest.** (1) ***When a Presumption Applies.*** Under this Rule 2015.3, the estate is presumed to have a substantial or controlling interest in an entity of which it controls or owns at least a 20% interest. Otherwise, the estate is presumed not to have a substantial or controlling interest. (2) ***Rebutting the Presumption.*** The entity, any holder of an interest in it, the United States trustee, or any other party in interest may move to rebut either presumption. After notice and a hearing, the court must determine whether the estate's interest in the entity is substantial or controlling.
(d) MODIFICATION OF REPORTING REQUIREMENT. The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.	**(d) Modifying the Reporting Requirement.** After notice and a hearing, the court may vary the reporting requirements of (a) for cause, including that: (1) the trustee or debtor in possession is not able, after a good-faith effort, to comply with them; or (2) the required information is publicly available.

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(e) NOTICE AND PROTECTIVE ORDERS. No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders—known to the trustee or debtor in possession—of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under § 107 of the Code.	**(e) Notice to Entities in Which the Estate has a Substantial or Controlling Interest; Protective Order.** At least 14 days before filing the first report under (a), the trustee or debtor in possession must send notice to every entity in which the estate has a substantial or controlling interest—and all known holders of an interest in the entity—that the trustee or debtor in possession expects to file and serve financial information about the entity in accordance with this Rule 2015.3. Any such entity, or person holding an interest in it, may request that the information be protected under § 107.
(f) EFFECT OF REQUEST. Unless the court orders otherwise, the pendency of a request under subdivisions (c), (d), or (e) of this rule shall not alter or stay the requirements of subdivision (a).	**(f) Effect of a Request.** Unless the court orders otherwise, a pending request under (c), (d), or (e) does not alter or stay the requirements of (a).

Committee Note

The language of Rule 2015.3 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses	**Rule 2016. Compensation for Services Rendered; Reimbursing Expenses**
(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.	**(a) In General.** (1) ***Application.*** If aAn entity seeking seeks from the estate interim or final compensation for services or reimbursement of necessary expenses, the entity must file an application showing: (A) in detail the amounts requested and the services rendered, time expendedspent, and expenses incurred; (B) all payments previously made or promised for services rendered or to be rendered in connection with the case; (C) the source of the paid or promised compensation; (D) whether any previous compensation has been shared; and (D)(E) whether an agreement or understanding exists between the applicant and any other entity for sharing compensation for services rendered or to be rendered in connection with the case; and (E)(F) the particulars of any compensation sharing or agreement or understanding to share, except by the applicant aswith a member or regular associate of a law or accounting firm. (2) ***Application for Services Rendered or to be Rendered by an Attorney or Accountant.*** The requirements of (a) apply to an application for compensation for services rendered by an attorney or accountant, even though

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	a creditor or other entity files the application. (3) ***Copy to the United States Trustee.*** Except in a Chapter 9 case, the applicant must send a copy of the application to the United States trustee.
(b) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.	**(b) Disclosing Compensation Paid or Promised to the Debtor's Attorney.** (1) ***Basic Requirements.*** Within 14 days after the order for relief—or at another time as the court orders—every debtor's attorney (whether or not applying for compensation) must file and send to the United States trustee the statement required by § 329. The statement must: (A) show whether the attorney has shared or agreed to share compensation with any other entity; and, (B) if so, the particulars of any sharing or agreement to share, except with a member or regular associate of the attorney's law firm. (2) ***Supplemental Statement.*** Within 14 days after any payment or agreement to pay not previously disclosed, the attorney must file and send to the United States trustee a supplemental statement.

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(c) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO BANKRUPTCY PETITION PREPARER. Before a petition is filed, every bankruptcy petition preparer for a debtor shall deliver to the debtor, the declaration under penalty of perjury required by § 110(h)(2). The declaration shall disclose any fee, and the source of any fee, received from or on behalf of the debtorwithin 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration shall also describe the services performed and documents prepared or caused to be prepared by the bankruptcy petition preparer. The declaration shall be filed with the petition. The petition preparer shall file a supplemental statement within 14 days after any payment or agreement not previously disclosed.	**(c) Disclosing Compensation Paid or Promised to a Bankruptcy-Petition Preparer.** (1) ***Basic Requirements.*** Before a petition is filed, every bankruptcy-petition preparer for a debtor must deliver to the debtor the declaration under penalty of perjury required by § 110(h)(2). The declaration must: (A) disclose any fee, and its source, received from or on behalf of the debtor within 12 months before the petition's filing, together with all unpaid fees charged to the debtor; (B) describe the services performed and the documents prepared or caused to be prepared by the bankruptcy-petition preparer; and (C) be filed with the petition. (2) ***Supplemental Statement.*** Within 14 days after any later payment or agreement to pay not previously disclosed, the bankruptcy-petition preparer must file a supplemental statement.

Committee Note

The language of Rule 2016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2017. Examination of Debtor's Transactions with Debtor's Attorney	**Rule 2017. Examining Transactions Between a Debtor and the Debtor's Attorney**
(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE ORDER FOR RELIEF. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.	**(a) Payments or Transfers to an Attorney Made in Contemplation of Filing a Petition or Before the Order for Relief.** On ~~motion of a party in interest~~a party in interest's motion, or on its own, the court may, after notice and a hearing, determine whether a debtor's direct or indirect payment of money or transfer of property to an attorney for services rendered or to be rendered was excessive if it was made: (1) in contemplation of the filing of a bankruptcy petition by or against the debtor~~,~~; or (2) before the order for relief is entered in an involuntary case.
(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER FOR RELIEF. On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.	**(b) Payments or Transfers to an Attorney Made After the Order for Relief Is Entered.** On motion of the debtor or the United States trustee, or on its own, the court may, after notice and a hearing, determine whether a debtor's payment of money or transfer of property—or agreement to pay money or transfer property—to an attorney after an order for relief is entered is excessive. It does not matter ~~for the determination~~ whether the payment or transfer is made, or to be made, directly or indirectly, if the payment, transfer, or agreement is for services related to the case.

Committee Note

The language of Rule 2017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2018. Intervention; Right to Be Heard	**Rule 2018. Intervention by an Interested Entity; Right to Be Heard**
(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.	**(a) In General.** After hearing on such notice as the court orders and for cause, the court may permit an interested entity to intervene generally or ~~regarding~~ in any specified matter.
(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.	**(b) Intervention by a State Attorney General.** In a Chapter 7, 11, 12, or 13 case, a state attorney general may appear and be heard on behalf of consumer creditors if the court determines that the appearance is in the public interest. But the state attorney general may not appeal from any judgment, order, or decree entered in the case.
(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.	**(c) Intervention by the United States Secretary of the Treasury or a State Representative.** In a Chapter 9 case: (1) the United States Secretary of the Treasury may—and if requested by the court must—intervene; and (2) a representative of the state where the debtor is located may intervene ~~on~~ in any matter~~s~~ the court specifies.
(d) LABOR UNIONS. In a chapter 9, 11, or 12 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees. A labor union or employees' association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.	**(d) Intervention by a Labor Union or an Association Representing the Debtor's Employees.** In a Chapter 9, 11, or 12 case, a labor union or an association representing the debtor's employees has the right to be heard on the economic soundness of a plan affecting the employees' interests. Unless otherwise permitted by law, the labor union or employees' association exercising that right may not appeal any judgment, order, or decree related to the plan.

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(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.	**(e) Serving Entities Covered by This Rule.** The court may issue orders governing the service of notice and ~~papers~~ documents on entities permitted to intervene or be heard under this Rule 2018.

Committee Note

The language of Rule 2018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases	**Rule 2019. Disclosures by Groups, Committees, and Other Entities in a Chapter 9 or 11 Case**
(a) DEFINITIONS. In this rule the following terms have the meanings indicated: (1) "Disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest. (2) "Represent" or "represents" means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.	**(a) Definitions.** In this Rule 2019: (1) "disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest; and (2) "represent" or "represents" means to take a position before the court or to solicit votes regarding a plan's confirmation on another's behalf.
(b) DISCLOSURE BY GROUPS, COMMITTEES, AND ENTITIES. (1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another. (2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as: (A) an indenture trustee; (B) an agent for one or more other entities under an agreement	**(b) Who Must Disclose.** (1) ***In General.*** In a Chapter 9 or 11 case, a verified statement containing the information listed in (c) must be filed by every group or committee consisting of or representing and every entity representing multiple creditors or equity security holders that are: (A) acting in concert to advance their common interests; and (B) not composed entirely of affiliates or insiders of one another. (2) ***When a Disclosure Statement Is Not Required.*** Unless the court orders otherwise, an entity need not file the statement described in (1) solely because it is: (A) an indenture trustee;

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for the extension of credit; (C) a class action representative; or (D) a governmental unit that is not a person.	(B) an agent for one or more other entities under an agreement to extend credit; (C) a class-action representative; or (D) a governmental unit that is not a person.
(c) INFORMATION REQUIRED. The verified statement shall include: (1) the pertinent facts and circumstances concerning: (A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or (B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged; (2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee: (A) name and address; (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and (C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee	**(c) Required Information.** The verified statement must include: (1) the pertinent facts and circumstances concerning: (A) for a group or committee (except a committee appointed under § 1102 or § 1114), its formation, including the name of each entity at whose instance it was formed or for whom it has agreed to act; or (B) for an entity, the entity's employment, including the name of each creditor or equity security holder at whose instance the employment was arranged; (2) if not disclosed under (1), for each member of a group or committee and for an entity: (A) name and address; (B) the nature and amount of each disclosable economic interest held in relation to the debtor when the group or committee was formed or the entity was employed; and (C) for each member of a group or committee claiming to represent any entity in addition to its own members (except a committee appointed under § 1102 or § 1114), the quarter and year in which each disclosable economic interest was acquired—unless it was acquired more than 1 year before the petition was filed;

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appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed; (3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code: (A) name and address; and (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and (4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.	(3) if not disclosed under (1) or (2), for each creditor or equity security holder represented by an entity, group, or committee (except a committee appointed under § 1102 or § 1114): (A) name and address; and (B) the nature and amount of each disclosable economic interest held in relation to the debtor on the statement's date; and (4) a copy of any instrument authorizing the group, committee, or entity to act on behalf of creditors or equity security holders.
(d) SUPPLEMENTAL STATEMENTS. If any fact disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.	**(d) Supplemental Statements.** If a fact disclosed in its most recent statement has changed materially, a group, committee, or entity must file a verified supplemental statement whenever it takes a position before the court or solicits votes on a plan's confirmation. The supplemental statement must set forth any material changes in the information specified in (c).
(e) DETERMINATION OF FAILURE TO COMPLY; SANCTIONS. (1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.	**(e) Failure to Comply; Sanctions.** (1) ***Failure to Comply.*** On a party in interest's motion, or on its own, the court may determine whether there has been a failure to comply with this Rule 2019.

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(2) If the court finds such a failure to comply, it may: (A) refuse to permit the entity, group, or committee to be heard or to intervene in the case; (B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or (C) grant other appropriate relief.	(2) ***Sanctions.*** If the court finds a failure to comply, it may: (A) refuse to permit the group, committee, or entity to be heard or to intervene in the case; (B) hold invalid any authority, acceptance, rejection, or objection that the group, committee, or entity has given, procured, or received; or (C) grant other appropriate relief.

Committee Note

The language of Rule 2019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 2020. Review of Acts by United States Trustee	**Rule 2020. Reviewing an Act by a United States Trustee**
A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.	A proceeding to contest any act or failure to act by a United States trustee is governed by Rule 9014.

Committee Note

The language of Rule 2020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

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PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS	**PART III. CLAIMS; PLANS; DISTRIBUTIONS TO CREDITORS AND EQUITY SECURITY HOLDERS**
Rule 3001. Proof of Claim	**Rule 3001. Proof of Claim**
(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.	**(a) Definition and Form.** A proof of claim is a written statement of a creditor's claim. It must substantially conform to Form 410.
(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.	**(b) Who May Sign a Proof of Claim.** Only a creditor or the creditor's agent may sign a proof of claim—except as provided in Rules 3004 and 3005.
(c) SUPPORTING INFORMATION. (1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. (2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual: (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim. (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the	**(c) Required Supporting Information.** (1) ***Claim or Interest Based on a Writing.*** If a claim or an interest in the debtor's property securing the claim is based on a writing, the creditor must file a copy with the proof of claim—except for a claim based on a consumer-credit agreement under (4). If the writing has been lost or destroyed, a statement explaining the loss or destruction must be filed with the claim. (2) ***Additional Information in an Individual Debtor's Case.*** If the debtor is an individual, the creditor must file with the proof of claim: (A) an itemized statement of the principal amount and any interest, fees, expenses, or other charges incurred before the petition was filed; (B) for any claimed security interest in the debtor's property, the amount needed to cure any default as of the date the petition was filed; and

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petition shall be filed with the proof of claim.	(C) for any claimed security interest in the debtor's principal residence: (i) Form 410A; and (ii) if there is an escrow account connected with the claim, an escrow-account statement, prepared as of the date the petition was filed, that is consistent in form with applicable nonbankruptcy law.
(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.	
(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:	(3) ***Sanctions in an Individual-Debtor Case.*** If the debtor is an individual and a claim holder fails to provide any information required by ~~(c)~~(1) ~~and~~ or (2), the court may, after notice and a hearing, take one or both of these actions:
(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or	(A) preclude the holder from presenting the information in any form as evidence in any contested matter or adversary proceeding in the case—unless the court determines that the failure is substantially justified or is harmless; and
(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.	(B) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.
(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*	(4) ***Claim Based on an Open-End or Revolving Consumer-Credit Agreement.***
(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:	(A) *Required Statement.* Except when the claim is secured by an interest in the debtor's real property, a proof of claim for a claim based on an open-end or revolving consumer-credit agreement must be accompanied by a statement that
(i) the name of the entity from whom the creditor	

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purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of an account holder's last transaction; (iv) the date of the last payment on the account; and (v) the date on which the account was charged to profit and loss. (B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.	shows the following information about the credit account: (i) the name of the entity from whom the creditor purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; (iii) the date of that last transaction; (iv) the date of the last payment on the account; and (v) the date that the account was charged to profit and loss. (B) *Copy to a Party in Interest.* On a party in interest's written request, the creditor must send a copy of the writing described in ~~(c)~~(1) to that party ~~in interest~~ within 30 days after the request is sent.
(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.	**(d) Claim Based on a Security Interest in the Debtor's Property.** If a creditor claims a security interest in the debtor's property, the proof of claim must be accompanied by evidence that the security interest has been perfected.
(e) TRANSFERRED CLAIM. (1) *Transfer of Claim Other Than for Security Before Proof Filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee. (2) *Transfer of Claim Other than for Security after Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after	**(e) Transferred Claim.** (1) ***Claim Transferred Before a Proof of Claim Is Filed.*** Unless the transfer was made for security, if a claim was transferred before a proof of claim is~~was~~ filed, only the transferee or an indenture trustee may file a proof of claim.

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the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor. (3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. (4) *Transfer of Claim for Security*	(2) ***Claim Transferred After a Proof of Claim Was Filed.*** (A) *Filing Evidence of the Transfer.* Unless the transfer was made for security, the transferee of a claim that was transferred after a proof of claim is filed must file evidence of the transfer—except for a claim based on a publicly traded note, bond, or debenture. (B) *Notice of the Filing and the Time for Objecting.* The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it. (C) *Hearing on an Objection; Substituting the Transferee.* If, on timely objection by the alleged transferor and after notice and a hearing, the court finds that the claim was transferred other than for security, the court must substitute the transferee for the transferor. If the alleged transferor does not file a timely objection, the transferee must be substituted for the transferor. (3) ***Claim Transferred for Security Before a Proof of Claim ~~is~~ Is Filed.*** (A) *Right to File a Proof of Claim.* If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security before the proof of claim is~~was~~ filed, either the transferor or transferee (or both) may file a proof of claim for the full amount. The proof of claim must include a

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after Proof Filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate. (5) *Service of Objection or Motion; Notice of Hearing*. A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.	statement setting forth the terms of the transfer. (B) *Notice of a Right to Join in a Proof of Claim; Consolidating Proofs*. If either the transferor or transferee files a proof of claim, the clerk must, by mail, immediately notify the other of the right to join in the claim. If both file proofs of the same claim, the claims must be consolidated. (C) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. (4) ***Claim Transferred for Security After a Proof of Claim ~~Has Been~~Was Filed.*** (A) *Filing Evidence of the Transfer*. If a claim (except one based on a publicly traded note, bond, or debenture) was transferred for security after a proof of claim was filed, the transferee must file a statement setting forth the terms of the transfer. (B) *Notice of the Filing and the Time for Objecting*. The clerk must immediately notify the alleged transferor, by mail, that evidence of the transfer has been filed and that the alleged transferor has 21 days after the notice is mailed to file an objection. The court may extend the time to file it. (C) *Hearing on an Objection*. If the alleged transferor files a timely objection,

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	the court must, after notice and a hearing, determine whether the transfer was for security. (D) *Failure to File an Agreement About the Rights of the Transferor and Transferee.* On a party in interest's motion and after notice and a hearing, the court must issue appropriate orders regarding the rights of the transferor and transferee if either one fails to file an agreement on voting the claim, receiving dividends on it, or participating in the estate's administration. (5) ***Serving an Objection or Motion; Notice of a Hearing.*** At least 30 days before a hearing, a copy of any objection filed under (2) or (4) or any motion filed under (3) or (4) must be mailed or delivered to either the transferor or transferee as appropriate, together with notice of the hearing.
(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.	**(f) Proof of Claim as Prima Facie Evidence of a Claim and Its Amount.** A proof of claim signed and filed in accordance with these rules is prima facie evidence of the claim's validity and amount ~~of the claim~~.
(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.	**(g) Proving the Ownership and Quantity of Grain.** To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

Committee Note

The language of most provisions in Rule 3001 have been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. Rule 3001(g) has not been restyled (except to add a title) because it was enacted by Congress,

P.L. 98-353, 98 Stat. 361, Sec. 354 (1984). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

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Rule 3002. Filing Proof of Claim or Interest	**Rule 3002. Filing a Proof of Claim or Interest**
(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.	**(a) Need to File.** Unless Rule 1019(c), 3003, 3004, or 3005 provides otherwise, every creditor must file a proof of claim—and an~~or~~ equity security holder must file a proof of ~~claim or~~ interest—~~-~~for the claim or interest to be allowed. A lien that secures a claim is not void solely because an entity failed to file a proof of claim.
(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.	**(b) Where to File.** The proof of claim or interest must be filed in the district where the case is pending and in accordance with Rule 5005.
(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. But in all these cases, the following exceptions apply: (1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of	**(c) Time to File.** In a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if ~~it is~~ filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13. In an involuntary Chapter 7 case, a proof of claim is timely ~~filed~~ if ~~it is~~ filed within 90 days after the order for relief is entered. These exceptions apply in all cases: (1) ***Governmental Unit.*** A governmental unit's proof of claim is timely if ~~it is~~ filed within 180 days after the order for relief. But a proof of claim resulting from a tax return filed under § 1308 is timely if ~~it is~~ filed within 180 days after the order for relief or within 60 days after the tax return is filed. On motion filed by a governmental unit before the time expires and for cause, the court may extend the time to file a proof of claim. (2) ***Infant or Incompetent Person.*** In the interests of justice, the court may extend the time for an infant or incompetent person—or a representative of either—to file a

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claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim. (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either. (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed. (4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct. (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed. (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file	proof of claim, but only if the extension will not unduly delay case administration. (3) ***Unsecured Claim That Arises from a Judgment.*** This paragraph (3) applies if a~~A~~n unsecured claim ~~that~~ arises in favor of an entity or becomes allowable because of a judgment ~~may be filed within 30 days after the judgment becomes final if it is~~ to recover money or property from that entity or a judgment that denies or avoids the entity's interest in property. The claim may be filed within 30 days after the judgment becomes final. But t~~T~~he claim must not be allowed if the judgment imposes a liability that is not satisfied—or a duty that is not performed—within the 30 days or any additional time set by the court. (4) ***Claim Arising from a Rejected Executory Contract or Unexpired Lease.*** A proof of claim for a claim that arises from a rejected executory contract or an unexpired lease may be filed within the time set by the court. (5) ***Notice That Assets May Be Available to Pay a Dividend.*** The clerk must, by mail, give at least 90 days' notice to creditors that a dividend payment appears possible and that proofs of claim must be filed by the date set forth in the notice if: (A) a notice of insufficient assets to pay a dividend had been given under Rule 2002(e); and (B) the trustee later notifies the court that a dividend appears possible. (6) ***Claim Secured by a Security Interest in the Debtor's Principal Residence.*** A proof of a claim secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim and

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a proof of claim. (7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if: (A) the proof of claim, together with the attachments required by Rule 3001(c)(2)(C), is filed not later than 70 days after the order for relief is entered; and (B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.	attachments required by Rule 3001(c)(2)(C) are filed within 70 days after the order for relief; and (B) the attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim within 120 days after the order for relief. (7) ***Extending the Time to File.*** On a creditor's motion filed before or after the time to file a proof of claim has expired, the court may extend the time to file by no more than 60 days from the date of its order. The motion may be granted if the court finds that the notice was insufficient -to give the creditor a reasonable time to file.

Committee Note

The language of Rule 3002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence</td><td>Rule 3002.1. Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case</td></tr>
<tr><td>(a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.</td><td>(a) In General. This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.</td></tr>
<tr><td>(b) NOTICE OF PAYMENT CHANGES; OBJECTION.

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

(2) Objection. A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.</td><td>(b) Notice of a Payment Change.

(1) Notice by the Claim Holder. The claim holder must file a notice of any change in the amount of an installment payment—including any change resulting from an interest-rate or escrow-account adjustment. At least 21 days before the new payment is due, the notice must be filed and served on:
• the debtor;
• the debtor's attorney; and
• the trustee.

If the claim arises from a home-equity line of credit, the court may modify this requirement.

(2) Party in Interest's Objection. A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments under § 1322(b)(5). Unless the court orders otherwise, if no motion is filed by the day before the new payment is due, the change goes into effect.</td></tr>
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(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.	**(c) Fees, Expenses, and Charges Incurred After the Case Was Filed; Notice by the Claim Holder.** The claim holder must file a notice itemizing all fees, expenses, and charges incurred after the case was filed that the holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges were incurred, the notice must be served on: • the debtor; • the debtor's attorney; and • the trustee.
(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).	**(d) Filing Notice as a Supplement to a Proof of Claim.** A notice under (b) or (c) must be filed as a supplement to the proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).
(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.	**(e) Determining Fees, Expenses, or Charges.** On a party in interest's motion filed within one year after the notice in (c) was served, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments under § 1322(b)(5).
(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on	**(f) Notice of the Final Cure Payment.** (1) ***Contents of a Notice.*** Within 30 days after the debtor completes all

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the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.	payments under a Chapter 13 plan, the trustee must file a notice: (A) stating that the debtor has paid in full the amount required to cure any default on the claim; and (B) informing the claim holder of its obligation to file and serve a response under (g). (2) ***Serving the Notice.*** The notice must be served on: • the claim holder; • the debtor; and • the debtor's attorney. (3) ***The Debtor's Right to File.*** The debtor may file and serve the notice if: (A) the trustee fails to do so; and (B) the debtor contends that the final cure payment has been made and all plan payments have been completed.
(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of	**(g) Response to a Notice of the Final Cure Payment.** (1) ***Required Statement.*** Within 21 days after the notice under (f) is served, the claim holder must file and serve a statement that: (A) indicates whether: (i) the claim holder agrees that the debtor has paid in full the amount required to cure any default on the claim; and (ii) the debtor is otherwise current on all payments under § 1322(b)(5); and (B) itemizes the required cure or postpetition amounts, if any,

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claim and is not subject to Rule 3001(f).	that the claim holder contends remain unpaid as of the statement's date. (2) ***Persons to be Served.*** The holder must serve the statement on: • the debtor; • the debtor's attorney; and • the trustee. (3) ***Statement to be a Supplement.*** The statement must be filed as a supplement to the proof of claim and is not subject to Rule 3001(f).
(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.	**(h) Determining the Final Cure Payment.** On the debtor's or trustee's motion filed within 21 days after the statement under (g) is served, the court must, after notice and a hearing, determine whether the debtor has cured the default and made all required postpetition payments.
(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions: (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.	**(i) Failure to Give Notice.** If the claim holder fails to provide any information as required by (b), (c), or (g), the court may, after notice and a hearing, take one or both of these actions: (1) preclude the holder from presenting the omitted information in any form as evidence in a contested matter or adversary proceeding in the case—unless the failure was substantially justified or is harmless; and (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Committee Note

The language of Rule 3002.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent

throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases	**Rule 3003. Chapter 9 or 11—Filing a Proof of Claim or Equity Interest**
(a) APPLICABILITY OF RULE. This rule applies in chapter 9 and 11 cases.	**(a) Scope.** This rule applies only in a Chapter 9 or 11 case.
(b) SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECURITY HOLDERS. (1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to § 521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule. (2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.	**(b) Scheduled Liabilities and Listed Equity Security Holders as Prima Facie Evidence of Validity and Amount.** (1) ***Creditor's Claim.*** An entry on the schedule of liabilities filed under § 521(a)(1)(B)(i) is prima facie evidence of the validity and the amount of a creditor's claim—except for a claim scheduled as disputed, contingent, or unliquidated. Filing a proof of claim is unnecessary except as provided in (c)(2). (2) ***Interest of an Equity Security Holder.*** An entry on the list of equity security holders filed under Rule 1007(a)(3) is prima facie evidence of the validity and the amount of the equity interest. Filing a proof of the interest is unnecessary except as provided in (c)(2).
(c) FILING PROOF OF CLAIM. (1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule. (2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be	**(c) Filing a Proof of Claim.** (1) ***Who May File a Proof of Claim.*** A creditor or indenture trustee may file a proof of claim. (2) ***Who Must File a Proof of Claim or Interest.*** A creditor or equity security holder whose claim or interest is not scheduled—or is scheduled as disputed, contingent, or unliquidated—must file a proof of claim or interest. A creditor who fails to do so will not be treated as a creditor for that claim for voting and distribution.

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treated as a creditor with respect to such claim for the purposes of voting and distribution. (3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6). (4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code. (5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.	(3) ***Time to File.*** The court must set the time to file a proof of claim or interest and may, for cause, extend the time. If the time has expired, the proof of claim or interest may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (3), (4), and (7). (4) ***Proof of Claim by an Indenture Trustee.*** An indenture trustee may file a proof of claim on behalf of all known or unknown holders of securities issued under the trust instrument under which it is trustee. (5) ***Effect of Filing a Proof of Claim or Interest.*** A proof of claim or interest signed and filed under (c) supersedes any scheduling ~~under § 521(a)(1)~~ of the claim or interest under § 521(a)(1).
(d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.	**(d) Treating a Nonrecord Holder of a Security as the Record Holder.** For the purpose of Rules 3017, 3018, and 3021 and receiving notices, an entity that is not a record holder of a security may file a statement setting forth facts that entitle the entity to be treated as the record holder. A party in interest may file an objection to the statement.

Committee Note

The language of Rule 3003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3004. Filing of Claims by Debtor or Trustee	**Rule 3004. Proof of Claim Filed by the Debtor or Trustee for a Creditor**
If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.	**(a) Filing by the Debtor or Trustee.** If a creditor does not file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), the debtor or trustee may do so within 30 days after the creditor's time to file expires. **(b) Notice by the Clerk.** The clerk must promptly give notice of the filing to: • the creditor; • the debtor; and • the trustee.

Committee Note

The language of Rule 3004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor	**Rule 3005. Filing a Proof of Claim or Accepting or Rejecting a Plan by a Surety, Endorser, Guarantor, or Other Codebtor**
(a) FILING OF CLAIM. If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.	**(a) In General.** If a creditor fails to file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), it may be filed by an entity that, along with the debtor, is or may be liable to the creditor or has given security for the creditor's debt. The entity must do so within 30 days after the creditor's time to file expires. A distribution on such a claim may be made only on satisfactory proof that the distribution will diminish the original debt ~~will be diminished by the distribution~~.
(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.	**(b) Accepting or Rejecting a Plan in a Creditor's Name.** An entity that has filed a proof of claim on a creditor's behalf ~~of a creditor~~ under (a) may accept or reject a plan in the creditor's name. If the creditor's name is unknown, the entity may do so in its own name. But the creditor must be substituted for the entity on that claim if the creditor: (1) files a proof of claim within the time permitted by Rule 3003(c); or (2) files notice, before the plan is confirmed, of an intent to act ~~in~~ on the creditor's own behalf.

Committee Note

The language of Rule 3005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan</td><td>Rule 3006. Withdrawing a Proof of Claim; Effect on a Plan</td></tr>
<tr><td>A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.</td><td>(a) Notice of Withdrawal; Limitations. A creditor may withdraw a proof of claim by filing a notice of withdrawal. But unless the court orders otherwise after notice and a hearing, a creditor may not withdraw a proof of claim if:
(1) an objection to it has been filed;
(2) a complaint has been filed against the creditor in an adversary proceeding; or
(3) the creditor has accepted or rejected the plan or has participated significantly in the case.
(b) Notice of the Hearing; Order Permitting Withdrawal. Notice of the hearing must be served on:
• the trustee or debtor in possession; and
• any creditors' committee elected under § 705(a) or appointed under § 1102.
The court's order permitting a creditor to withdraw a proof of claim may contain any terms and conditions the court considers proper.
(c) Effect of Withdrawing a Proof of Claim. Unless the court orders otherwise, an authorized withdrawal constitutes withdrawal of any related acceptance or rejection of a plan.</td></tr>
</table>

Committee Note

The language of Rule 3006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3007. Objections to Claims	**Rule 3007. Objecting to a Claim**
(a) TIME AND MANNER OF SERVICE. (1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. (2) *Manner of Service.* (A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and (i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or (ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h). (B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.	**(a) Time and Manner of Serving the Objection.** (1) ***Time to Serve.*** An objection to a claim and a notice of the objection must be filed and served at least 30 days before a scheduled hearing on the objection or any deadline for the claim holder to request a hearing. (2) ***Whom to Serve; Manner of Service.*** (A) *Serving the Claim Holder.* The notice—substantially conforming to Form 420B—and objection must be served by mail on the person the claim holder most recently designated to receive notices on the claim holder's original or latest amended proof of claim, at the address so indicated. If the objection is to a claim of: (i) the United States or one of its officers or agencies, service must also be made as if it were a summons and complaint under Rule 7004(b)(4) or (5); or (ii) an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, service must also be made under Rule 7004(h). (B) *Serving Others.* The notice and objection must also be served, by mail (or other permitted means), on: • the debtor or debtor in possession; • the trustee; and • if applicable, the entity that filed the proof of claim under Rule 3005.

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(b) DEMAND FOR RELIEF REQUIRING AN ADVERSARY PROCEEDING. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.	**(b) Demanding Relief That Requires an Adversary Proceeding Not Permitted.** In objecting to a claim, a party in interest must not include a demand for a type of relief specified in Rule 7001 but may include the objection in an adversary proceeding.
(c) LIMITATION ON JOINDER OF CLAIMS OBJECTIONS. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.	**(c) Limit on Omnibus Objections.** Unless the court orders otherwise or (d) permits, objections to more than one claim may not be joined in a single objection.
(d) OMNIBUS OBJECTION. Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or	**(d) Omnibus Objection.** Subject to (e), objections to more than one claim may be joined in a single objection if: (1) all the claims were filed by the same entity; or (2) the objections are based solely on grounds that the claims should be disallowed, in whole or in part, because they: (A) duplicate other claims; (B) were filed in the wrong case; (C) have been amended by later proofs of claim; (D) were not timely filed; (E) have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (F) were presented in a form that does not comply with applicable rules and the objection states that ~~because of the noncompliance~~ the objector is therefore unable to determine a claim's validity; ~~(F)~~(G) are interests, not claims; or

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(8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.	(H) assert a priority in an amount that exceeds the maximum amount allowable under § 507.
(e) REQUIREMENTS FOR OMNIBUS OBJECTION. An omnibus objection shall: (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection; (2) list claimants alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claimants by category of claims; (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds; (4) state in the title the identity of the objector and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.	**(e) Required Content of an Omnibus Objection.** An omnibus objection must: (1) state in a conspicuous place that claim holders can find their names and claims in the objection; (2) list the claim holders alphabetically, provide a cross-reference to claim numbers, and, if appropriate, list claim holders by category of claims; (3) state for each claim the grounds for the objection and provide a cross-reference to the pages where pertinent information about the grounds appears; (4) state in the title the objector's identity and the grounds for the objections; (5) be numbered consecutively with other omnibus objections filed by the same objector; and (6) contain objections to no more than 100 claims.
(f) FINALITY OF OBJECTION. The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.	**(f) Finality of an Order When Objections Are Joined.** When objections are joined, the finality of an order regarding any claim must be determined as though the claim had been subject to an individual objection.

Committee Note

The language of Rule 3007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3008. Reconsideration of Claims	**Rule 3008. Reconsidering an Order Allowing or Disallowing a Claim**
A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.	A party in interest may move to reconsider an order allowing or disallowing a claim. After notice and a hearing, the court must issue an appropriate order.

Committee Note

The language of Rule 3008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case	**Rule 3009. Chapter 7—Paying Dividends**
In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.	In a Chapter 7 case, dividends to creditors on claims that have been allowed must be paid as soon as practicable. A dividend check must be made payable to and mailed to the creditor. But if a power of attorney authorizing another entity to receive payment has been filed under Rule 9010, the check must be: (a) made payable to both the creditor and the other entity; and (b) mailed to the other entity.

Committee Note

The language of Rule 3009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3010. Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13	**Rule 3010. Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13—Limits on Small Dividends and Payments**
(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.	**(a) Chapter 7.** In a Chapter 7 case, the trustee must not distribute to a creditor any dividend less than $5 unless authorized to do so by local rule or court order. A dividend not distributed must be treated in the same manner as unclaimed funds under § 347.
(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.	**(b) Subchapter V of Chapter 11, Chapter 12, and Chapter 13.** In a case under Subchapter V of Chapter 11, or under Chapter 12 or 13, the trustee must not distribute to a creditor any payment less than $15 unless authorized to do so by local rule or court order. Distribution must be made when accumulated funds total $15 or more. Any remaining funds must be distributed with the final payment.

Committee Note

The language of Rule 3010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL[1]	REVISION
Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13	**Rule 3011. Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13—Listing Unclaimed Funds**
(a) The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347 of the Code.	**(a) Filing the List.** The trustee must: (1) file a list of the known names and addresses of entities entitled to payment from any remaining property of the estate that is paid into court under § 347(a); and (2) include the amount due each entity.
(b) On the court's website, the clerk must provide searchable access to information about funds deposited under § 347(a). The court may, for cause, limit access to information about funds in a specific case.	**(b) Making the Information Searchable.** On the court's website, the clerk must provide searchable access to information about funds deposited under § 347(a). The court may, for cause, limit access to that information ~~about funds~~ in a specific case.

Committee Note

The language of Rule 3011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

[1] Rule 3011 original text shows changes on track to go into effect on December 1, 2023.

ORIGINAL	REVISION
Rule 3012. Determining the Amount of Secured and Priority Claims	**Rule 3012. Determining the Amount of a Secured or Priority Claim**
(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine: (1) the amount of a secured claim under § 506(a) of the Code; or (2) the amount of a claim entitled to priority under § 507 of the Code.	**(a) In General.** On a party in interest's request, after notice and a hearing, the court may determine the amount of a secured claim under § 506(a) or the amount of a priority claim under § 507. The notice must be served on: • the claim holder; and • any other entity the court designates.
(b) REQUEST FOR DETERMINATION; HOW MADE. Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.	**(b) Determining the Amount of a Claim.** (1) ***Secured Claim.*** Except as provided in (c), a request to determine the amount of a secured claim may be made by motion, in an objection to a claim, or in a plan filed in a Chapter 12 or 13 case. If the request is included in a plan, a copy of the plan must be served on the claim holder and any other entity the court designates as if it were a summons and complaint under Rule 7004. (2) ***Priority Claim.*** A request to determine the amount of a priority claim may be made only by motion after the claim is filed or in an objection to the claim.
(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.	**(c) Governmental Unit's Secured Claim.** A request to determine the amount of a governmental unit's secured claim may be made only by motion—or in an objection to a claim—filed after: (1) the governmental unit has filed the proof of claim; or (2) the time to file it under Rule 3002(c)(1) has expired.

Committee Note

The language of Rule 3012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3013. Classification of Claims and Interests	**Rule 3013. Determining Classes of Creditors and Equity Security Holders**
For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122, 1222(b)(1), and 1322(b)(1) of the Code.	For purposes of a plan and its acceptance, the court may—on motion after hearing on notice as the court ~~directs~~orders—determine classes of creditors and equity security holders under §§ 1122, 1222(b)(1), and 1322(b)(1).

Committee Note

The language of Rule 3013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3014. Chapter 9 or 11—Secured Creditors' Election to Apply § 1111(b)**
An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.	**(a) Time for an Election.** (1) ***Chapter 9 or 11.*** In a Chapter 9 or 11 case, before a hearing on the disclosure statement concludes, a class of secured creditors may elect to apply § 1111(b)(2). If the disclosure statement is conditionally approved under Rule 3017.1 and a final hearing on it is not held, the election must be made within the time provided in Rule 3017.1(a)(2). In either situation, the court may set another time for the election. (2) ***Subchapter V of Chapter 11.*** In a case under Subchapter V of Chapter 11 in which § 1125 does not apply, the election may be made no later than a date the court sets. ~~(a)~~(b) **Signed Writing; Binding Effect**. The election must be made in writing and signed, unless made at the hearing on the disclosure statement. An election made by the majorities required by § 1111(b)(1)(A)(i) is binding on all members of the class.

Committee Note

The language of Rule 3014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case	**Rule 3015. Chapter 12 or 13—Time to File a Plan; Nonstandard Provisions; Objection to Confirmation; Effect of Confirmation; Modifying a Plan**
(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.	**(a) Time to File a Chapter 12 Plan.** The debtor must file a Chapter 12 plan: (1) with the petition; or (2) within the time prescribed by § 1221.
(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.	**(b) Time to File a Chapter 13 Plan.** (1) ***In General.*** The debtor must file a Chapter 13 plan with the petition or within 14 days after the petition is filed. The time to file ~~may~~ must not be extended except for cause and on notice as the court ~~directs~~orders. (2) ***Case Converted to Chapter 13.*** If a case is converted to Chapter 13, the plan must be filed within 14 days after conversion. The time ~~may~~ must not be extended except for cause and on notice as the court ~~directs~~orders.
(c) FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.	**(c) Form of a Chapter 13 Plan.** (1) ***In General.*** In filing a Chapter 13 plan, the debtor must use Form 113, unless the court has adopted a local form under Rule 3015.1. (2) ***Nonstandard Provision.*** With either form, a nonstandard provision is effective only if it is included in the section of the form that is designated for nonstandard provisions and is identified in accordance with any other requirements of the form. A nonstandard provision is one that is not included in the form or deviates from it.

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(d) NOTICE. If the plan is not included with the notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.	**(d) Serving a Copy of the Plan.** If the plan was not included with the notice of a confirmation hearing mailed under Rule 2002, the debtor must serve the plan on the trustee and creditors when it is filed.
(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under subdivision (a) or (b) of this rule.	**(e) Copy to the United States Trustee.** The clerk must promptly send to the United States trustee a copy of any plan filed under (a) or (b) or any modification of it.
(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.	**(f) Objection to Confirmation; Determining Good Faith When No Objection is Filed.** (1) ***Serving an Objection.*** An entity that objects to a plan's confirmation ~~of a plan~~ must file and serve the objection on the debtor, trustee, and any other entity the court designates, and must send a copy to the United States trustee. Unless the court orders otherwise, the objection must be filed, served, and sent at least ~~seven~~ 7 days before the date set for the confirmation hearing. The objection is governed by Rule 9014. (2) ***When No Objection Is Filed.*** If no objection is timely filed, the court may, without receiving evidence, determine that the plan has been proposed in good faith and not by any means forbidden by law.
(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: (1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to	**(g) Effect of Confirmation of a Chapter 12 or 13 Plan on the Amount of a Secured Claim; Terminating the Stay.** (1) ***Secured Claim.*** When a plan is confirmed, the amount of a secured claim—determined in the plan under Rule 3012—becomes binding on the claim holder ~~of the claim~~. That is the effect even if the holder files a contrary proof of claim, the debtor

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the claim has been filed; and (2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.	schedules that claim, or an objection to the claim is filed. (2) ***Terminating the Stay.*** When a plan is confirmed, a request in the plan to terminate the stay imposed under § 362(a), § 1201(a), or § 1301(a) is granted.
(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.	**(h) Modifying a Plan After It Is Confirmed.** (1) ***Request to Modify a Plan After It Is Confirmed.*** A request to modify a confirmed plan under § 1229 or § 1329 must identify the proponent and include the proposed modification. Unless the court orders otherwise for creditors not affected by the modification, the clerk or the court's designee must: (A) give the debtor, trustee, and creditors at least 21 days' notice, by mail, of the time to file objections and the date of any hearing; (B) send a copy of the notice to the United States trustee; and (C) include a copy or summary of the modification. (2) ***Objecting to a Modification.*** Rule 9014 governs an objection to a proposed modification. An objection must be filed and served on: • the debtor; • the trustee; and • any other entity the court designates. A copy must also be sent to the United States trustee.

Committee Note

The language of Rule 3015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case	**Rule 3015.1 Requirements for a Local Form for a Chapter 13 Plan**
Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:	As an exception to Rule 9029(a)(1), a district may require that a single local form be used for a ~~chapter~~ Chapter 13 plan instead of ~~Official~~ Form 113 if it:
(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;	(a) is adopted for the district after public notice and an opportunity for comment;
(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;	(b) numbers and labels each paragraph in boldface type with a heading that states its general subject matter;
(c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:	(c) includes an opening paragraph for the debtor to indicate that the plan does or does not:
(1) contain any nonstandard provision;	(1) contain a nonstandard provision;
(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or	(2) limit the amount of a secured claim based on a valuation of the collateral; or
(3) avoid a security interest or lien;	(3) avoid a security interest or lien;
(d) the Local Form contains separate paragraphs for:	(d) contains separate paragraphs relating to:
(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;	(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;
(2) paying a domestic-support obligation;	(2) paying a domestic support obligation;
(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and	(3) paying a claim described in the final paragraph of § 1325(a); and
(4) surrendering property that secures a claim with a request that	(4) surrendering property that secures a claim and requesting that the stay under § 362(a) or 1301(a) related to the property be terminated; and
	(e) contains a final paragraph providing a place for:
	(1) nonstandard provisions as defined in Rule 3015(c), with a warning that any nonstandard provision placed elsewhere ~~in the plan~~ is void; and

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the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and (e) the Local Form contains a final paragraph for: (1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and (2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.	(2) a certification by the debtor's attorney, or by an unrepresented debtor, that the plan does not contain any nonstandard provision except as set out in the final paragraph.

Committee Note

The language of Rule 3015.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3016. Chapter 9 or 11—Plan and Disclosure Statement**
(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.	**(a) In General.** In a Chapter 9 or 11 case, every proposed plan or modification must be dated. In a Chapter 11 case, the plan or modification must also name the entity or entities proposing or filing it.
(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.	**(b) Filing a Disclosure Statement.** (1) ***In General.*** In a Chapter 9 or 11 case, unless (2) applies, the disclosure statement, if required by § 1125—or evidence showing compliance with § 1126(b)—must be filed with the plan or at another time set by the court. (2) ***Providing Information Under § 1125(f)(1).*** A plan intended to provide adequate information under § 1125(f)(1) must be so designated. Rule 3017.1 then applies as if the plan were a disclosure statement.
(c) INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.	**(c) Injunction in a Plan.** If the plan provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction.
(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a small business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.	**(d) Form of a Disclosure Statement and Plan in a Small Business Case or a Case Under Subchapter V of Chapter 11.** In a small business case or a case under Subchapter V of Chapter 11, the court may approve a disclosure statement that substantially conforms to Form 425B and confirm a plan that substantially conforms to Form 425A—or, in either instance, to a standard form approved by the court.

Committee Note

The language of Rule 3016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case	**Rule 3017. Chapter 9 or 11—Hearing on a Disclosure Statement and Plan**
(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.	**(a) Hearing on a Disclosure Statement; Objections.** (1) ***Notice and Hearing.*** (A) *Notice.* Except as provided in Rule 3017.1 for a small business case, the court must hold a hearing on a disclosure statement filed under Rule 3016(b) and any objection or modification to it. The hearing must be held on at least 28 days' notice under Rule 2002(b) to: • the debtor; • creditors; • equity security holders; and • other parties in interest. (B) *Limit on Sending the Plan and Disclosure Statement.* A copy of the plan and disclosure statement must be mailed with the notice of a hearing to: • the debtor; • any trustee or appointed committee; • the Securities and Exchange Commission; and • any party in interest that, in writing, requests a copy of the disclosure statement or plan.

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	(2) ***Objecting to a Disclosure Statement.*** An objection to a disclosure statement must be filed and served before the disclosure statement is approved or by an earlier date the court sets. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. (3) ***Chapter 11—Copies to the United States Trustee.*** In a Chapter 11 case, a copy of every item required to be served or mailed under this Rule 3017(a) must also be sent to the United States trustee within the prescribed time.
(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.	**(b) Court Ruling on the Disclosure Statement.** After the hearing, the court must determine whether the disclosure statement should be approved.
(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.	**(c) Time to Accept or Reject a Plan and for the Confirmation Hearing.** At the time or before the disclosure statement is approved, the court: (1) must set a deadline for the holders of claims and interests to accept or reject the plan; and (2) may set a date for a confirmation hearing.

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(d) TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY SECURITY HOLDERS. Upon approval of a disclosure statement,—[2] except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee, (1) the plan or a court-approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the	**(d) Hearing on Confirmation.** (1) ***~~Transmitting~~ Sending the Plan and Related Documents.*** (A) *In General.* After the disclosure statement has been approved, the court must order the debtor in possession, the trustee, the plan proponent, or the clerk to mail the following items to creditors and equity security holders and, in a Chapter 11 case, to send a copy of each to the United States trustee: (i) the court-approved disclosure statement; (ii) the plan or a court-approved summary of it; (iii) a notice of the time to file acceptances and rejections of the plan; and (iv) any other information as the court ~~directs~~orders—including any opinion approving the disclosure statement or a court-approved summary of the opinion. (B) *Exception.* The court may vary the requirements for an unimpaired class of creditors or equity security holders.

[2] So in original. The comma probably should not appear.

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court opinion or the plan shall be provided on request of a party in interest at the plan proponent'sexpense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailedto any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed tomembers of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall includeholders of stock, bonds, debentures, notes, and other securities of record onthe date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.	(2) ***Time to Object to a Plan; Notice of the Confirmation Hearing.*** Notice of the time to file an objection to a plan's confirmation and the date of the hearing on confirmation must be mailed to creditors and equity security holders in accordance with Rule 2002(b). A ballot that conforms to Form 314 must also be mailed to creditors and equity security holders who are entitled to vote on the plan. If the court's opinion is not sent (or only a summary of the plan was sent), a party in interest may request a copy of the opinion or plan, which must be provided at the plan proponent's expense. (3) ***Notice to Unimpaired Classes.*** If the court orders that the disclosure statement and plan (or the plan summary) not be mailed to an unimpaired class, a notice that the class has been designated ~~in the plan~~ as unimpaired must be mailed to the class members. The notice must show: (A) the name and address of the person from whom the plan (or summary) and the disclosure statement may be obtained at the plan proponent's expense; (B) the time to file an objection to the plan's confirmation; and (C) the date of the confirmation hearing.

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	(4) ***Definition of "Creditors" and "Equity Security Holders."*** In this Rule 3017(d), "creditors" and "equity security holders" include record holders of stock, bonds, debentures, notes, and other securities on the date the order approving the disclosure statement is entered—or another date the court sets for cause and after notice and a hearing.
(e) TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.	**(e) Procedure for Sending Information to Beneficial Holders of Securities.** At the hearing under (a), the court must: (1) determine the adequacy of the procedures for sending the documents and information listed in (d)(1) to beneficial holders of stock, bonds, debentures, notes, and other securities; and (2) issue any appropriate orders.
(f) NOTICE AND TRANSMISSION OF DOCUMENTS TO ENTITIES SUBJECT TO AN INJUNCTION UNDER A PLAN. If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with: (1) at least 28 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and to the extent feasible, a copy of the plan and disclosure statement.	**(f) Sending Information to Entities Subject to an Injunction.** (1) ***Timing of the Notice.*** This Rule 3017(f) applies if, under a plan, an entity that is not a creditor or equity security holder is subject to an injunction against conduct not otherwise enjoined by the Code. At the hearing under (a), the court must consider procedures to provide the entity with at least 28 days' notice of: (A) the time to file an objection; and (B) the date of the confirmation hearing. (2) ***Contents of the Notice.*** The notice must: (A) provide the information required by Rule 2002(c)(3); and (B) if feasible, include a copy of the plan and disclosure statement.

Committee Note

The language of Rule 3017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11	**Rule 3017.1. Disclosure Statement in a Small Business Case or a Case Under Subchapter V of Chapter 11**
(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall: (1) fix a time within which the holders of claims and interests may accept or reject the plan; (2) fix a time for filing objections to the disclosure statement; (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and (4) fix a date for the hearing on confirmation.	**(a) Conditionally Approving a Disclosure Statement.** This section (a) applies inIn a small business case or in a case under Subchapter V of Chapter 11 in which the court has ordered that § 1125 applies. the The court may, on motion of the plan proponent or on its own, conditionally approve a disclosure statement filed under Rule 3016. On or before doing so, the court must: (1) set the time within which the claim holders and interest holders may accept or reject the plan; (2) set the time to file an objection to the disclosure statement; (3) if a timely objection is filed, set the date to hold the hearing on final approval of the disclosure statement if a timely objection is filed; and (4) set a date for the confirmation hearing.
(b) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).	**(b) *Effect of a Conditional Approval.*** Rule 3017(a)–(c) and (e) do not apply to a conditionally approved disclosure statement. But conditional approval is considered approval in applying Rule 3017(d).

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(c) FINAL APPROVAL. (1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. (2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. (3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.	**(c) Time to File an Objection; Date of a Hearing.** (1) ***Notice.*** Notice must be given under Rule 2002(b) of the time to file an objection and the date of a hearing to consider final approval of the disclosure statement. The notice may be combined with notice of the confirmation hearing. (2) ***Time to File an Objection to the Disclosure Statement.*** An objection to the disclosure statement must be filed before ~~the disclosure statement~~it is finally approved or by an earlier date set by the court. The objection must be served on: • the debtor; • the trustee; • any appointed committee; and • any other entity the court designates. A copy must also be sent to the United States trustee. (3) ***Hearing on an Objection to the Disclosure Statement.*** If a timely objection to the disclosure statement is filed, the court must hold a hearing on final approval either before or combined with the confirmation hearing.

Committee Note

The language of Rule 3017.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement	**Rule 3017.2. Setting Dates in a Case Under Subchapter V of Chapter 11 in Which There Is No Disclosure Statement**
In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall: (a) fix a time within which the holders of claims and interests may accept or reject the plan; (b) fix a date on which an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan; (c) fix a date for the hearing on confirmation; and (d) fix a date for transmitting the plan, notice of the time within which the holders of claims and interests may accept or reject it, and notice of the date for the hearing on confirmation.	In a case under Subchapter V of Chapter 11 in which § 1125 does not apply, the court must set: (a) a time within which the holders of claims and interests may accept or reject the plan; (b) a date on which an equity security holder or a creditor whose claim is based on a security must be the record holder of the security in order to be eligible to accept or reject the plan; (c) a date for the hearing on confirmation; and (d) a date for sending the plan, notice of the time within which the holders of claims and interests may accept or reject it, and notice of the date for the hearing on confirmation.

Committee Note

The language of Rule 3017.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case	**Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan**
(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.	**(a) In General.** (1) ***Who May Accept or Reject a Plan.*** Within the time set by the court under Rule 3017, 3017.1, or 3017.2, a claim holder or equity security holder may accept or reject a Chapter 9 or Chapter 11 plan under § 1126. (2) ***Claim Based on a Security of Record.*** Subject to (b), an equity security holder or creditor whose claim is based on a security of record may accept or reject a plan only if the equity security holder or creditor is the holder of record: (A) on the date the order approving the disclosure statement is entered; or (B) on another date the court sets: (i) under Rule 3017.2; or (ii) after notice and a hearing and for cause. (3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. (4) ***Temporarily Allowing a Claim or Interest.*** Even if an objection to a claim or interest has been filed, the court may, after notice and a hearing, temporarily allow a claim or interest in an amount that the court considers proper for voting to accept or reject a plan.
(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. An equity security holder or creditor whose claim is based on a security of record who accepted or	**(b) Treatment of Acceptances or Rejections Obtained Before the Petition Was Filed.** (1) ***Acceptance or Rejection by a Nonholder of Record.*** An equity security holder or creditor who

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rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.	accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan under § 1126(b) if the equity security holder or creditor: (A) has a claim or interest based on a security of record; and (B) was not the security's holder of record on the date specified in the solicitation of the acceptance or rejection. (2) ***Defective Solicitations.*** A holder of a claim or interest who accepted or rejected a plan before the petition was filed will not be considered to have accepted or rejected the plan if the court finds, after notice and a hearing, that: (A) the plan was not sent to substantially all creditors and equity security holders of the same class; (B) an unreasonably short time was prescribed for those creditors and equity security holders to accept or reject the plan; or (C) the solicitation did not comply with § 1126(b).
(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or	**(c) Form for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.** (1) ***Form.*** An acceptance or rejection of a plan must: (A) be in writing; (B) identify the plan or plans; (C) be signed by the creditor or equity security holder—or an authorized agent; and (D) conform to Form 314. (2) ***When More Than One Plan Is Distributed.*** If more than one plan is

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preferences among the plans so accepted.	~~transmitted~~ sent under Rule 3017, a creditor or equity security holder may accept or reject one or more plans and may indicate preferences among ~~the plans~~those accepted.
(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.	**(d) Partially Secured Creditor.** If a creditor's claim has been allowed in part as a secured claim and in part as an unsecured claim, the creditor may accept or reject a plan in both capacities.

Committee Note

The language of Rule 3018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case</td><td>Rule 3019. Chapter 9 or 11—Modifying a Plan</td></tr>
<tr><td>(a) MODIFICATION OF PLAN BEFORE CONFIRMATION. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.</td><td>(a) Modifying a Plan Before Confirmation. In a Chapter 9 or 11 case, after a plan has been accepted and before confirmation, the plan proponent may file a modification. The modification is considered accepted by any creditor or equity security holder who has accepted it in writing. For others who have not accepted it in writing but have accepted the plan, the modification is considered accepted if, after notice and a hearing, the court finds that it does not adversely change the treatment of their claims or interests. The notice must be served on:
• the trustee;
• any appointed committee; and
• any other entity the court designates.</td></tr>
<tr><td>(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification.</td><td>(b) Modifying a Plan After Confirmation in an Individual Debtor's Chapter 11 Case.
(1) In General. When a plan in an individual debtor's Chapter 11 case has been confirmed, a request to modify it under § 1127(e) is governed by Rule 9014. The request must identify the proponent, and the proposed modification must be filed with it.
(2) Time to File an Objection; Service.
(A) Time. Unless the court orders otherwise for creditors who are not affected by the proposed modification, the clerk—or the court's designee—must give the debtor, trustee, and creditors at least 21 days' notice, by mail, of:
(i) the time to file an objection; and</td></tr>
</table>

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Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.	(ii) if an objection is filed, the date of a hearing to consider the proposed modification. (B) *Service.* Any objection must be served on: • the debtor; • the entity proposing the modification; • the trustee; and • any other entity the court designates. A copy of the notice, modification, and objection must also be sent to the United States trustee.
(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.	**(c) Modifying a Plan After Confirmation in a Case Under Subchapter V of Chapter 11.** In a case under Subchapter V of Chapter 11, Rule 9014 governs a request to modify the plan under § 1193(b) or (c) ~~is governed by Rule 9014~~, and ~~the provisions of~~ (b) ~~in~~ of this rule ~~apply~~applies.

Committee Note

The language of Rule 3019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case</td><td>Rule 3020. In a Chapter 11 Case, Depositing Funds Before the Plan is Confirmed; Confirmation in a Chapter 9 or 11 Case</td></tr>
<tr><td>(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.</td><td>(a) Chapter 11—Depositing Funds Before the Plan is Confirmed. Before a plan is confirmed in a Chapter 11 case, the court may order that the consideration required to be distributed upon confirmation be deposited with the trustee or debtor in possession. Any funds deposited must be kept in a special account established for the sole purpose of making the distribution.</td></tr>
<tr><td>(b) OBJECTION TO AND HEARING ON CONFIRMATION IN A CHAPTER 9 OR CHAPTER 11 CASE.

(1) Objection. An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

(2) Hearing. The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.</td><td>(b) Chapter 9 or 11—Objecting to Confirmation; Confirmation Hearing.

(1) Objecting to Confirmation. In a Chapter 9 or 11 case, an objection to confirmation is governed by Rule 9014. The objection must be filed and served within the time set by the court and be served on:
• the debtor;
• the trustee;
• the plan proponent;
• any appointed committee; and
• any other entity the court designates.

(2) Copy to the United States Trustee. In a Chapter 11 case, the objecting party must send a copy of the objection to the United States trustee within the time set to file an objection.

(3) Hearing on the Objection; Procedure If No Objection Is Filed. After notice and a hearing as provided in Rule 2002, the court must rule on confirmation. If no objection is timely filed, the court may, without receiving</td></tr>
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<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td></td><td>evidence, determine that the plan was proposed in good faith and not by any means forbidden by law.</td></tr>
<tr><td>(c) ORDER OF CONFIRMATION.

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).</td><td>(c) Confirmation Order.

(1) Form of the Order; Injunctive Relief. A confirmation order must conform to Form 315. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order must:

(A) describe the acts enjoined in reasonable detail;

(B) be specific in its terms regarding the injunction; and

(C) identify the entities subject to the injunction.

(2) Notice of Confirmation. Notice of entry of a confirmation order must be promptly mailed to:

• the debtor;
• the trustee;
• creditors;
• equity security holders;
• other parties in interest; and
• if known, identified entities subject to an injunction described in (1).

(3) Copy to the United States Trustee. In a Chapter 11 case, a copy of the order must be sent to the United States trustee under Rule 2002(k).</td></tr>
<tr><td>(d) RETAINED POWER. Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.</td><td>(d) Retained Power to Issue Future Orders Relating to Administration. After a plan is confirmed, the court may continue to issue orders needed to administer the estate.</td></tr>
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(e) STAY OF CONFIRMATION ORDER. An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(e) Staying a Confirmation Order.** Unless the court orders otherwise, a confirmation order is stayed for 14 days after its entry.

Committee Note

The language of Rule 3020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3021. Distribution Under Plan	**Rule 3021. Distributing Funds Under a Plan**
Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.	**(a) In General.** After confirmation and when any stay under Rule 3020(e) expires, payments under the plan must be distributed to: • creditors whose claims have been allowed; • interest holders whose interests have not been disallowed; and • indenture trustees whose claims under Rule 3003(c)(5) have been allowed. **(b) Definition of "Creditors" and "Interest Holders."** In this Rule 3021: (1) "creditors" include record holders of bonds, debentures, notes, and other debt securities as of the initial distribution date, unless the plan or confirmation order states a different date; and (2) "interest holders" include record holders of stock and other equity securities as of the initial distribution date, unless the plan or confirmation order states a different date.

Committee Note

The language of Rule 3021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 3022. Final Decree in Chapter 11 Reorganization Case	**Rule 3022. Chapter 11—Final Decree**
After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.	After the estate is fully administered in a Chapter 11 case, the court must, on its own or on a party in interest's motion, enter a final decree closing the case.

Committee Note

The language of Rule 3022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

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PART IV—THE DEBTOR: DUTIES AND BENEFITS	**PART IV. THE DEBTOR'S DUTIES AND BENEFITS**
Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements	**Rule 4001. Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Using Cash Collateral; Obtaining Credit; Various Agreements**
(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY. (1) *Motion*. A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct. (2) *Ex Parte Relief*. Relief from a stay under § 362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the	**(a) Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property.** (1) ***Motion.*** A motion under § 362(d) for relief from the automatic stay—or a motion under § 363(e) to prohibit or condition the use, sale, or lease of property—must comply with Rule 9014. The motion must be served on: (A) the following, as applicable: • a committee elected under § 705 or appointed under § 1102; • the committee's authorized agent; or • the creditors included on the list filed under Rule 1007(d) if the case is a Chapter 9 or Chapter 11 case and no committee of unsecured creditors has been appointed under § 1102; and (B) any other entity the court designates. (2) ***Relief Without Notice.*** Relief from a stay under § 362(a)—or a request under § 363(e) to prohibit or condition the use, sale, or lease of property—may be granted without prior notice only if: (A) specific facts—shown by either an affidavit or a verified motion—

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reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) or § 363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion. (3) *Stay of Order*. An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	clearly demonstrate that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party or its attorney can be heard in opposition; and (B) the movant's attorney certifies to the court in writing what efforts, if any, have been made to give notice and why it should not be required. (3) ***Notice of Relief; Motion for Reinstatement or Reconsideration.*** (A) *Notice of Relief.* A party who obtains relief under (2) and under § 362(f) or § 363(e) must: (i) immediately give oral notice both to the debtor and to the trustee or the debtor in possession; and (ii) promptly send them a copy of the order granting relief. (B) *Motion for Reinstatement or Reconsideration.* On 2 days' notice to the party who obtained relief under (2)—or on shorter notice as the court may order—the adverse party may move to reinstate the stay or reconsider the order prohibiting or conditioning the use, sale, or lease of property. The court must proceed expeditiously to hear and decide the motion. (4) ***Stay of an Order Granting Relief from the Automatic Stay.*** Unless the court orders otherwise, an order granting a motion for relief from the automatic stay under (1) is stayed for 14 days after it is entered.

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(b) USE OF CASH COLLATERAL.	**(b) Using Cash Collateral.**
(1) *Motion; Service.*	(1) ***Motion; Contents; Service.***
(A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.	(A) *Motion.* A motion for authorization to use cash collateral must comply with Rule 9014 and must be accompanied by a proposed form of order.
(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:	(B) *Content~~s~~.* The motion must consist of—or if the motion exceeds five pages, begin with—a concise statement of the relief requested, no longer than five pages. The statement must list or summarize all material provisions (citing their locations in the relevant documents), including:
(i) the name of each entity with an interest in the cash collateral;	• the name of each entity with an interest in the cash collateral;
(ii) the purposes for the use of the cash collateral;	• how it will be used;
(iii) the material terms, including duration, of the use of the cash collateral; and	• the material terms of its use, including duration; and
(iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.	• all liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral—or~~,~~ if no such protection is proposed, an explanation of how each entity's interest is adequately protected.
(C) *Service.* The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the	(C) *Service.* The motion must be served on: • each entity with an interest in the cash collateral; • all those who must be served under (a)(1)(A); and • any other entity the court designates.

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creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs. (2) *Hearing.* The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.	(2) ***Hearings; Notice.*** (A) *Preliminary and Final Hearings.* The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize using only the cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice.* Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates.
(c) OBTAINING CREDIT. (1) *Motion; Service.* (A) *Motion.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order	**(c) Obtaining Credit.** (1) ***Motion; Content~~s~~; Service.*** (A) *Motion.* A motion for authorization to obtain credit must comply with Rule 9014 and must be accompanied by a copy of the credit agreement and a proposed form of order. (B) *Content~~s~~.* The motion must consist of—or if the motion exceeds five pages, begin with—a concise statement of the relief requested, no longer than five pages. The statement must list or summarize all material provisions of the credit agreement and form of order (citing their locations in the relevant documents), including interest rates, maturity dates, default provisions, liens, and borrowing limits and conditions. If the credit agreement or form of

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includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:	order includes any of the provisions listed below in (i)–(xi), the concise statement must also list or summarize each one, describe its nature and extent, cite its location in the proposed agreement and form of order, and identify any that would remain effective if interim approval were to be granted but final relief denied under (2). The provisions are:
(i) a grant of priority or a lien on property of the estate under § 364(c) or (d);	(i) a grant of priority or a lien on property of the estate under § 364(c) or (d);
(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;	(ii) the providing of adequate protection or priority for a claim that arose before the case commenced—including a lien on property of the estate, or ~~the~~ its use~~, of property of the estate~~ or of credit obtained under § 364 to make cash payments on the claim;
(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;	(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the case commenced, or of any lien securing the claim;
(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;	(iv) a waiver or modification of Code provisions or applicable rules regarding the automatic stay;
(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;	(v) a waiver or modification of an entity's right to file a plan, seek to extend the time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or

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	request authorization to obtain credit under § 364;
(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;	(vi) the establishment of deadlines for filing a plan of reorganization, approving a disclosure statement, holding a hearing on confirmation, or entering a confirmation order;
(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;	(vii) a waiver or modification of ~~the applicability of~~applicable nonbankruptcy law regarding perfecting or enforcing a lien on property of the estate;
(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;	(viii) a release, waiver, or limitation on a claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;
(ix) the indemnification of any entity;	(ix) the indemnification of any entity;
(x) a release, waiver, or limitation of any right under § 506(c); or	(x) a release, waiver, or limitation of any right under § 506(c); or
(xi) the granting of a lien on any claim or cause of action arising under §§ 544,[1] 545, 547, 548, 549, 553(b), 723(a), or 724(a).	(xi) the granting of a lien on a claim or cause of action arising under § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).
(C) *Service*. The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.	(C) *Service*. The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates.
	(2) ***Hearings; Notice.***
	(A) *Preliminary and Final Hearings*. The court may begin a final hearing on the motion no earlier than 14 days after it has been served. If the

[1] So in original. Probably should be only one section symbol.

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(2) *Hearing*. The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (3) *Notice*. Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct. (4) *Inapplicability in a Chapter 13 Case*. This subdivision (c) does not apply in a chapter 13 case.	motion so requests, the court may conduct a preliminary hearing before that 14-day period ends. After a preliminary hearing, the court may authorize obtaining credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. (B) *Notice*. Notice of a hearing must be given to the parties who must be served with the motion under (1)(C) and to any other entity the court designates. (3) ***Inapplicability in a Chapter 13 Case.*** This subdivision (c) does not apply in a ~~chapter~~ Chapter 13 case.
(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT. (1) *Motion; Service.* (A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided	**(d) Various Agreements: Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Providing Adequate Protection; Using Cash Collateral; or Obtaining Credit.** (1) ***Motion; Contents; Service.*** (A) *Motion.* A motion to approve any of the following must be accompanied by a copy of the agreement and a proposed form of order: (i) an agreement to provide adequate protection; (ii) an agreement to prohibit or condition the use, sale, or lease of property; (iii) an agreement to modify or terminate the stay provided for in § 362;

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for in § 362; (iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property. (B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision. (C) *Service.* The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs. (2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of	(iv) an agreement to use cash collateral; or (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate under which the entity consents to creating a lien that is senior or equal to the entity's lien or interest~~ in the property~~. (B) *Content~~s~~.* The motion must consist of—or if the motion exceeds five pages, begin with—a concise statement of the relief requested, no longer than five pages. The statement must: (i) list or summarize all the agreement's material provisions (citing their locations in the relevant documents); and (ii) briefly list or summarize, cite the location of, and describe the nature and extent of each provision in the proposed form of order, agreement, or other document of the type listed in (c)(1)(B). (C) *Service.* The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates. (2) ***Objection.*** Notice of the motion must be mailed to the parties on whom service of the motion is required and any other entity the court designates. The notice must include the time within which objections may be filed and served on the debtor in possession or trustee. Unless the court sets a different time, any objections must be

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this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice. (3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct. (4) *Agreement in Settlement of Motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.	filed within 14 days after the notice is mailed. (3) ***Disposition Without a Hearing.*** If no objection is filed, the court may enter an order approving or disapproving the agreement without holding a hearing. (4) ***Hearing.*** If an objection is filed or if the court decides that a hearing is appropriate, the court must hold one after giving at least 7 days' notice to: • the objector; • the movant; • the parties who must be served with the motion under (1)(C); and • any other entity the court designates. (5) ***Agreement to Settle a Motion.*** The court may decide that a motion made under (a), (b), or (c) was sufficient to give reasonable notice of the agreement's material provisions and an opportunity for a hearing. If so, the court may order that the procedures prescribed in (1)–(4) do not apply and may approve the agreement without further notice.

Committee Note

The language of Rule 4001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 4002. Duties of Debtor	**Rule 4002. Debtor's Duties**
(a) IN GENERAL. In addition to performing other duties prescribed by the Code and rules, the debtor shall: (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (5) file a statement of any change of the debtor's address.	**(a) In General.** In addition to performing other duties that are required by the Code or these rules, the debtor must: (1) attend and submit to an examination when the court orders; (2) attend the hearing on a complaint objecting to discharge and, if called, testify as a witness; (3) if a schedule of property has not yet been filed under Rule 1007, report to the trustee immediately in writing: (A) the location of any real property in which the debtor has an interest; and (B) the name and address of every person holding money or property subject to the debtor's withdrawal or order; (4) cooperate with the trustee in preparing an inventory, examining proofs of claim, and administering the estate; and (5) file a statement of any change in the debtor's address.
(b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE DOCUMENTATION. (1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341: (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and (B) evidence of social security number(s), or a written statement that such documentation does not exist.	**(b) Individual Debtor's Duty to Provide Documents.** (1) ***Personal Identifying Information.*** An individual debtor must bring to the § 341 meeting of creditors: (A) a government-issued identification ~~containing~~ with the debtor's picture, or other personal ~~identifying~~ information that establishes the debtor's identity; and (B) evidence of any social-security number, or a written statement that no such evidence exists.

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(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:	(2) ***Financial Documents.*** An individual debtor must bring the following documents (or copies) to the § 341 meeting of creditors and make them available to the trustee—or provide a written statement that they do not exist or are not in the debtor's possession:
(A) evidence of current income such as the most recent payment advice;	(A) evidence of current income, such as the most recent payment advice;
(B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and	(B) unless the trustee or the United States trustee instructs otherwise, a statement for each depository or investment account—including a checking, savings, or money-market account, mutual fund or brokerage account—for the period that includes the petition's filing date; and
(C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or (B).	(C) if required by § 707(b)(2)(A) or (B), documents showing claimed monthly expenses.
(3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.	(3) ***Tax Return to Be Provided to the Trustee.*** At least 7 days before the first date set for the § 341 meeting of creditors, the debtor must provide the trustee with: (A) a copy of the debtor's federal income-tax return, including any attachments to it, for the most recent tax year ending before the case was commenced and for which the debtor filed a return; (B) a transcript of the return; or (C) a written statement that the ~~documentation does~~documents do not exist.
(4) *Tax Returns Provided to Creditors.* If a creditor, at least 14 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the	(4) ***Tax Return to Be Provided to a Creditor.*** Upon a creditor's request at least 14 days before the first date set for the § 341 meeting of creditors, the debtor must provide the creditor with the documents to be provided to the trustee under (3). The debtor must do

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meeting of creditors under § 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist. (5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.	so at least 7 days before the meeting. (5) ***Safeguarding Confidential Tax Information.*** The debtor's obligation to provide tax returns under (3) and (4) is subject to procedures established by the Director of the Administrative Office of the United States Courts for safeguarding confidential tax information.

Committee Note

The language of Rule 4002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4003. Exemptions	**Rule 4003. Exemptions**
(a) CLAIM OF EXEMPTIONS. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.	**(a) Claiming an Exemption.** A debtor must list the property claimed as exempt under § 522 on Form 106C filed under Rule 1007. If the debtor fails to do so within the time specified in Rule 1007(c), a debtor's dependent may file the list within 30 days after the debtor's time to file expires.
(b) OBJECTING TO A CLAIM OF EXEMPTIONS. (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. (2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney. (3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed. (4) A copy of any objection shall	**(b) Objecting to a Claimed Exemption.** (1) ***By a Party in Interest.*** Except as (2) and (3) provide, a party in interest may file an objection to a claimed exemption within 30 days after the later of: • the conclusion of the § 341 meeting of creditors; • the filing of an amendment to the list; or • the filing of a supplemental schedule. On a party in interest's motion filed before the time to object expires, the court may, for cause, extend the time to file an objection. (2) ***By the Trustee for a Fraudulently Claimed Exemption.*** If the debtor has fraudulently claimed an exemption, the trustee may file an objection to it within one year after the case is closed. The trustee must deliver or mail the objection to: • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.

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be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.	(3) ***Objection Based on § 522(q).*** An objection based on § 522(q) must be filed: (A) before the case is closed; or (B) if an exemption is first claimed after a case has been reopened, before the reopened case is closed. (4) ***Distributing Copies of the Objection.*** A copy of any objection, other than one filed by the trustee under (b)(2), must be delivered or mailed to: • the trustee; • the debtor; • the debtor's attorney; • the person who filed the list of exempt property; and • that person's attorney.
(c) BURDEN OF PROOF. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.	**(c) Burden of Proof.** In a hearing under this Rule 4003, the objecting party has the burden of proving that an exemption was not properly claimed. After notice and a hearing, the court must determine the issues presented.
(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to	**(d) Avoiding a Lien or Other Transfer of Exempt Property.** (1) ***Bringing a Proceeding.*** A proceeding under § 522(f) to avoid a lien or other transfer of exempt property must be commenced by: (A) filing a motion under Rule 9014; or (B) serving a Chapter 12 or 13 plan on the affected creditors as Rule 7004 provides for serving a summons and complaint. (2) ***Objecting to a Request Under § 522(f).*** As an exception to (b), a creditor may object to a request under

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be impaired by the lien.	§ 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Committee Note

The language of Rule 4003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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Rule 4004. Grant or Denial of Discharge	**Rule 4004. Granting or Denying a Discharge**
(a) TIME FOR OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.	**(a) Time to Object to a Discharge; Notice.** (1) ***Chapter 7.*** In a Chapter 7 case, a complaint—or a motion under § 727(a)(8) or (9)—objecting to a discharge must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (2) ***Chapter 11.*** In a Chapter 11 case, a complaint objecting to a discharge must be filed on or before the first date set for the hearing on confirmation. (3) ***Chapter 13.*** In a Chapter 13 case, a motion objecting to a discharge under § 1328(f) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. (4) ***Notice to the United States Trustee, the Creditors, and the Trustee.*** At least 28 days' notice of ~~the time so fixed~~the time for filing must be given to: • the United States trustee under Rule 2002(k); • all creditors under Rule 2002(f); • the trustee; and • the trustee's attorney.
(b) EXTENSION OF TIME. (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired. (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and	**(b) Extending the Time to File an Objection.** (1) ***Motion Before the Time Expires.*** On a party in interest's motion and after notice and a hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired. (2) ***Motion After the Time Has Expired.*** After the time to object has

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before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.	expired and before a discharge is granted, a party in interest may file a motion to extend the time ~~to object~~ if: (A) the objection is based on facts that, if learned after the discharge is granted, would provide a basis for revocation under § 727(d)~~, and~~ ; ~~(A)~~(B) the movant did not know those facts in time to object; and ~~(B)~~(C) the movant files the motion promptly after learning ~~those facts~~about them.
(c) GRANT OF DISCHARGE. (1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if: (A) the debtor is not an individual; (B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion to dismiss the case under § 707 is pending; (E) a motion to extend the time for filing a complaint objecting to the discharge is pending; (F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending; (G) the debtor has not paid in full the filing fee prescribed by	**(c) Granting a Discharge.** (1) ***Chapter 7.*** In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances: (A) the debtor is not an individual; (B) a complaint ~~,~~ or a motion under § 727(a)(8) or (9) ~~,~~ objecting to the discharge is pending; (C) the debtor has filed a waiver under § 727(a)(10); (D) a motion is pending to dismiss the case under § 707; (E) a motion is pending to extend the time to file a complaint objecting to the discharge; (F) a motion is pending to extend the time to file a motion to dismiss the case under Rule 1017(e)(1); (G) the debtor has not fully paid the filing fee required by 28 U.S.C. § 1930(a) ~~,~~ together with any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the

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28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);	clerk upon commencing a case—unless the court has waived the fees under 28 U.S.C. § 1930(f);
(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);	(H) the debtor has not filed a statement showing that a course on personal financial management has been completed—if such a statement is required by Rule 1007(b)(7);
(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;	(I) a motion is pending to delay or postpone a discharge under § 727(a)(12);
(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;	(J) a motion is pending to extend the time to file a reaffirmation agreement under Rule 4008(a);
(K) a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or	(K) the court has not concluded a hearing on a presumption—in effect under § 524(m)—that a reaffirmation agreement is an undue hardship; or
(L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f).	(L) a motion is pending to delay discharge because the debtor has not filed with the court all tax documents required to be filed under § 521(f).
(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.	(2) ***Delay in Entering a Discharge in General.*** On the debtor's motion, the court may delay entering a discharge for 30 days and, on a motion made within that time, delay entry to a date certain.
(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.	(3) ***Delaying Entry Because of Rule 1007(b)(8).*** If the debtor is required to file a statement under Rule 1007(b)(8), the court must not grant a discharge until at least 30 days after the statement is filed.
	(4) ***Individual Chapter 11 or Chapter 13 Case.*** In a Chapter 11 case in which the debtor is an individual—or in a Chapter 13 case—the court must not

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(4) In a chapter 11 case in which the debtor is an individual, or a chapter 13 case, the court shall not grant a discharge if the debtor has not filed any statement required by Rule 1007(b)(7).	grant a discharge if the debtor has not filed a statement required by Rule 1007(b)(7).
(d) APPLICABILITY OF RULES IN PART VII AND RULE 9014. An objection to discharge is governed by Part VII of these rules, except that an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f) is commenced by motion and governed by Rule 9014.	**(d) Applying Part VII Rules and Rule 9014.** The Part VII rules govern an objection to a discharge, except that Rule 9014 governs an objection to a discharge under § 727(a)(8) or (9) or § 1328(f).
(e) ORDER OF DISCHARGE. An order of discharge shall conform to the appropriate Official Form.	**(e) Form of a Discharge Order.** A discharge order must conform to the appropriate Official Form.
(f) REGISTRATION IN OTHER DISTRICTS. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.	**(f) Registering a Discharge in Another District.** A discharge order that becomes final may be registered in another district by filing a certified copy with the clerk ~~of the court~~ for that district. When registered, the order has the same effect as an order of the court where it is registered.
(g) NOTICE OF DISCHARGE. The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.	**(g) Notice of a Final Discharge Order.** The clerk must promptly mail a copy of the final discharge order to those entities listed in (a)(4).

Committee Note

The language of Rule 4004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4005. Burden of Proof in Objecting to Discharge	**Rule 4005. Burden of Proof in Objecting to a Discharge**
At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.	At a trial on a complaint objecting to a discharge, the plaintiff has the burden of proof.

Committee Note

The language of Rule 4005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4006. Notice of No Discharge	**Rule 4006. Notice When No Discharge Is Granted**
If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.	The clerk must promptly notify in the manner provided by Rule 2002(f) all parties in interest of an order: (a) denying a discharge; (b) revoking a discharge; (c) approving a waiver of discharge; or (d) closing an individual debtor's case without entering a discharge.

Committee Note

The language of Rule 4006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4007. Determination of Dischargeability of a Debt	**Rule 4007. Determining Whether a Debt Is Dischargeable**
(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.	**(a) Who May File a Complaint.** A debtor or any creditor may file a complaint to determine whether a debt is dischargeable.
(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER § 523(c) OF THE CODE. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.	**(b) Time to File; No Fee for a Reopened Case.** A complaint, except one under § 523(c), may be filed at any time. If a case is reopened to permit filing the complaint, no fee for reopening is required.
(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	**(c) Chapter 7, 11, 12, or 13—Time to File a Complaint Under § 523(c); Notice of Time; Extension.** Except as (d) provides, a complaint to determine whether a debt is dischargeable under § 523(c) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(d) TIME FOR FILING COMPLAINT UNDER § 523(a)(6) IN A CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF	**(d) Chapter 13—Time to File a Complaint Under § 523(a)(6); Notice of Time; Extension.** When a debtor files a motion for a discharge under § 1328(b), the court

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TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.	must set the time to file a complaint under § 523(a)(6) to determine whether a debt is dischargeable. The clerk must give all creditors at least 30 days' notice of the time to file in the manner provided by Rule 2002. On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.
(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.	**(e) Applying Part VII Rules.** The Part VII rules govern a proceeding on a complaint filed under this Rule 4007.

Committee Note

The language of Rule 4007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement	**Rule 4008. Reaffirmation Agreement and Supporting Statement**
(a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.	**(a) Time to File; Cover Sheet.** A reaffirmation agreement must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. The agreement must have a cover sheet prepared as prescribed by Form 427. At any time, the court may extend the time to file an agreement.
(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT. The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.	**(b) Supporting Statement.** The debtor's supporting statement required by § 524(k)(6)(A) must be accompanied by a statement of the total income and expenses as shown on Schedules I and J. If the income and expenses shown on the supporting statement differ from those shown on the schedules, the supporting statement must explain the difference.

Committee Note

The language of Rule 4008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

5000 Series

ORIGINAL	REVISION
PART V—Courts and Clerks	**PART V. COURTS AND CLERKS**
Rule 5001. Courts and Clerks' Offices	**Rule 5001. Court~~s~~ Operations;~~ and~~ Clerks' Offices**
(a) COURTS ALWAYS OPEN. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.	**(a) Courts Always Open.** Bankruptcy courts are considered always open for filing a pleading, motion, or other paper; issuing and returning process; making rules; or entering an order.
(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.	**(b) Location for Trials and Hearings; Proceedings in Chambers.** Every trial or hearing must be held in open court—in a regular courtroom if convenient. Except as provided in 28 U.S.C. § 152(c), any other act may be performed—or a proceeding held—in chambers anywhere within or outside the district. But unless it is ex parte, a hearing may be held outside the district only if all affected parties consent.
(c) CLERK'S OFFICE. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).	**(c) Clerk's Office Hours.** A clerk's office—with the clerk or a deputy in attendance—must be open during business hours on all days except Saturdays, Sundays, and the legal holidays listed in Rule 9006(a)(6).

Committee Note

The language of Rule 5001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5002. Restrictions on Approval of Appointments	**Rule 5002. Restrictions on Approving Court Appointments**
(a) APPROVAL OF APPOINTMENT OF RELATIVES PROHIBITED. The appointment of an individual as a trustee or examiner pursuant to § 1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.	**(a) Appointing or Employing Relatives.** (1) ***Trustee or Examiner.*** A bankruptcy judge must not approve appointing an individual as a trustee or examiner under § 1104 if the individual is a relative of either the judge or the United States trustee in the region ~~in which~~where the case is pending. (2) ***Attorney, Accountant, Appraiser, Auctioneer, or Other Professional Person.*** A bankruptcy judge must not approve employing under § 327, § 1103, or § 1114 an individual as an attorney, accountant, appraiser, auctioneer, or other professional person who is a relative of the judge. The court may approve employing a relative of the United States trustee in the region ~~in which~~where the case is ~~pending unless, under the circumstances in the case,~~pending, unless the relationship makes the employment improper. (3) ***Related Entities and Associates.*** If an appointment under (1) or an employment under (2) is forbidden, so is appointing or employing: (A) ~~the individual's~~any entity—including any firm, ~~partnership, corporation~~partnership, or corporation~~—,~~with which the individual has a ~~or any other form of~~ business association or relationship; or (B) a member, associate, or professional employee of such an entity~~ listed in (A)~~.
(b) JUDICIAL DETERMINATION THAT APPROVAL OF APPOINTMENT OR EMPLOYMENT IS IMPROPER. A bankruptcy judge may not approve the	**(b) Other Considerations in Approving Appointments or Employment.** A bankruptcy judge must not approve appointing a person as a trustee or examiner—

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appointment of a person as a trustee or examiner pursuant to § 1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.	~~under (a)(1)~~or employing an attorney, accountant, appraiser, auctioneer, or other professional person—if the person is, or has been, so connected with the judge or the United States trustee as to make the appointment or employment improper.

Committee Note

The language of Rule 5002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5003. Records Kept By the Clerk	**Rule 5003. Records to Be Kept by the Clerk**
(a) BANKRUPTCY DOCKETS. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.	**(a) Bankruptcy Docket.** The clerk must keep a docket in each case and must: (1) enter on the docket each judgment, order, and activity, as prescribed by the Director of the Administrative Office of the United States Courts; and (2) show the date of entry for each judgment or order.
(b) CLAIMS REGISTER. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.	**(b) Claims Register.** When it appears that there will be a distribution to unsecured creditors, the clerk must keep in a claims register a list of the claims filed in the case.
(c) JUDGMENTS AND ORDERS. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.	**(c) Judgments and Orders.** (1) ***In General.*** In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a copy of: (A) every final judgment or order affecting title to, or a lien on, real property; (B) every final judgment or order for the recovery of money or property; and (C) any other order the court designates. (2) ***Indexing with the District Court.*** On a prevailing party's request, a copy of the following must be kept and indexed with the district court's civil judgments: (A) every final judgment or order affecting title to, or a lien on, real or personal property; and

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	(B) every final judgment or order for the recovery of money or property.
(d) INDEX OF CASES; CERTIFICATE OF SEARCH. The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.	**(d) Index of Cases; Certificate of Search.** (1) ***Index of Cases.*** The clerk must keep an index of cases and adversary proceedings in the form and manner prescribed by the Director of the Administrative Office of the United States Courts. (2) ***Searching the Index; Certificate of Search.*** On request, the clerk must search the index and papers in the clerk's custody and certify whether: (A) a case or proceeding has been filed in or transferred to the court; or (B) a discharge has been entered.
(e) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS AND CERTAIN TAXING AUTHORITIES. The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a	**(e) Register of Mailing Addresses of Federal and State Governmental Units and Certain Taxing Authorities.** (1) ***In General.*** The United States—or a state or a territory where the court is located—may file a statement designating its mailing address. A taxing authority (including a local taxing authority) may also file a statement designating an address for serving requests under § 505(b). The authority's designation must describe where to find further information about additional requirements for serving a request. (2) ***Register of Mailing Address.*** (A) *In General.* In the form and manner prescribed by the Director of the Administrative Office of the United States Courts, the clerk must keep a register of the mailing addresses

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separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.	of the governmental units listed in the first sentence of (1) and a separate register containing the addresses of taxing authorities for serving requests under § 505(b). (B) *Number of Entries.* The clerk need not include in any register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. But if more than one mailing address is included, the clerk must also include information that would enable a user to determine when each address ~~is applicable~~applies. Mailing to only one applicable address provides effective notice. (C) *Keeping the Register Current.* The clerk must update the register annually, as of January 2 of each year. (D) *Mailing Address Presumed to Be Proper.* A mailing address in the register is conclusively presumed to be proper. But a failure to use that address does not invalidate ~~any~~ a notice that is otherwise effective under applicable law.
(f) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.	**(f) Other Books and Records.** The clerk must keep any other books and records required by the Director of the Administrative Office of the United States Courts.

Committee Note

The language of Rule 5003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5004. Disqualification	**Rule 5004. Disqualifying a Bankruptcy Judge**
(a) DISQUALIFICATION OF JUDGE. A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.	**(a) From Presiding Over a Proceeding, Contested Matter, or Case.** A bankruptcy judge's disqualification is governed by 28 U.S.C. § 455. The judge is disqualified from presiding over a proceeding or contested matter in which a disqualifying circumstance arises—and, when appropriate, from presiding over the entire case.
(b) DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION. A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.	**(b) From Allowing Compensation.** The bankruptcy judge is disqualified from allowing compensation to a relative or to a person who is so connected with the judge as to make the judge's allowing it improper.

Committee Note

The language of Rule 5004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5005. Filing and Transmittal of Papers	**Rule 5005. Filing Papers and Sending Copies to the United States Trustee**
(a) FILING. (1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices. (2) *Electronic Filing and Signing.* (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. (B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or by local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.	**(a) Filing Papers.** (1) ***With the Clerk.*** Except as provided in 28 U.S.C. § 1409, the following papers required to be filed by these rules must be filed with the clerk in the district where the case is pending: • lists; • schedules; • statements; • proofs of claim or interest; • complaints; • motions; • applications; • objections; and • other required papers. The clerk must not refuse to accept for filing any petition or other paper solely because it is not in the form required by these rules or by any local rule or practice. (2) ***With a Judge of the Court.*** A judge may personally accept for filing a paper listed in (1). The judge must note on ~~the paper~~it the date of filing and promptly send it to the clerk. (3) ***Electronic Filing and Signing.*** (A) *By a Represented Entity—Generally Required; Exceptions.* An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for ~~good~~ cause or is allowed or required by local rule.

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(C) *Signing.* A filing made through a person's electronic filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.	(B) *By an Unrepresented Individual—When Allowed or Required.* An individual not represented by an attorney: (i) may file electronically only if allowed by court order or ~~by~~ local rule; and (ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (C) *Signing.* A filing made through a person's electronic-filing account and authorized by that person, together with ~~that~~ the person's name on a signature block, constitutes the person's signature. (D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107.
(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE. (1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee may be sent by filing with the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise. (2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court's electronic-filing system shall promptly file as proof of such transmittal a statement identifying the paper and stating the manner by which and the date on which it was transmitted to the United States trustee.	**(b) Sending Copies to the United States Trustee.** (1) ***Papers Sent Electronically.*** All papers required to be sent to the United States trustee may be sent by using the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise. (2) ***Papers Not Sent Electronically.*** If an entity other than the clerk sends a paper to the United States trustee without using the court's electronic-filing system, the entity must promptly file a statement identifying the paper and stating the manner by which and the date it was sent. The clerk need not send a copy of a paper to a United States trustee

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(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.	who requests in writing that it not be sent.
(c) ERROR IN FILING OR TRANSMITTAL. A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.	**(c) When a Paper Is Erroneously Filed or Delivered.** (1) ***Paper Intended for the Clerk.*** If a paper intended to be filed with the clerk is erroneously delivered to a person listed below, that person must note on it the date of receipt and promptly send it to the clerk: • the United States trustee; • the trustee; • the trustee's attorney; • a bankruptcy judge; • a district judge; • the clerk of the bankruptcy appellate panel; or • the clerk of the district court. (2) ***Paper Intended for the United States Trustee.*** If a paper intended for the United States trustee is erroneously delivered to the clerk or to another person listed in (1), the clerk or that person must note on it the date of receipt and promptly send it to the United States trustee. (3) ***Applicable Filing Date.*** In the interests of justice, the court may order that the original receipt date ~~of receipt~~ shown on a paper erroneously delivered under (1) or (2) be deemed the date it was filed with the clerk or sent to the United States trustee.

Committee Note

The language of Rule 5005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5006. Certification of Copies of Papers	**Rule 5006. Providing Certified Copies**
The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.	Upon payment of the prescribed fee, the clerk must issue a certified copy of the record of any proceeding or any paper filed with the clerk.

Committee Note

The language of Rule 5006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5007. Record of Proceedings and Transcripts	**Rule 5007. Record of Proceedings; ~~and~~ Transcripts**
(a) FILING OF RECORD OR TRANSCRIPT. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.	**(a) Filing Original Notes, Tape Recordings, and Other Original Records of a Proceeding; Transcripts.** (1) ***Records.*** The reporter or operator of a recording device must certify the original notes of testimony, any tape recordings, and other original records of a proceeding and must promptly file them with the clerk. (2) ***Transcripts.*** A person who prepares a transcript must promptly file a certified copy with the clerk.
(b) TRANSCRIPT FEES. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.	**(b) Fee for a Transcript.** The fee for a copy of a transcript must be charged at the rate prescribed by the Judicial Conference of the United States. No fee may be charged for filing the certified copy.
(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.	**(c) Sound Recording or Transcript as Prima Facie Evidence.** In any proceeding, a certified sound recording or a transcript of a proceeding is admissible as prima facie evidence of the record.

Committee Note

The language of Rule 5007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors	**Rule 5008. Chapter 7—Notice That a Presumption of Abuse Has Arisen Under § 707(b)**
If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.	**(a) Notice to Creditors.** When a presumption of abuse under § 707(b) arises in a Chapter 7 case of an individual debtor with primarily consumer debts, the clerk must, within 10 days after the petition is filed, so notify the creditors in accordance with Rule 2002. **(b) Debtor's Statement.** If the debtor does not file a statement indicating whether a presumption has arisen, the clerk must, within 10 days after the petition is filed, so notify creditors and indicate that further notice will be given if a later-filed statement shows that the presumption has arisen. If the debtor later files such a statement, the clerk must promptly notify the creditors.

Committee Note

The language of Rule 5008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5009. Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied	**Rule 5009. Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied**
(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.	**(a) Closing a Chapter 7, 12, or 13 Case.** The estate in a Chapter 7, 12, or 13 case is presumed to have been fully administered when: (1) the trustee has filed a final report and final account and has certified that the estate has been fully administered; and (2) within 30 days after the filing, no objection to the report has been filed by the United States trustee or a party in interest.
(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).	**(b) Chapter 7 or 13—Notice of a Failure to File a Statement About Completing a Course on Personal Financial Management.** This subdivision (b) applies if an individual debtor in a Chapter 7 or 13 case is required to file a statement under Rule 1007(b)(7) and fails to do so within 45 days after the first date set for the meeting of creditors under § 341(a). The clerk must promptly notify the debtor that the case will be closed without entering a discharge ~~unless~~ if the statement is not filed within the time prescribed by Rule 1007(c).
(c) CASES UNDER CHAPTER 15. A foreign representative in a proceeding recognized under § 1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in	**(c) Closing a Chapter 15 Case.** (1) ***Foreign Representative's Final Report.*** In a proceeding recognized under § 1517, when the purpose of a foreign representative's appearance is completed, the representative must file a final report describing the nature and results of the representative's activities in the court. (2) ***Giving Notice of the Report.*** The representative must send a copy of the report to the United States trustee, give notice of its filing, and file a certificate

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the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.	~~with the court~~ indicating that the notice has been given~~,~~ to: (A) the debtor; (B) all persons or bodies authorized to administer the debtor's foreign proceedings; (C) all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and (D) any other entity the court designates. (3) ***Presumption of Full Administration.*** If the United States trustee or a party in interest does not file an objection within 30 days after the certificate is filed, the case is presumed to have been fully administered.
(d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.	**(d)** ***Order Declaring a Lien Satisfied.*** This subdivision (d) applies in a Chapter 12 or 13 case when a claim secured by property of the estate is subject to a lien under applicable nonbankruptcy law. The debtor may move for an order declaring that the secured claim has been satisfied and the lien has been released under the terms of the confirmed plan. The motion must be served—in the manner provided by Rule 7004 for serving a summons and complaint—on the claim holder and any other entity the court designates.

Committee Note

The language of Rule 5009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5010. Reopening Cases	**Rule 5010. Reopening a Case**
A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.	On the debtor's or another party in interest's motion, the court may, under § 350(b), reopen a case. In a reopened Chapter 7, 12, or 13 case, the United States trustee must not appoint a trustee unless the court determines that one is needed to protect the interests of the creditors and the debtor, or to ensure that the reopened case is efficiently administered.

Committee Note

The language of Rule 5010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5011. Withdrawal and Abstention from Hearing a Proceeding	**Rule 5011. Motion to Withdraw a Case or Proceeding or to Abstain from Hearing a Proceeding; Staying a Proceeding**
(a) WITHDRAWAL. A motion for withdrawal of a case or proceeding shall be heard by a district judge.	**(a) Withdrawing a Case or Proceeding.** A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) must be heard by a district judge.
(b) ABSTENTION FROM HEARING A PROCEEDING. A motion for abstention pursuant to 28 U.S.C. § 1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.	**(b) Abstaining from Hearing a Proceeding.** ~~A~~ Rule 9014 governs a motion ~~requesting~~ asking the court to abstain from hearing a proceeding under 28 U.S.C. § 1334(c) ~~is governed by Rule 9014~~. The motion must be served on all parties to the proceeding.
(c) EFFECT OF FILING OF MOTION FOR WITHDRAWAL OR ABSTENTION. The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. § 1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.	**(c) Staying a Proceeding After a Motion to Withdraw or Abstain.** A motion filed under (a) or (b) does not stay proceedings in a case or affect its administration. But a bankruptcy judge may, on proper terms and conditions, stay a proceeding until the motion is decided.
	(d) Motion to Stay a Proceeding. A motion to stay a proceeding must ordinarily be submitted first to the bankruptcy judge. If it—or a motion for relief from a stay—is filed in the district court, the motion must state why it ~~has~~ was not ~~been~~ first presented to or obtained from the bankruptcy judge. The district judge may grant relief on proper terms and conditions ~~the judge considers proper~~.

Committee Note

The language of Rule 5011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases	**Rule 5012. Chapter 15—Agreement to Coordinate Proceedings**
Approval of an agreement under § 1527(4) of the Code shall be sought by motion. The movant shall attach to the motion a copy of the proposed agreement or protocol and, unless the court directs otherwise, give at least 30 days' notice of any hearing on the motion by transmitting the motion to the United States trustee, and serving it on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct.	An agreement to coordinate proceedings under § 1527(4) may be approved on motion with an attached copy of the agreement or protocol. Unless the court orders otherwise, the movant must give at least 30 days' notice of any hearing on the motion by sending a copy to the United States trustee and serving it on: • the debtor; • all persons or bodies authorized to administer the debtor's foreign proceedings; • all entities against whom provisional relief is sought under § 1519; • all parties to litigation pending in the United States in which the debtor was a party when the petition was filed; and • any other entity the court designates.

Committee Note

The language of Rule 5012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

6000 Series

ORIGINAL	REVISION
PART VI—COLLECTION AND LIQUIDATION OF THE ESTATE	**PART VI. COLLECTING AND LIQUIDATING THE ESTATE**
Rule 6001. Burden of Proof As to Validity of Postpetition Transfer	**Rule 6001. Burden of Proving the Validity of a Postpetition Transfer**
Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.	An entity that asserts the validity of a postpetition transfer under § 549 has the burden of proof.

Committee Note

The language of Rule 6001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6002. Accounting by Prior Custodian of Property of the Estate	**Rule 6002. Custodian's Report to the United States Trustee**
(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.	**(a) Custodian's Report and Account.** A custodian required by the Code to deliver property to the trustee must promptly file and send to the United States trustee a report and account about the property of the estate and its administration.
(b) EXAMINATION OF ADMINISTRATION. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.	**(b) Examining the Administration.** After the custodian's report and account has been filed and the superseded administration has been examined, the court must, after notice and a hearing, determine whether the custodian's administration has been proper, including whether disbursements have been reasonable.

Committee Note

The language of Rule 6002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts	**Rule 6003. Prohibition on Granting Certain Applications and Motions Made Immediately After the Petition Is Filed**
Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: (a) an application under Rule 2014; (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or (c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.	**(a) In General.** Unless relief is needed to avoid immediate and irreparable harm, the court must not, within 21 days after the petition is filed, grant an application or motion to: (1) employ a professional person under Rule 2014; (2) use, sell, or lease property of the estate, including a motion to pay all or a part of a claim that arose before the petition was filed; (3) incur any other obligation regarding the property of the estate; or (4) assume or assign an executory contract or unexpired lease under § 365. **(b) Exception.** This rule does not apply to a motion under Rule 4001.

Committee Note

The language of Rule 6003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6004. Use, Sale, or Lease of Property	**Rule 6004. Use, Sale, or Lease of Property**
(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code.	**(a) Notice.** (1) ***In General.*** Notice of a proposed use, sale, or lease of property that is not in the ordinary course of business must be given: (A) under Rule 2002(a)(2), (c)(1), (i), and (k); and (B) in accordance with § 363(b)(2), if applicable. (2) ***Exceptions.*** Notice is not required if (d) applies or the proposal involves cash collateral only.
(b) OBJECTION TO PROPOSAL. Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.	**(b) Objection.** Except as provided in (c) and (d), an objection to a proposed use, sale, or lease of property must be filed and served at least 7 days before the date set for the proposed action or within the time set by the court. Rule 9014 governs the objection.
(c) SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS. A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.	**(c) Motion to Sell Property Free and Clear of Liens and Other Interests; Objection.** A motion for authority to sell property free and clear of liens or other interests must be made in accordance with Rule 9014 and served on the parties who have the liens or other interests. The notice required by (a) must include: (1) the date of the hearing on the motion; and (2) the time to file and serve an objection on the debtor in possession or trustee.
(d) SALE OF PROPERTY UNDER $2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt	**(d) Notice of an Intent to Sell Property Valued at Less Than $2,500; Objection.** If all the nonexempt property of the estate

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property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other than inthe ordinary course of business to all creditors, indenture trustees, committeesappointed or elected pursuant to the Code, the United States trustee and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 14 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.	—in the aggregate—has a gross value less than $2,500, a notice of an intent to sell the property that is not in the ordinary course of business must be given to: • all creditors; • all indenture trustees; • any committees appointed or elected under the Code; • the United States trustee; and • other persons as the court orders. A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. Rule 9014 governs the objection.
(e) HEARING. If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.	**(e) Notice of a Hearing on an Objection.** The date of a hearing on an objection under (b) or (d) may be set in the notice under (a).
(f) CONDUCT OF SALE NOT IN THE ORDINARY COURSE OF BUSINESS. (1) *Public or Private Sale.* All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy	**(f) Conducting a Sale That Is Not in the Ordinary Course of Business.** (1) ***Public Auction or Private Sale.*** (A) *Itemized Statement Required.* A sale that is not in the ordinary course of business may be made by public auction or private sale. Unless it is impracticable, when the sale is completed, an itemized statement must be filed that shows: • the property sold; • the name of each purchaser; and • the consideration received for each item or lot or, if sold in bulk, for the entire property. (B) *If by an Auctioneer.* If the property is sold by an auctioneer, the auctioneer must file the itemized statement and send a copy to the

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thereof to the United States trustee. (2) *Execution of Instruments.* After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.	United States trustee and to either the trustee, debtor in possession, or Chapter 13 debtor. (C) *If Not by an Auctioneer.* If the property is not sold by an auctioneer, the trustee, debtor in possession, or Chapter 13 debtor must file the itemized statement and send a copy to the United States trustee. (2) ***Signing the Sale Documents.*** When a sale is complete, the debtor, trustee, or debtor in possession must sign any document that is necessary or court-ordered to transfer the property to the purchaser.
(g) SALE OF PERSONALLY IDENTIFIABLE INFORMATION. (1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11 reorganization case and no committee ofunsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court may direct. The motion shall be transmitted to the United States trustee. (2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than seven days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the	**(g) Selling Personally Identifiable Information.** (1) ***Request for a Consumer-Privacy Ombudsman.*** A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) must include a request for an order directing the United States trustee to appoint a consumer-privacy ombudsman under § 332. Rule 9014 governs the motion. It must be sent to the United States trustee and served on: • any committee elected under § 705 or appointed under § 1102; • in a Chapter 11 case in which no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and • other entities as the court orders. (2) ***Notice That an Ombudsman Has Been Appointed.*** If a consumer-privacy ombudsman is appointed, the United States trustee must give notice of the appointment at least 7 days

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appointment, including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.	before the hearing on any motion under § 363(b)(1)(B). The notice must give the name and address of the person appointed and include the person's verified statement that sets forth any connection with: • the debtor, creditors, or any other party in interest; • their respective attorneys and accountants; • the United States trustee; and • any person employed in the United States trustee's office.
(h) STAY OF ORDER AUTHORIZING USE, SALE, OR LEASE OF PROPERTY. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.	**(h)** ***Staying an Order Authorizing the Use, Sale, or Lease of Property.*** Unless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered.

Committee Note

The language of Rule 6004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6005. Appraisers and Auctioneers	**Rule 6005. Employing an Appraiser or Auctioneer**
The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.	A court order approving the employment of an appraiser or auctioneer must set the amount or rate of compensation. An officer or employee of the United States judiciary or United States Department of Justice is not eligible to act as an appraiser or auctioneer. No residence or licensing requirement disqualifies a person from being so employed.

Committee Note

The language of Rule 6005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease	**Rule 6006. Assuming, Rejecting, or Assigning an Executory Contract or Unexpired Lease**
(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.	**(a) Procedure in General.** Rule 9014 governs a proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan.
(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustmentcase, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contractor lease is governed by Rule 9014.	**(b) Requiring a Trustee, Debtor in Possession, or Debtor to Assume or Reject a Contract or Lease.** In a Chapter 9, 11, 12, or 13 case, Rule 9014 governs a proceeding by a party to an executory contract or unexpired lease to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease.
(c) NOTICE. Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.	**(c) Notice of a Motion.** Notice of a motion under (a) or (b) must be given to: • the other party to the contract or lease; • other parties in interest as the court orders; and • except in a Chapter 9 case, the United States trustee.
(d) STAY OF ORDER AUTHORIZING ASSIGNMENT. An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.	**(d) Staying an Order Authorizing an Assignment.** Unless the court orders otherwise, an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed for 14 days after the order is entered.

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(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.	**(e) Combining in One Motion a Request Involving Multiple Contracts or Leases.** (1) ***Requests to Assume or Assign.*** The trustee must not seek authority to assume or assign multiple executory contracts or unexpired leases in one omnibus motion unless: (A) they are all between the same parties or are to be assigned to the same assignee; (B) the trustee seeks to assume—but not assign to more than one assignee—unexpired leases of real property; or (C) the court allows the motion to be filed. (2) ***Requests to Reject.*** Subject to (f), a trustee may join in one omnibus motion requests for authority to reject multiple executory contracts or unexpired leases.
(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall: (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; (2) list parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including the curing of defaults, for each requested assumption or assignment; (4) specify the terms, including the identity of each assignee and the	**(f) Content of an Omnibus Motion.** A motion to reject—or, if permitted under (e), a motion to assume or assign—multiple executory contracts or unexpired leases that are not between the same parties must: (1) state in a conspicuous place that the parties' names and their contracts or leases are listed in the motion; (2) list the parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including how a default will be cured, for each requested assumption or assignment; (4) specify the terms, including the assignee's identity and the adequate assurance of future performance by each assignee, for each requested assignment;

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adequate assurance of future performance by each assignee, for each requested assignment; (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.	(5) be numbered consecutively with other omnibus motions to reject, assume, or assign executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.
(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.	**(g) Determining the Finality of an Order Regarding an Omnibus Motion.** The finality of an order regarding any executory contract or unexpired lease included in an omnibus motion must be determined as though the contract or lease were the subject of a separate motion.

Committee Note

The language of Rule 6006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6007. Abandonment or Disposition of Property	**Rule 6007. Abandoning or Disposing of Property**
(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.	**(a) Notice by the Trustee or Debtor in Possession.** (1) ***In General.*** Unless the court orders otherwise, the trustee or debtor in possession must give notice of a proposed abandonment or disposition of property to: • all creditors; • all indenture trustees; • any committees appointed or elected under the Code; and • the United States trustee. (2) ***Objection.*** A party in interest may file and serve an objection within 14 days after the notice is mailed or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>(b) MOTION BY PARTY IN INTEREST. A party in interest may fileand serve a motion requiring the trusteeor debtor in possession to abandon property of the estate. Unless otherwise directed by the court, the party filing themotion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days ofservice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee’s or debtor in possession’s abandonment without further notice, unless otherwise directedby the court.</td><td>(b) Motion by a Party in Interest.
(1) Service. A party in interest may file and serve a motion to require the trustee or debtor in possession to abandon property of the estate. Unless the court orders otherwise, the motion (and any notice of it) must be served on:
• the trustee or debtor in possession;
• all creditors;
• all indenture trustees;
• any committees appointed or elected under the Code; and
• the United States trustee.
(2) Objection. A party in interest may file and serve an objection within 14 days after service or within the time set by the court. If a timely objection is filed, the court must set a hearing on notice to the United States trustee and other entities as the court orders.
(3) Order. Unless the court orders otherwise, an order granting the motion to abandon property effects the trustee’s or debtor in possession’s abandonment without further notice.</td></tr>
<tr><td>[(c) HEARING]</td><td></td></tr>
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Committee Note

The language of Rule 6007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6008. Redemption of Property from Lien or Sale	**Rule 6008. Redeeming Property from a Lien or a Sale to Enforce a Lien**
On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.	On motion by the debtor, trustee, or debtor in possession and after a hearing on notice as the court may order, the court may authorize property to be redeemed from a lien or from a sale to enforce a lien under applicable law.

Committee Note

The language of Rule 6008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession	**Rule 6009. Right of the Trustee or Debtor in Possession to Prosecute and Defend Proceedings**
With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.	With or without court approval, the trustee or debtor in possession may: (a) prosecute—or appear in and defend—any pending action or proceeding by or against the debtor; or (b) commence and prosecute in any tribunal an action or proceeding on the estate's behalf.

Committee Note

The language of Rule 6009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety	**Rule 6010. Avoiding an Indemnifying Lien or a Transfer to a Surety**
If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.	This rule applies if a lien voidable under § 547 has been dissolved by furnishing a bond or other obligation, and the surety has been indemnified by the transfer of or creation of a lien on the debtor's nonexempt property. The surety must be joined as a defendant in any proceeding to avoid that transfer or lien. Part VII governs the proceeding.

Committee Note

The language of Rule 6010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

ORIGINAL	REVISION
Rule 6011. Disposal of Patient Records in Health Care Business Case	**Rule 6011. Claiming Patient Records Scheduled for Destruction in a Health-Care-Business Case**
(a) NOTICE BY PUBLICATION UNDER § 351(1)(A). A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall: (1) identify with particularity the health care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained; (3) state how to claim the patient records; and (4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.	**(a) Notice by Publication About the Records.** A notice by publication about destroying or claiming patient records under § 351(1)(A) must not identify any patient by name or contain other identifying information. The notice must: (1) identify with particularity the health-care facility whose patient records the trustee proposes to destroy; (2) state the name, address, telephone number, e-mail address, and website (if any) of the person from whom information about the records may be obtained; (3) state how to claim the records and the final date for doing so; and (4) state that if they are not claimed by that date, they will be destroyed.
(b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where the health care facility is located, and to any	**(b) Notice by Mail About the Records.** (1) ***Required Information.*** Subject to applicable nonbankruptcy law relating to patient privacy, a notice by mail about destroying or claiming patient records under § 351(1)(B) must: (A) include the information described in (a); and (B) direct a family member or other representative who receives the notice to tell the patient about it. (2) ***Mailing.*** The notice must be mailed to: • the patient;

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insurance company known to have provided health care insurance to the patient.	• any family member or other contact person whose name and address have been given to the trustee or debtor for providing information about the patient's health care; • the Attorney General of the State where the health-care facility is located; and • any insurance company known to have provided health-care insurance to the patient.
(c) PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.	**(c) Proof of Compliance with Notice Requirements.** Unless the court orders the trustee to file a proof of compliance with § 351(1)(B) under seal, the trustee must keep the proof of compliance for a reasonable time but not file it.
(d) REPORT OF DESTRUCTION OF RECORDS. The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.	**(d) Report on the Destruction of Unclaimed Records.** Within 30 days after a patient's unclaimed records have been destroyed under § 351(3), the trustee must file a report that certifies the destruction and explains the method used. The report must not identify any patient by name or by other identifying information.

Committee Note

The language of Rule 6011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

7000 Series

ORIGINAL	REVISION
PART VII—ADVERSARY PROCEEDINGS	**PART VII. ADVERSARY PROCEEDINGS**
Rule 7001. Scope of Rules of Part VII	**Rule 7001. Types of Adversary Proceedings**
An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002; (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d); (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property; (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8)[1], (a)(9), or 1328(f); (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan; (6) a proceeding to determine the dischargeability of a debt; (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;	An adversary proceeding is governed by the rules in this Part VII. The following are adversary proceedings: (a) a proceeding to recover money or property—except a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b), § 725, Rule 2017, or Rule 6002; (b) a proceeding to determine the validity, priority, or extent of a lien or other interest in property—except a proceeding under Rule 3012 or Rule 4003(d); (c) a proceeding to obtain authority under § 363(h) to sell both the estate's interest in property and that of a co-owner; (d) a proceeding to revoke or object to a discharge—except an objection under § 727(a)(8) or (a)(9), or § 1328(f); (e) a proceeding to revoke an order confirming a plan in a Chapter 11, 12, or 13 case; (f) a proceeding to determine whether a debt is dischargeable; (g) a proceeding to obtain an injunction or other equitable relief—except when the relief is provided in a Chapter 9, 11, 12, or 13 plan; (h) a proceeding to subordinate an allowed claim or interest—except when subordination is provided in a Chapter 9, 11, 12, or 13 plan;

[1] So in original. Probably should be only one section symbol.

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(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination; (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.	(i) a proceeding to obtain a declaratory judgment ~~relating~~ related to any proceeding described in (a)–(h); and (j) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Committee Note

The language of Rule 7001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In 7001(i) the words "relating to" have been changed to "related to" at the request of the style consultants.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC noted that the designations for subparts of this rule were changed from numbers to letters, which "may make this rule consistent with the result of the restyled rules, but it will also make it more difficult for practicing judges and lawyers to use existing case law and other authorities with citations using the current nomenclature." They suggest not making the change.

> ***Response***: As the NBC acknowledges, "the gains from the redesignation are only stylistic." On matters of style we defer to the style consultants. No change was made in response to this suggestion.

The NBC also expressed concern with the words "any proceeding" in Rule 7001(i), saying that it is confusing and suggests that a separate proceeding must exist (separate from the declaratory-judgment action). They suggest changing the language to "any subject" or "any matter."

> ***Response***: Each of paragraphs (a)-(h) begins with the words "a proceeding."

ORIGINAL	REVISION
Rule 7002. References to Federal Rules of Civil Procedure	**Rule 7002. References to the Federal Rules of Civil Procedure**
Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.	When a Federal Rule of Civil Procedure applicable to an adversary proceeding refers to another civil rule, that reference ~~must be read as a reference~~is to the civil rule as modified by this Part VII.

Committee Note

The language of Rule 7002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The words "must be read as a reference" are changed to the word "is" at the request of the style consultants.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC objected to the use of the words "civil rule" in this Rule, saying that that phrase "does not have accepted meaning" and could be construed to mean a rule under civil law rather than common law.

> ***Response***: The opening phrase of Rule 7002 is to the "Federal Rules of Civil Procedure" and the two uses of "civil rule" are clearly referring back to the Federal Rules of Civil Procedure. There is no confusion here. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 7003. Commencement of Adversary Proceeding	**Rule 7003. Commencing an Adversary Proceeding**
Rule 3 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 3 applies in an adversary proceeding.

Committee Note

The language of Rule 7003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7004. Process; Service of Summons, Complaint	**Rule 7004. Process; Issuing and Serving a Summons and Complaint**
(a) SUMMONS; SERVICE; PROOF OF SERVICE. (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1),(d)(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person. (2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.	**(a) Issuing, Delivering, and Personally Serving a Summons and Complaint.** (1) ***In General.*** Except as provided in (~~3~~2), Fed. R. Civ. P. 4(a), (b), (c)(1), (d)(5), (e)–(j), (l), and (m) applies in an adversary proceeding. (2) ***Issuing and Delivering a Summons.*** The clerk may: (A) sign, seal, and issue the summons electronically by placing an "s/" before the clerk's name and adding the court's seal to the summons; and (B) deliver the summons ~~for service~~to the person who will serve it. (3) ***Personally Serving a Summons and Complaint.*** Any person who is at least 18 years old and not a party may personally serve a summons and complaint under Fed. R. Civ. P. 4(e)–(j).
(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows: (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.	**(b) Service by Mail as an Alternative.** Except as provided in subdivision (h), in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)–(j), a copy of a summons and complaint may be served by first-class mail, postage prepaid, within the United States on: (1) an individual except an infant or an incompetent person—by mailing the copy to the individual's dwelling or usual place of abode or where the individual regularly conducts a business or profession;

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(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession. (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. (4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The	(2) an infant or incompetent person—by mailing the copy: (A) to a person who, under the law of the state where service is made, is authorized to receive service on behalf of the infant or incompetent person when an action is brought in that state's courts of general jurisdiction; and (B) at that person's dwelling or usual place of abode or where the person regularly conducts a business or profession; (3) a domestic or foreign corporation, or a partnership or other unincorporated association—by mailing the copy: (A) to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service; and (B) also to the defendant if a statute authorizes an agent to receive service and the statute so requires; (4) the United States, with these requirements: (A) a copy of the summons and complaint must be mailed to: (i) the civil-process clerk in the United States attorney's office in the district where the ~~case~~ action is filed; (ii) the Attorney General of the United States in Washington, D.C.; and (iii) in an action attacking the validity of an order of a United States officer or agency that is not a party, also to that officer or agency; and

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court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. (5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.	(B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); (5) an officer or agency of the United States, with these requirements: (A) the summons and complaint must be mailed not only to the officer or the agency—as prescribed in (3) if the agency is a corporation—but also to the United States, as prescribed in (4); (B) if the plaintiff has mailed a copy of the summons and complaint to a person specified in either (4)(A)(i) or (ii), the court must allow a reasonable time to serve the others that must be served under (A); and (C) if a United States trustee is the trustee in the case, service may be made on the United States trustee solely as trustee, as prescribed in (10); (6) a state or municipal corporation or other governmental organization subject to suit, with these requirements: (A) the summons and complaint must be mailed to the person or office that, under the law of the state where service is made, is authorized to receive service in a case filed against that defendant in that state's courts of general jurisdiction; and

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(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof. (7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state. (8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision. (9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the	(B) if there is no such authorized person or office, the summons and complaint ~~may~~ must be mailed to the defendant's chief executive officer; (7) a defendant of any class referred to in (1) and (3)—for whom it also suffices to mail the summons and complaint to the entity on which service must be made under a federal statute or under the law of the state where service is made when an action is brought against that defendant in that state's courts of general jurisdiction; (8) any defendant—for whom it also suffices to mail the summons and complaint to the defendant's agent under these conditions: (A) the agent is authorized by appointment or by law to accept service ~~of process~~; (B) the mail is addressed to the agent's dwelling or usual place of abode or where the agent regularly conducts a business or profession; and (C) if the agent's authorization so requires, a copy is also mailed to the defendant as provided in this subdivision (b); (9) the debtor, ~~with the qualification that~~ after a petition has been filed by or served upon a debtor, and until the case is dismissed or closed—by ~~addressing the mail to the debtor at the~~mailing the copy to the address shown on the debtor's petition or the address the debtor specifies in a filed writing; (10) a United States trustee who is the trustee in the case and service is made upon the United States trustee solely as

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petition or to such other address as the debtor may designate in a filed writing. (10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.	trustee—by addressing the mail to the United States trustee's office or other place that the United States trustee designates within the district.
(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)–(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.	**(c) Service by Publication in an Adversary Proceeding Involving Property Rights.** If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under (b) or Fed. R. Civ. P. 4(e)–(j), the court may order the summons and complaint to be served by: (1) first-class mail, postage prepaid, to the party's last known address; and (2) at least one publication in a form and manner as the court orders.
(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.	**(d) Nationwide Service of Process.** A summons and complaint (and all other process, except a subpoena) may be served anywhere within the United States.
(e) SUMMONS: TIME LIMIT FOR SERVICE WITHIN THE UNITED STATES. Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, another summons	**(e) Time to Serve a Summons and Complaint.** (1) ***In General.*** A summons and complaint served by delivery under Fed. R. Civ. P. 4(e), (g), (h)(1), (i), or (j)(2) ~~by delivery~~must be served within 7 days after the summons is issued. If served by mail, they must be deposited in the mail within 7 days after the summons is issued. If a summons is not timely delivered or mailed, a new summons must be issued.

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will be issued for service. This subdivision does not apply to service in a foreign country.	(2) ***Exception.*** This ~~paragraph~~ subdivision (e) does not apply to service in a foreign country.
(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.	**(f) Establishing Personal Jurisdiction.** If ~~the exercise of~~exercising jurisdiction is consistent with the United States Constitution and laws~~ of the United States~~, serving a summons or filing a waiver of service under this Rule 7004 or the applicable provisions of Fed. R. Civ. P. 4 establishes personal jurisdiction over ~~the person of~~ a defendant: (1) in a bankruptcy case; or (2) in a civil proceeding arising ~~in or related to a bankruptcy case~~under the Code, or arising in or related to a case under the Code~~; or in a civil proceeding under the Code~~.
(g) SERVICE ON DEBTOR'S ATTORNEY. If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P.	**(g) Serving a Debtor's Attorney.** If, when served, a debtor is represented by an attorney, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b).
(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—	**(h) Service of Process on an Insured Depository Institution.** Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless— (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

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(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.	(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.
(i) SERVICE OF PROCESS BY TITLE. This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3) or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address – or even be named – if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.	**(i) Service of Process by Title.** This subdivision (i) applies to service on a domestic or foreign corporation or partnership or other unincorporated association under Rule 7004(b)(3), or on an officer of an insured depository institution under Rule 7004(h). The defendant's officer or agent need not be correctly named in the address—~~–~~or even be named—~~–~~if the envelope is addressed to the defendant's proper address and directed to the attention of the officer's or agent's position or title.

Committee Note

The language of Rule 7004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. The ~~first clause~~beginning of Rule 7004(b) (through the words "in addition") and all of Rule 7004(h) have not been restyled because they were enacted by Congress, P.L. 103-394, Sec. 114, 108 Stat. ~~361, Sec. 4118~~4106, 4118 (1994). The Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, provides no authority to modify statutory language.

Changes Made After Publication and Comment

• In 7004(a)(1), the first reference to "(3)" has been changed to "(2)."

• In 7004(a)(2)(B) the words "for service" have been changed to "to the person who will serve it" at the request of the style consultants.

• In 7004(b)(4)(A)(i) the word "case" was changed to "action."

• In 7004(b)(5)(A), a footnote call number was removed.

• In 7004(b)(6)(B), the word "may" was replaced with "must."

• In 7004(b)(9), the words "with the qualification that" were eliminated, and the words "addressing the mail to the debtor at the" were replaced with "mailing the copy to the".

• In 7004(e)(1), the words "by delivery" were moved from after "(j)(2)" to after "served" at the request of the style consultants.

• In 7004(e)(2), the word "paragraph" was replaced with "subdivision (e)."

• In 7004(f) the word "exercising" replaced "the exercise of", and "United States Constitution and laws" replaced "Constitution and laws of the United States". Those changes were made at the request of the style consultants. In addition, the words "the person of" were deleted.

• Subsections (A), (B), and (C) were redesignated as (1), (2), and (3) and were rewritten in accordance with the suggestion made by the National Bankruptcy Conference described below.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In 7004(a), the NBC objected to the order in which (2) and (3) appear, noting that they reverse the order in the current rule. In particular, they think keeping the current order "makes it clear the reference to delivery of the summons is to the person who will serve the summons" and the restyled version "makes it unclear to whom the clerk is 'to deliver' the summons."

> ***Response***: The order of the subparts is a matter of style. Rule 7004(a)(2)(B) has been modified to specify to whom the summons is to be delivered.

The NBC expressed concern that the restyled version of Rule 7004(b) effected a substantive change by changing that language from "service may be made" to "a summons and complaint may be served." It thinks the restyled rule does not clearly state that mailing a copy of the summons and complaint is an alternative form of service.

Response: The phrase "may be served" is used in Fed. R. Civ. P. 4, to which this section refers. The title of the section, as the NBC noted, is "Service by Mail as an Alternative." The text of the section says "in addition to the methods of service authorized by [FRCP 4], a copy of a summons and complaint may be served by first-class mail." It is quite clear that mailing a copy of the summons and complaint is an alternative form of service. No change was made in response to this comment.

The NBC objects to the use of the em dash throughout Rule 7004(b), finding it "jarring and awkward".

Response: This is a matter of style, and we defer to the style consultants on matters of style.

In Rule 7004(b)(2)(B), the NBC finds the reference to "that person" to be ambiguous, potentially referring to the infant or incompetent person rather than the intended person referenced in (b)(2)(A).

Response: Rule 7004(b)(2)(B) is describing where the copy is to be mailed, and begins with the words "at that person's." The immediately preceding reference to a "person" is in (b)(2)(A). To interpret (b)(2)(B) as referring to the infant or incompetent person, one would have to assume that the section read "an infant or incompetent person – by mailing the copy … at that person's dwelling or usual place of abode …." That does not make grammatical sense. The person must be the one described in (b)(2)(A). No change was made in response to this suggestion.

In Rule 7004(b)(4)(A)(i), the NBC suggests that the words "where the case is filed" are unclear and could be read to refer to the underlying bankruptcy case rather than the adversary proceeding. They suggest using the word "action" (as in the original rule) or "proceeding" instead.

Response: Suggestion accepted.

In Rule 7004(b)(5)(A), the NBC noted that there was a footnote call number with no text.

Response: The footnote call number was removed.

In Rule 7004(b)(6)(B), the NBC suggests that if state law does not designate to whom service is to be made, service must be made on the chief executive officer. Therefore, the word "may" should be changed to "must."

Response: Suggestion accepted.

The NBC noted that the current language of (b)(9) never requires mailing the copy, only addressing it, and suggested rewriting (b)(9) to read as follows: "(9) the debtor, after a petition has been filed or served upon a debtor and until the case is dismissed or closed, by mailing the copy to the address shown on the debtor's petition or the address the debtor specifies in a filed writing;"

Response: Suggestion accepted.

In (e)(1), the NBC believes that the word "they" is ambiguous and should be replaced with "the documents" or "the summons and complaint".

Response: There is nothing other than the summons and complaint that could be referred to by the word "they." No change was made in response to this comment.

In (f) the NBC asks why the paragraphs are labeled with letters rather than with numbers like the rest of Rule 7004.

Response: Suggestion accepted.

In (f)(A) the concept of "a defendant in a bankruptcy case" makes no sense and the NBC suggests changing the words "in a" with "regarding" (although that is only marginally better).

Response: Suggestion accepted.

The NBC points out that (f)(A)-(C) is supposed to track the language of 28 U.S.C. § 1334(a)-(b) which give district courts jurisdiction over "all cases under title 11" and "all civil proceedings arising under title 11, or arising in or related to cases under title 11." They therefore suggest that (f)(A)-(C) be replaced with language that reads as follows: (1) regarding a case under the Code; (2) in a civil proceeding arising under the Code; or (3) in a civil proceeding arising in or related to a case under the Code."

Response: Suggestion accepted with modifications to track statutory language more closely.

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Rule 7005. Service and Filing of Pleadings and Other Papers	**Rule 7005. Serving and Filing Pleadings and Other Papers**
Rule 5 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 5 applies in an adversary proceeding.

Committee Note

The language of Rule 7005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7007. Pleadings Allowed	**Rule 7007. Pleadings Allowed**
Rule 7 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 7 applies in an adversary proceeding.

Committee Note

The language of Rule 7007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7007.1. Corporate Ownership Statement	**Rule 7007.1. Corporate Ownership Statement**
(a) REQUIRED DISCLOSURE. Any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, shall file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.	**(a) Required Disclosure.** Any nongovernmental corporation—other than the debtor— -that is a party to an adversary proceeding~~, other than the debtor,~~ must file a statement ~~that identifies~~identifying any parent corporation and any publicly held corporation that owns 10% or more of its stock or ~~states~~ stating that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.
(b) TIME FOR FILING; SUPPLEMENTAL FILING. The corporate ownership statement shall: (1) be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court; and (2) be supplemented whenever the information required by this rule changes.	**(b) Time for Filing; Supplemental Filing.** The statement must: (1) be filed with the corporation's first appearance, pleading, motion, response, or other request to the court; and (2) be supplemented whenever the information required by this rule changes.

Committee Note

The language of Rule 7007.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The words ", other than the debtor," were removed from after the words "adversary proceeding" and the phrase "—other than the debtor—" was inserted after the words "nongovernmental corporation" at the beginning of the section at the request of the style consultants.

- The words "that identifies" were replaced with "identifying" and the word "states" was replaced with "stating."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the words "that identifies" be replaced with "identifying" and the word "states" be replaced with "stating."

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 7008. General Rules of Pleading	**Rule 7008. General Rules of Pleading**
Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.	Fed. R. Civ. P. 8 applies in an adversary proceeding. The allegation of jurisdiction required by that rule must include a reference to the name, number, and Code chapter of the case that the adversary proceeding relates to and the district and division where it is pending. In an adversary proceeding before a bankruptcy court, a complaint, counterclaim, crossclaim, or third-party complaint must state whether the pleader does or does not consent to the entry of ~~a~~ final orders or judgment by the bankruptcy court.

Committee Note

The language of Rule 7008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The words "a final order" were replaced with "final orders."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the words "where it is pending" are ambiguous and that "it" should be changed to "the case" or "such case."

> ***Response***: The only possible antecedent for "it" is "the adversary proceeding." There is no ambiguity. No change was made in response to this suggestion.

The NBC is concerned that the change from "final orders" in the existing rule to "final order" in the restyled rule could be a substantive change. It notes that it is possible that there could be more than one final order in an adversary proceeding and the existing rule applies to all of them.

> ***Response***: Suggestion accepted.

ORIGINAL	REVISION
Rule 7009. Pleading Special Matters	**Rule 7009. Pleading Special Matters**
Rule 9 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 9 applies in an adversary proceeding.

Committee Note

The language of Rule 7009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7010. Form of Pleadings	**Rule 7010. Form of Pleadings in an Adversary Proceeding**
Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.	Fed. R. Civ. P. 10 applies in an adversary proceeding—except that a pleading's caption must substantially conform ~~substantially~~ to the appropriate version of ~~Official~~ Form 416.

Committee Note

The language of Rule 7010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The language "conform substantially" has been changed to "substantially conform" at the request of the style consultants.

- The word "Official" before "Form" has been deleted for consistency throughout the Restyled Rules; whenever an Official Form is referred to by number, the practice is to use "Form [number]" without "Official."

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggested changing the words "Official Form 416" to "Form 416."

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 7012. Defenses and Objections—When and How Presented— By Pleading or Motion—Motion for Judgment on the Pleadings	**Rule 7012. Defenses; Effect of a Motion; Motion for Judgment on the Pleadings and Other Procedural Matters**
(a) WHEN PRESENTED. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.	**(a) Time to Serve.** The time to serve a responsive pleading is as follows: (1) ***Answer to a Complaint in General.*** A defendant must serve an answer to a complaint within 30 days after the summons was issued, unless the court sets a different time. (2) ***Answer to a Complaint Served by Publication or on a Party in a Foreign Country.*** The court must set the time to serve an answer to a complaint served by publication or served on a party in a foreign country. (3) ***Answer to a Crossclaim.*** A party served with a pleading that states a crossclaim must serve an answer to the crossclaim within 21 days after being served. (4) ***Answer to a Counterclaim.*** A plaintiff served with an answer that contains a counterclaim must serve an answer ~~answer~~to the counterclaim within 21 days after service of: (A) the answer; or (B) a court order requiring an answer, unless the order states otherwise. (5) ***Answer to a Complaint or Crossclaim—or Answer to a Counterclaim—Served on the United States or an Officer or Agency.*** The United States or its officer or agency must serve: (A) an answer to a complaint within 35 days after the summons was issued; and

ORIGINAL	REVISION
	(B) an answer to a crossclaim or ~~an answer to~~ a counterclaim within 35 days after the United States attorney is served with the pleading that asserts the claim. (6) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these times as follows: (A) if the court denies the motion or postpones disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or (B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the statement is served.
(b) APPLICABILITY OF RULE 12(b)–(i) F.R.CIV.P. Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.	**(b) Applicability of Civil Rule 12(b)–(i).** Fed. R. Civ. P. 12(b)–(i) applies in an adversary proceeding. A responsive pleading must state whether the party does or does not consent to the entry of ~~a~~ final orders or judgment by the bankruptcy court.

Committee Note

The language of Rule 7012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 7012(a)(4) the word "answer" was replaced with "serve an answer to".

• Rule 7012(a)(5)(B) was modified to remove the words "an answer to" before "a counterclaim" at the request of the style consultants.

• The words "a final order" in Rule 7012(b) were replaced with "final orders".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC again, as in Rule 7008, objects to the use of "a final order" rather than "final orders" in 7012(b), stating that it is a substantive change.

Response: Suggestion accepted.

<table>
<tr><th>ORIGINAL</th><th>REVISION</th></tr>
<tr><td>Rule 7013. Counterclaim and Cross-Claim</td><td>Rule 7013. Counterclaim and Crossclaim</td></tr>
<tr><td>Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor’s property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.</td><td>Fed. R. Civ. P. 13 applies in an adversary proceeding. But a party sued by a trustee or debtor in possession need not state as a counterclaim any claim the party has against the debtor, the debtor’s property, or the estate, unless the claim arose after the order for relief. If, through oversight, inadvertence, or excusable neglect, a trustee or debtor in possession fails to plead a counterclaim—or when justice so requires—the court may permit the trustee or debtor in possession to:
(a) amend the pleading; or
(b) commence a new adversary proceeding or separate action.</td></tr>
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Committee Note

The language of Rule 7013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7014. Third-Party Practice	**Rule 7014. Third-Party Practice**
Rule 14 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 14 applies in an adversary proceeding.

Committee Note

The language of Rule 7014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7015. Amended and Supplemental Pleadings	**Rule 7015. Amended and Supplemental Pleadings**
Rule 15 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 15 applies in an adversary proceeding.

Committee Note

The language of Rule 7015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7016. Pretrial Procedures	**Rule 7016. Pretrial Procedures**
(a) PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT. Rule 16 F.R.Civ.P. applies in adversary proceedings. (b) DETERMINING PROCEDURE. The bankruptcy court shall decide, on its own motion or a party's timely motion, whether: (1) to hear and determine the proceeding; (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (3) to take some other action.	**(a) Pretrial Conferences; Scheduling; Management.** Fed. R. Civ. P. 16 applies in an adversary proceeding. **(b) Determining Procedure.** On its own or a party's timely motion, the court must decide whether: (1) to hear and determine the proceeding; (2) to hear it and issue proposed findings of fact and conclusions of law; or (3) to take other action.

Committee Note

The language of Rule 7016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC pointed out a formatting issue in Rule 7016(a), which was corrected. They also expressed concern that the word "it" in (b)(2) was ambiguous and should be replaced with "the proceeding" as in the current rule.

> ***Response:*** The formatting has been corrected. There is nothing that that word "it" could refer to other than "the proceeding" that is mentioned in (b)(1). It could not possibly be the court. There is no ambiguity. No change was made in response to this suggestion.

ORIGINAL	REVISION
Rule 7017. Parties Plaintiff and Defendant; Capacity	**Rule 7017. Plaintiff and Defendant; Capacity; Public Officers**
Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).	Fed. R. Civ. P. 17 applies in an adversary proceeding, except as provided in Rule 2010(b).

Committee Note

The language of Rule 7017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7018. Joinder of Claims and Remedies	**Rule 7018. Joinder of Claims**
Rule 18 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 18 applies in an adversary proceeding.

Committee Note

The language of Rule 7018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7019. Joinder of Persons Needed for Just Determination	**Rule 7019. Required Joinder of ~~Persons~~Parties**
Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceedings and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.	Fed. R. Civ. P. 19 applies in an adversary proceeding. But these exceptions apply: (a) if an entity joined as a party raises the defense that the court lacks subject-matter jurisdiction and the defense is sustained, the court must dismiss the party; and (b) if an entity joined as a party properly and timely raises the defense of improper venue, the court must determine under 28 U.S.C. § 1412 whether to transfer to another district the entire adversary proceeding or just that part involving the joined party.

Committee Note

The language of Rule 7019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The word "Persons" in the heading was changed to "Parties" to conform to Fed. R. Civ. P. 19.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7020. Permissive Joinder of Parties	**Rule 7020. Permissive Joinder of Parties**
Rule 20 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 20 applies in an adversary proceeding.

Committee Note

The language of Rule 7020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7021. Misjoinder and Non-Joinder of Parties	**Rule 7021. Misjoinder and Nonjoinder of Parties**
Rule 21 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 21 applies in an adversary proceeding.

Committee Note

The language of Rule 7021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7022. Interpleader	**Rule 7022. Interpleader**
Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements—and does not limit—the joinder of parties allowed by Rule 7020.	Fed. R. Civ. P. 22(a) applies in an adversary proceeding. This rule supplements and does not limit the joinder of parties under Rule 7020.

Committee Note

The language of Rule 7022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7023. Class Proceedings	**Rule 7023. Class Actions**
Rule 23 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23 applies in an adversary proceeding.

Committee Note

The language of Rule 7023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7023.1. Derivative Actions	**Rule 7023.1. Derivative Actions**
Rule 23.1 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23.1 applies in an adversary proceeding.

Committee Note

The language of Rule 7023.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations	**Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations**
Rule 23.2 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 23.2 applies in an adversary proceeding.

Committee Note

The language of Rule 7023.2 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7024. Intervention	**Rule 7024. Intervention**
Rule 24 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 24 applies in an adversary proceeding.

Committee Note

The language of Rule 7024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7025. Substitution of Parties	**Rule 7025. Substitution of Parties**
Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 25 applies in an adversary proceeding—but is subject to Rule 2012.

Committee Note

The language of Rule 7025 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7026. General Provisions Governing Discovery	**Rule 7026. Duty to Disclose; General Provisions Governing Discovery**
Rule 26 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 26 applies in an adversary proceeding.

Committee Note

The language of Rule 7026 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal	**Rule 7027. Depositions to Perpetuate Testimony**
Rule 27 F.R.Civ.P. applies to adversary proceedings.	Fed. R. Civ. P. 27 applies in an adversary proceeding.

Committee Note

The language of Rule 7027 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7028. Persons Before Whom Depositions May Be Taken	**Rule 7028. Persons Before Whom Depositions May Be Taken**
Rule 28 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 28 applies in an adversary proceeding.

Committee Note

The language of Rule 7028 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7029. Stipulations Regarding Discovery Procedure	**Rule 7029. Stipulations About Discovery Procedure**
Rule 29 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 29 applies in an adversary proceeding.

Committee Note

The language of Rule 7029 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7030. Depositions Upon Oral Examination	**Rule 7030. Depositions by Oral Examination**
Rule 30 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 30 applies in an adversary proceeding.

Committee Note

The language of Rule 7030 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7031. Deposition Upon Written Questions	**Rule 7031. Depositions by Written Questions**
Rule 31 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 31 applies in an adversary proceeding.

Committee Note

The language of Rule 7031 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7032. Use of Depositions in Adversary Proceedings	**Rule 7032. Using Depositions in Court Proceedings**
Rule 32 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 32 applies in an adversary proceeding.

Committee Note

The language of Rule 7032 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7033. Interrogatories to Parties	**Rule 7033. Interrogatories to Parties**
Rule 33 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 33 applies in an adversary proceeding.

Committee Note

The language of Rule 7033 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	**Rule 7034. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**
Rule 34 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 34 applies in an adversary proceeding.

Committee Note

The language of Rule 7034 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7035. Physical and Mental Examination of Persons	**Rule 7035. Physical and Mental Examinations**
Rule 35 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 35 applies in an adversary proceeding.

Committee Note

The language of Rule 7035 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7036. Requests for Admission	**Rule 7036. Requests for Admission**
Rule 36 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 36 applies in an adversary proceeding.

Committee Note

The language of Rule 7036 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7037. Failure to Make Discovery: Sanctions	**Rule 7037. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions**
Rule 37 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 37 applies in an adversary proceeding.

Committee Note

The language of Rule 7037 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7040. Assignment of Cases for Trial	**Rule 7040. Scheduling Cases for Trial**
Rule 40 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 40 applies in an adversary proceeding.

Committee Note

The language of Rule 7040 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7041. Dismissal of Adversary Proceedings	**Rule 7041. ~~Dismissal of~~Dismissing Adversary Proceedings**
Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.	Fed. R. Civ. P. 41 applies in an adversary proceeding. But a complaint objecting to the debtor's discharge may be dismissed on the plaintiff's motion only: (a) by a court order setting out any terms and conditions for the dismissal~~with notice to the trustee, the United States trustee, and any other person as the court designates~~; and (b) with notice to the trustee, the United States trustee, and any other person the court designates~~by a court order that sets out any conditions for the dismissal~~.

Committee Note

The language of Rule 7041 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The language of Rule 7041(a) and (b) were reversed at the request of the style consultants.

- In what is now 7041(a), the words "that sets out" were placed with "setting out" and the words "terms and" were inserted before "conditions".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the words "that sets out" be replaced with "setting out" in former 7041(b).

Response: Suggestion accepted.

The NBC believes that replacing the phrase "terms and conditions" in what is now 7041(a) with "conditions" is a substantive change. Not all terms are conditions. They request that the words "terms and" be reinserted.

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 7042. Consolidation of Adversary Proceedings; Separate Trials	**Rule 7042. Consolidating Adversary Proceedings; Separate Trials**
Rule 42 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 42 applies in an adversary proceeding.

Committee Note

The language of Rule 7042 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7052. Findings by the Court	**Rule 7052. Findings and Conclusions by the Court; Judgment on Partial Findings**
Rule 52 F.R.Civ.P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F.R.Civ.P. to the entry of judgment under Rule 58 F.R.Civ.P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a).	Fed. R. Civ. P. 52 applies in an adversary proceeding—except that a motion under Fed. R. Civ. P. 52(b) to amend or add findings must be filed within 14 days after the judgment is entered. The reference in Fed. R. Civ. P. 52(a) to entering a judgment under Fed. R. Civ. P. 58 must be read as referring to entering a judgment or order under Rule 5003(a).

Committee Note

The language of Rule 7052 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7054. Judgments; Costs	**Rule 7054. Judgments; Costs**
(a) JUDGMENTS. Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings.	**(a) Judgment.** Fed. R. Civ. P. 54(a)–(c) applies in an adversary proceeding.
(b) COSTS; ATTORNEY'S FEES. (1) *Costs Other Than Attorney's Fees.* The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court. (2) *Attorney's Fees.* (A) Rule 54(d)(2)(A)–(C) and (E) F.R.Civ.P. applies in adversary proceedings except for the reference in Rule 54(d)(2)(C) to Rule 78. (B) By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings.	**(b) Costs and Attorney's Fees.** (1) ***Costs Other Than Attorney's Fees.*** The court may allow costs to the prevailing party, unless a federal statute or these rules provide otherwise. Costs against the United States, its officers, and its agencies may be imposed only to the extent permitted by law. The clerk, on 14 days' notice, may tax costs, and the court, on motion served within the next 7 days, may review the clerk's action. (2) ***Attorney's Fees.*** (A) *In General.* Fed. R. Civ. P. 54(d)(2)(A)–(C) and (E) applies in an adversary proceeding—except for the reference in ~~Rule~~ 54(d)(2)(C) to ~~Rule~~ Civil Rule 78. (B) *Local Rules for Resolving Issues.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings.

Committee Note

The language of Rule 7054 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In 7054(b)(2)(A), the word "Rule" was deleted before "54(d)(2)(C) and replaced by "Civil Rule" before "78".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the two references to "Rule" in 7054 (b)(2)(A) should be changed to "Fed. R. Civ. P." because the restyled rules use the term "Rule" to refer only to Bankruptcy Rules.

> ***Response***: The NBC is correct that the word "Rule" is used to refer to Bankruptcy Rules. The word in this section is deleted before "54(d)(2)(C)" (because it is referring to the rule earlier in the same sentence), and replaced with "Civil Rule" before "78" (which is the phrase used in the heading to 7012(b)).

ORIGINAL	REVISION
Rule 7055. Default	**Rule 7055. Default; Default Judgment**
Rule 55 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 55 applies in an adversary proceeding.

Committee Note

The language of Rule 7055 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7056. Summary Judgment	**Rule 7056. Summary Judgment**
Rule 56 F.R.Civ.P. applies in adversary proceedings, except that any motion for summary judgment must be made at least 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a different time is set by local ruleor the court orders otherwise.	Fed. R. Civ. P. 56 applies in an adversary proceeding. But a motion for summary judgment must be filed at least 30 days beforethe first date set for an evidentiary hearing onany issue that the motion addresses, unless a local rule sets a different time or the court orders otherwise.

Committee Note

The language of Rule 7056 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7058. Entering Judgment in Adversary Proceeding	**Rule 7058. Entering Judgment**
Rule 58 F.R.Civ.P. applies in adversary proceedings. In these proceedings, the reference in Rule 58 F.R.Civ.P. to the civil docket shall be read as a referenceto the docket maintained by the clerk under Rule 5003(a).	Fed. R. Civ. P. 58 applies in an adversary proceeding. A reference in that rule to the civil docket must be read as referring to the docket maintained by the clerk under Rule 5003(a).

Committee Note

The language of Rule 7058 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggested changing the words "must be read as referring to" to "is".

> ***Response***: The suggested change does not work. The reference in civil rule 58 to the docket is not the docket maintained by the clerk under Rule 5003(a). The reference is supposed to be read to refer to that docket rather than the district court docket. No change was made in response to this suggestion.

ORIGINAL	REVISION
Rule 7062. Stay of Proceedings to Enforce a Judgment	**Rule 7062. Stay of Proceedings to Enforce a Judgment**
Rule 62 F.R.Civ.P. applies in adversary proceedings, except that proceedings to enforce a judgment are stayed for 14 days after its entry.	Fed. R. Civ. P. 62 applies in an adversary proceeding—except that a proceeding to enforce a judgment is stayed for 14 days after its entry.

Committee Note

The language of Rule 7062 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7064. Seizure of Person or Property	**Rule 7064. Seizing a Person or Property**
Rule 64 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 64 applies in an adversary proceeding.

Committee Note

The language of Rule 7064 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7065. Injunctions	**Rule 7065. Injunctions**
Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).	Fed. R. Civ. P. 65 applies in an adversary proceeding. But on application of a debtor, trustee, or debtor in possession, the court may issue a temporary restraining order or preliminary injunction without complying with subdivision (c) of that rule.

Committee Note

The language of Rule 7065 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7067. Deposit in Court	**Rule 7067. Deposit into Court**
Rule 67 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 67 applies in an adversary proceeding.

Committee Note

The language of Rule 7067 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7068. Offer of Judgment	**Rule 7068. Offer of Judgment**
Rule 68 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 68 applies in an adversary proceeding.

Committee Note

The language of Rule 7068 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7069. Execution	**Rule 7069. Execution**
Rule 69 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 69 applies in an adversary proceeding.

Committee Note

The language of Rule 7069 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7070. Judgment for Specific Acts; Vesting Title	**Rule 7070. Enforcing a Judgment for a Specific Act; Vesting Title**
Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.	Fed. R. Civ. P. 70 applies in an adversary proceeding. When real or personal property is within the court's jurisdiction, the court may enter a judgment divesting a party's title and vesting it in another person.

Committee Note

The language of Rule 7070 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7071. Process in Behalf of and Against Persons Not Parties	**Rule 7071. Enforcing Relief for or Against a Nonparty**
Rule 71 F.R.Civ.P. applies in adversary proceedings.	Fed. R. Civ. P. 71 applies in an adversary proceeding.

Committee Note

The language of Rule 7071 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 7087. Transfer of Adversary Proceeding	**Rule 7087. Transferring an Adversary Proceeding**
On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).	On motion and after a hearing, the court may transfer an adversary proceeding, or any part of it, to another district under 28 U.S.C. § 1412—except as provided in Rule 7019(b).

Committee Note

The language of Rule 7087 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

8000 Series

ORIGINAL	REVISION
PART VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL	**PART VIII. APPEAL TO A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL**
Rule 8001. Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission	**Rule 8001. Scope; Definition of "BAP"; Sending Documents Electronically**
(a) GENERAL SCOPE. These Part VIII rules govern the procedure in a United States district court and a bankruptcy appellate panel on appeal from a judgment, order, or decree of a bankruptcy court. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d).	**(a) Scope.** These Part VIII rules govern the procedure in a United States district court and in a bankruptcy appellate panel on appeal from a bankruptcy court's judgment, order, or decree. They also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d).
(b) DEFINITION OF "BAP." "BAP" means a bankruptcy appellate panel established by a circuit's judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158.	**(b) Definition of "BAP."** "BAP" means a bankruptcy appellate panel established by a circuit judicial council and authorized to hear appeals from a bankruptcy court under 28 U.S.C. § 158.
(c) METHOD OF TRANSMITTING DOCUMENTS. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery.	**(c) Requirement to Send Documents Electronically.** Under these Part VIII rules, a document must be sent electronically, unless: (1) it is sent by or to an individual who is not represented by counsel; or (2) the court's local rules permit or require mailing or delivery by other means.

Committee Note

The language of Rule 8001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8001(a), the word "in" was inserted before the words "a bankruptcy appellate panel" at the request of the style consultants.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8002. Time for Filing Notice of Appeal	**Rule 8002. Time to File a Notice of Appeal**
(a) IN GENERAL. (1) *Fourteen-Day Period.* Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed. (2) *Filing Before the Entry of Judgment.* A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry. (3) *Multiple Appeals.* If one party files a timely notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule, whichever period ends later. (4) *Mistaken Filing in Another Court.* If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, the clerk of that court must state on the notice the date on which it was received and transmit it to the bankruptcy clerk. The notice of appeal is then considered filed in the bankruptcy court on the date so stated. (5) *Entry Defined.* (A) A judgment, order, or decree is entered for purposes of this Rule 8002(a): (i) when it is entered in the docket under Rule 5003(a), or	**(a) In General.** (1) ***Time to File.*** Except as (b) and (c) provide otherwise, a notice of appeal must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered. (2) ***Filing Before the Entry of Judgment.*** A notice of appeal filed after the bankruptcy court announces a decision or order—but before entry of the judgment, order, or decree—is treated as filed on the date of and after the entry. (3) ***Multiple Appeals.*** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise allowed by this rule—whichever is later~~, whichever period ends later~~. (4) ***Mistaken Filing in Another Court.*** If a notice of appeal is mistakenly filed in a district court, BAP, or court of appeals, that court's clerk must note on it the date when it was received and send it to the bankruptcy clerk. The notice is then considered filed in the bankruptcy court on the date noted. (5) ***Entry Defined.*** (A) *In General.* A judgment, order, or decree is entered for purposes of this subdivision (a): (i) when it is entered in the docket under Rule 5003(a); or (ii) if Rule 7058 applies and Fed. R. Civ. P. 58(a) requires a separate document, when the

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(ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P. requires a separate document, when the judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs: • the judgment, order, or decree is set out in a separate document; or • 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a). (B) A failure to set out a judgment, order, or decree in a separate document when required by Rule 58(a) F.R.Civ.P. does not affect the validity of an appeal from that judgment, order, or decree.	judgment, order, or decree is entered in the docket under Rule 5003(a) and when the earlier of these events occurs: • the judgment, order, or decree is set out in a separate document; or • 150 days have run from entry of the judgment, order, or decree in the docket under Rule 5003(a). (B) *Failure to Use a Separate Document.* A failure to set out a judgment, order, or decree in a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment, order, or decree.
(b) EFFECT OF A MOTION ON THE TIME TO APPEAL. (1) *In General.* If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:	**(b) Effect of a Motion on the Time to Appeal.** (1) ***In General.*** If a party files in the bankruptcy court any of the following motions—and does so within the time allowed by these rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

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(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;	(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;
(B) to alter or amend the judgment under Rule 9023;	(B) to alter or amend the judgment under Rule 9023;
(C) for a new trial under Rule 9023; or	(C) for a new trial under Rule 9023; or
(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.	(D) for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.
(2) *Filing an Appeal Before the Motion is Decided.* If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in subdivision (b)(1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.	(2) ***Notice of Appeal Filed Before a Motion Is Decided.*** If a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in (1)—the notice becomes effective when the order disposing of the last such remaining motion is entered.
(3) *Appealing the Ruling on the Motion.* If a party intends to challenge an order disposing of any motion listed in subdivision (b)(1)—or the alteration or amendment of a judgment, order, or decree upon the motion—the party must file a notice of appeal or an amended notice of appeal. The notice or amended notice must comply with Rule 8003 or 8004 and be filed within the time prescribed by this rule, measured from the entry of the order disposing of the last such remaining motion.	(3) ***Appealing ~~the~~ a Ruling on ~~the~~ a Motion.*** A party intending to challenge an order disposing of a motion listed in (1)—or an alteration or amendment of a judgment, order, or decree made by a decision on the motion—must file a notice of appeal or an amended notice of appeal. It must: (A) comply with Rule 8003 or 8004; and (B) be filed within the time ~~prescribed~~ allowed by this rule, measured from the entry of the order disposing of the last such remaining motion.
(4) *No Additional Fee.* No additional fee is required to file an amended notice of appeal.	(4) ***No Additional Fee for an Amended Notice.*** No additional fee is required to file an amended notice of appeal.

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(c) APPEAL BY AN INMATE CONFINED IN AN INSTITUTION.	**(c) Appeal by an Inmate Confined in an Institution.**
(1) *In General.* If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8002(c)(1). If an inmate files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:	(1) ***In General.*** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this paragraph (1). If an inmate files a notice of appeal from a bankruptcy court's judgment, order, or decree ~~of a bankruptcy court~~, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:
(A) it is accompanied by:	(A) it is accompanied by:
(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being pre-paid; or	(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or	(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or
(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 8002(c)(1)(A)(i).	(B) the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies (A)(i).
(2) *Multiple Appeals.* If an inmate files under this subdivision the first notice of appeal, the 14-day period provided in subdivision (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk dockets the first notice.	(2) ***Multiple Appeals.*** If an inmate files under this subdivision (c) the first notice of appeal, the 14-day period provided in (a)(3) for another party to file a notice of appeal runs from the date when the bankruptcy clerk dockets the first notice.

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(d) EXTENDING THE TIME TO APPEAL.	**(d) Extending the Time to File a Notice of Appeal.**
(1) *When the Time May be Extended.* Except as provided in subdivision (d)(2), the bankruptcy court may extend the time to file a notice of appeal upon a party's motion that is filed:	(1) ***When the Time May Be Extended.*** Except as (2) provides otherwise, the bankruptcy court may, on motion, extend the time to file a notice of appeal[2] if the motion is filed:
(A) within the time prescribed by this rule; or	(A) within the time ~~prescribed~~ allowed by this rule; or
(B) within 21 days after that time, if the party shows excusable neglect.	(B) within 21 days after that time expires if the party shows excusable neglect.
(2) *When the Time May Not be Extended.* The bankruptcy court may not extend the time to file a notice of appeal if the judgment, order, or decree appealed from:	(2) ***When the Time ~~May~~ Must Not Be Extended.*** The bankruptcy court ~~may not~~must not extend the time to file the notice if the judgment, order, or decree being appealed:
(A) grants relief from an automatic stay under § 362, 922, 1201, or 1301 of the Code;	(A) grants relief from ~~the~~ an automatic stay under § 362, 922, 1201, or 1301;
(B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Code;	(B) authorizes the sale or lease of property or the use of cash collateral under § 363;
(C) authorizes the obtaining of credit under § 364 of the Code;	(C) authorizes obtaining credit under § 364;
(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Code;	(D) authorizes assuming or assigning an executory contract or unexpired lease under § 365;
(E) approves a disclosure statement under § 1125 of the Code; or	(E) approves a disclosure statement under § 1125; or
(F) confirms a plan under § 943, 1129, 1225, or 1325 of the Code.	(F) confirms a plan under § 943, 1129, 1225, or 1325.

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(3) TIME LIMITS ON AN EXTENSION. No extension of time may exceed 21 days after the time prescribed by this rule, or 14 days after the order granting the motion to extend time is entered, whichever is later.	(3) ***Limit on Extending Time.*** An extension of time must not exceed 21 days after the time ~~prescribed~~ allowed by this rule, or 14 days after the order granting the motion to extend time is entered—whichever is later.

Committee Note

The language of Rule 8002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In 8002(a)(3), the phrase ", whichever period ends later" was replaced with "—whichever is later" at the request of the style consultants.

• In 8002(b)(3) the heading is changed from "Appealing the Ruling on the Motion" to "Appealing a Ruling on a Motion" at the request of the style consultants.

• 8002(b)(3)(B), 8002(d)(1)(A) and 8002(d)(3) have been modified to replace the word "prescribed" with "allowed" at the request of the style consultants.

• In 8002(c)(1) the phrase "of a bankruptcy court" has been removed and the words "bankruptcy court's" have been inserted before "judgment, order, or decree".

• A phantom footnote call number was removed in 8002(d)(1).

• In 8002(d)(2) the word "May" in the title was replaced with "Must" and the phrase "may not" was replaced with "must not".

• In 8002(d)(2)(A) the words "the automatic stay" were replaced with "an automatic stay".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In 8002(a)(1), the NBC recommended retaining the existing title "Fourteen Day Period" instead of "Time to File" in order to emphasize to users that the normal 30-day period applicable in federal civil cases is not applicable here.

> ***Response***: This is a matter of style, and on style we defer to the style consultants. Other sections of the restyled rules have the same heading. No change was made in response to this comment.

In 8002(a)(2), the NBC suggested replacing the words "on the date of and after the entry" with "upon entry".

> ***Response***: This is a substantive change. The proposed language would make the time of the filing of the notice of appeal *the same moment* as the entry of the judgment, order or decree. The existing language makes the time *after* the entry, which is correct. One cannot appeal from a judgment that has not already been entered.

The NBC suggests that the word "it" in 8002(b)(3) is ambiguous and should retain the original language of "the notice or amended notice."

> ***Response***: The word "It" is understood to refer to the nearest antecedent, which is the "notice of appeal or amended notice of appeal." Nothing else would make sense. No change was made in response to this comment.

The NBC pointed out a phantom footnote call number in 8002(d)(1).

> ***Response***: Eliminated.

In 8002(d)(2)(A) the NBC suggests reverting to "an automatic stay" rather than "the automatic stay" because there can be a stay under any of the cited Code sections.

> ***Response***: Suggestion accepted.

The NBC also pointed out what appeared to be a typographical error in 8002(d)(2)(E), but was actually just a formatting error.

> ***Response***: Formatting fixed.

ORIGINAL	REVISION
Rule 8003.[1] Appeal as of Right—How Taken; Docketing the Appeal	**Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal**
(a) FILING THE NOTICE OF APPEAL. (1) *In General.* An appeal from a judgment, order, or decree of a bankruptcy court to a district court or BAP under 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002. (2) *Effect of Not Taking Other Steps.* An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal. (3) *Contents.* The notice of appeal must: (A) conform substantially to the appropriate Official Form; (B) be accompanied by the judgment—or the appealable order or decree—from which the appeal is taken; and (C) be accompanied by the prescribed fee.	**(a) Filing a Notice of Appeal.** (1) ***Time to File.*** An appeal under 28 U.S.C. § 158(a)(1) or (2) from ~~a~~ a bankruptcy court's judgment, order, or decree ~~of a bankruptcy court~~ to a district court or a BAP may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002. (2) ***Failure to Take Any Other Step.*** An appellant's failure to take any ~~other~~ step other than timely filing a notice of appeal does not affect the appeal's validity, but is ground only for the district court or BAP to act as it considers appropriate, including dismissing the appeal. (3) ***Content~~s~~ of the Notice of Appeal.*** A notice of appeal must: (A) conform substantially to Form 417A; (B) be accompanied by the judgment—or the appealable order or decree—from which the appeal is taken; and (C) be accompanied by the prescribed filing fee.
(4) *Merger.* The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal. (5) *Final Judgment.* The notice	(4) ***Merger.*** The notice of appeal encompasses all orders that, for purposes of appeal, merge into the identified judgment or appealable order or decree. It is not necessary to identify those orders in the notice of appeal. (5) ***Final Judgment.*** The notice of

[1] Rule 8003 original text shows changes on track to go into effect on December 1, 2023.

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of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:	appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:
(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or	(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or
(B) an order described in Rule 8002(b)(1).	(B) an order described in Rule 8002(b)(1).
(6) *Limited Appeal.* An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal.	(6) ***Limited Appeal.*** An appellant may identify only part of a judgment or appealable order or decree by expressly stating that the notice of appeal is so limited. Without such an express statement, specific identifications do not limit the scope of the notice of appeal.
(7) *Impermissible Ground for Dismissal.* An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree.	(7) ***Impermissible Ground for Dismissal.*** An appeal must not be dismissed for failure to properly identify the judgment or appealable order or decree if the notice of appeal was filed after entry of the judgment or appealable order or decree and identifies an order that merged into that judgment or appealable order or decree.
(8) *Additional Copies.* If requested to do so, the appellant must furnish the bankruptcy clerk with enough copies of the notice to enable the clerk to comply with subdivision (c).	(8) ***Clerk's Request for Additional Copies of the Notice of Appeal.*** On the bankruptcy clerk's request, the appellant must provide enough copies of the notice of appeal to enable the clerk to comply with (c).

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(b) JOINT OR CONSOLIDATED APPEALS. (1) *Joint Notice of Appeal.* When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy court and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) *Consolidating Appeals.* When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.	**(b) Joint or Consolidated Appeals.** (1) ***Joint Notice of Appeal.*** When two or more parties are entitled to appeal from a bankruptcy court's judgment, order, or decree and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant. (2) ***Consolidating Appeals.*** When parties have separately filed timely notices of appeal, the district court or BAP may join or consolidate the appeals.
(c) SERVING THE NOTICE OF APPEAL. (1) *Serving Parties and Transmitting to the United States Trustee.* The bankruptcy clerk must serve the notice of appeal on counsel of record for each party to the appeal, excluding the appellant, and transmit it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice of appeal to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) *Effect of Failing to Serve or Transmit Notice.* The bankruptcy clerk's failure to serve notice on a party or transmit notice to the United States trustee does not affect the validity of the appeal. (3) *Noting Service on the Docket.* The clerk must note on the docket the names of the parties served and the date and method of the service.	**(c) Serving the Notice of Appeal.** (1) ***Serving Parties; Sending to the United States Trustee.*** The bankruptcy clerk must serve the notice of appeal by sending a copy to counsel of record for each party to the appeal—excluding the appellant's counsel—and send it to the United States trustee. If a party is proceeding pro se, the clerk must send the notice to the party's last known address. The clerk must note, on each copy, the date when the notice of appeal was filed. (2) ***Failure to Serve the Notice of Appeal.*** The bankruptcy clerk's failure to serve notice on a party or send notice to the United States trustee does not affect the appeal's validity ~~of the appeal~~. (3) ***Entry of Service on the Docket.*** The clerk must note on the docket the names of the parties served and the date and method of service.

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(d) TRANSMITTING THE NOTICE OF APPEAL TO THE DISTRICT COURT OR BAP; DOCKETING THE APPEAL. (1) *Transmitting the Notice.* The bankruptcy clerk must promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice to the district clerk. (2) *Docketing in the District Court or BAP.* Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.	**(d) Sending the Notice of Appeal to the District Court or BAP; Docketing the Appeal.** (1) ***Where to Send the Notice of Appeal.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send the notice of appeal to the BAP clerk. Otherwise, the bankruptcy clerk must promptly send it to the district clerk. (2) ***Docketing the Appeal.*** Upon receiving the notice of appeal, the ~~BAP clerk or~~ district or BAP clerk must: (A) docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding; and (B) identify the appellant, adding the appellant's name if necessary.

Committee Note

The language of Rule 8003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The phrase "of a bankruptcy court" was deleted in Rule 8003(a)(1) and replaced with the phrase "a bankruptcy court's" before "judgment, order, or decree" at the request of the style consultants.

- In Rule 8003(a)(2) the word "other" is deleted before "step" and the words "other than timely filing a notice of appeal" are inserted after "step".

- The changes in Rule 8003(a)(3)-(8) are from the version that was separately published for comment in August 2021. The heading of (a)(3) has been changed from "Contents" to "Content of the Notice of Appeal" and the heading of (a)(8) has been changed from "Clerk's Request for Additional Copies" to "Clerk's Request for Additional Copies of the Notice of Appeal."

• The word "counsel" was inserted in Rule 8003(c)(1) after the word "appellant's" at the request of the style consultants.

• In Rule 8003(c)(2), the phrase "appeal's validity" replaces "validity of the appeal" at the request of the style consultants.

• The phrase "the BAP clerk or district clerk" in Rule 8003(d)(2) was replaced with "the district or BAP clerk" in an effort to make references to those clerks uniform throughout the restyled rules.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC objects to the reference to "any other step" in 8003(a)(2) because it does not identify other than what. They suggest returning to the language of the current rule.

> ***Response***: Suggestion accepted with style modifications.

The use of "it" in 8003(d)(1) in the final sentence is ambiguous to the NBC. They suggest using "the notice" instead as under the current rule.

> ***Response***: The only thing being "sent" in this paragraph is the notice of appeal. There is no ambiguity. No change was made in response to this suggestion.

ORIGINAL	REVISION
Rule 8004. Appeal by Leave—How Taken; Docketing the Appeal	**Rule 8004. Leave to Appeal ~~by Leave~~ from an Interlocutory Order or Decree Under 28 U.S.C. § 158(a)(3)**
(a) NOTICE OF APPEAL AND MOTION FOR LEAVE TO APPEAL. To appeal from an interlocutory order or decree of a bankruptcy court under 28 U.S.C. § 158(a)(3), a party must file with the bankruptcy clerk a notice of appeal as prescribed by Rule 8003(a). The notice must: (1) be filed within the time allowed by Rule 8002; (2) be accompanied by a motion for leave to appeal prepared in accordance with subdivision (b); and (3) unless served electronically using the court's transmission equipment, include proof of service in accordance with Rule 8011(d).	**(a) Notice of Appeal and Accompanying Motion for Leave to Appeal.** To appeal under 28 U.S.C. § 158(a)(3) from a bankruptcy court's interlocutory order or decree, a party must file with the bankruptcy clerk a notice of appeal under Rule 8003(a). The notice must: (1) be filed within the time allowed by Rule 8002; (2) be accompanied by a motion for leave to appeal prepared in accordance with (b); and (3) unless served electronically using the court's electronic-filing system, include proof of service in accordance with Rule 8011(d).
(b) CONTENTS OF THE MOTION; RESPONSE. (1) *Contents.* A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include the following: (A) the facts necessary to understand the question presented; (B) the question itself; (C) the relief sought; (D) the reasons why leave to appeal should be granted; and (E) a copy of the interlocutory order or decree and any related opinion or memorandum.	**(b) Content of the Motion for Leave to Appeal; Response.** (1) ***Content.*** A motion for leave to appeal under 28 U.S.C. § 158(a)(3) must include: (A) the facts needed to understand the question presented; (B) the question itself; (C) the relief sought; (D) the reasons why leave to appeal should be granted; and (E) a copy of the interlocutory order or decree and any related opinion or memorandum.

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(2) *Response.* A party may file with the district or BAP clerk a response in opposition or a cross-motion within 14 days after the motion is served.	(2) ***Response.*** Within 14 days after the motion for leave ~~has been~~is served, a party may file with the district ~~clerk~~ or BAP clerk a response in opposition or a cross-motion.
(c) TRANSMITTING THE NOTICE OF APPEAL AND THE MOTION; DOCKETING THE APPEAL; DETERMINING THE MOTION. (1) *Transmitting to the District Court or BAP.* The bankruptcy clerk must promptly transmit the notice of appeal and the motion for leave to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the district court hear the appeal. Otherwise, the bankruptcy clerk must promptly transmit the notice and motion to the district clerk. (2) *Docketing in the District Court or BAP.* Upon receiving the notice and motion, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary. (3) *Oral Argument Not Required.* The motion and any response or cross-motion are submitted without oral argument unless the district court or BAP orders otherwise.	**(c) Sending the Notice of Appeal and Motion for Leave to Appeal; Docketing the Appeal; Oral Argument Not Required.** (1) ***Sending to the District Court or BAP.*** If a BAP has been established to hear appeals from that district—and an appellant has not elected to have the appeal heard in the district court—the bankruptcy clerk must promptly send to the BAP clerk the notice of appeal and the motion for leave to appeal ~~to the BAP clerk~~. Otherwise, the bankruptcy clerk must promptly send the notice and motion to the district clerk. (2) ***Docketing the Appeal.*** Upon receiving the notice and motion, the district or BAP clerk must docket the appeal as prescribed by Rule 8003(d)(2). (3) ***Oral Argument Not Required.*** Unless the district court or BAP orders otherwise, a motion, a cross-motion, and any response will be submitted without oral argument.
(d) FAILURE TO FILE A MOTION WITH A NOTICE OF APPEAL. If an appellant timely files a notice of appeal under this rule but does not include a motion for leave, the district court or BAP may order the appellant to file a motion for leave, or treat the notice of appeal as a motion for leave and either	**(d) Failure to File a Motion for Leave to Appeal.** If an appellant files a timely notice of appeal under this rule but fails to include a motion for leave to appeal, the district court or BAP may: (1) treat the notice of appeal as a motion for leave to appeal and grant or deny it; or

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grant or deny it. If the court orders that a motion for leave be filed, the appellant must do so within 14 days after the order is entered, unless the order provides otherwise.	(2) order the appellant to file a motion for leave to appeal within 14 days after the order has been entered—unless the order provides otherwise.
(e) DIRECT APPEAL TO A COURT OF APPEALS. If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization of a direct appeal by the court of appeals under 28 U.S.C. § 158(d)(2) satisfies the requirement.	**(e) Direct Appeal to a Court of Appeals.** If leave to appeal an interlocutory order or decree is required under 28 U.S.C. § 158(a)(3), an authorization by a court of appeals for a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the requirement.

Committee Note

The language of Rule 8004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the title to Rule 8004, the words "Appeal by Leave" were changed to "Leave to Appeal" at the request of the style consultants.

- In Rule 8004(b)(2) the words "has been served" were changed to "is served" and the word "clerk" after "district" was deleted at the request of the style consultants.

- In Rule 8004(c)(1) the words "to the BAP clerk" were deleted from after "leave to appeal" and inserted instead after "promptly send" at the request of the style consultants.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC points out that 28 U.S.C. § 158(a) confers on a district court jurisdiction over interlocutory orders and decrees both under § 158(a)(3) (which is referred to in 8004(a)(1)) which gives the district court jurisdiction over "other interlocutory orders and decrees" and under the hanging paragraph that follows § 158(a)(3) that gives the district court jurisdiction over interlocutory orders and decrees of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under § 157 of the Code. Both require leave of court. The significance of the hanging paragraph is not certain, but the language of 8004(a)(1) covers only interlocutory orders and decrees described in § 158(a)(3) and not those described in the hanging paragraph. The NBC suggests replacing the reference to § 158(a)(3) with a reference to § 158(a) (thereby

picking up the hanging paragraph) and explaining the reasons for the change in a committee note.

> ***Response***: This would be a substantive change. No change was made in response to this suggestion.

ORIGINAL	REVISION
Rule 8005. Election to Have an Appeal Heard by the District Court Instead of the BAP	**Rule 8005. Election to Have an Appeal Heard in ~~a~~ the District Court Instead of the BAP**
(a) FILING OF A STATEMENT OF ELECTION. To elect to have an appeal heard by the district court, a party must: (1) file a statement of election that conforms substantially to the appropriate Official Form; and (2) do so within the time prescribed by 28 U.S.C. § 158(c)(1).	**(a) Filing a Statement of Election.** To elect to have the district court hear an appeal ~~heard in a district court~~, a party must file a statement of election within the time prescribed by 28 U.S.C. § 158(c)(1). The statement must substantially conform ~~substantially~~ to Form 417A.
(b) TRANSMITTING THE DOCUMENTS RELATED TO THE APPEAL. Upon receiving an appellant's timely statement of election, the bankruptcy clerk must transmit to the district clerk all documents related to the appeal. Upon receiving a timely statement of election by a party other than the appellant, the BAP clerk must transmit to the district clerk all documents related to the appeal and notify the bankruptcy clerk of the transmission.	**(b) Sending Documents Relating to the Appeal.** Upon receiving an appellant's timely statement of election, the bankruptcy clerk must send all documents related to the appeal to the district clerk. A BAP clerk who receives a timely statement of election from a party other than the appellant must: (1) send those documents to the district clerk; and (2) notify the bankruptcy clerk that they have been sent.
(c) DETERMINING THE VALIDITY OF AN ELECTION. A party seeking a determination of the validity of an election must file a motion in the court where the appeal is then pending. The motion must be filed within 14 days after the statement of election is filed.	**(c) Determining the Validity of an Election.** Within 14 days after the statement of election has been filed, a party seeking to determine the election's validity must file a motion in the court where the appeal is pending.
(d) MOTION FOR LEAVE WITHOUT A NOTICE OF APPEAL—EFFECT ON THE TIMING OF AN ELECTION. If an appellant moves for leave to appeal under Rule 8004 but fails to file a separate notice of appeal with the	**(d) Effect of Filing a Motion for Leave to Appeal Without Filing a Notice of Appeal.** If an appellant moves for leave to appeal under Rule 8004 but fails to file a notice of appeal with the motion, it must be treated as a notice of appeal in determining

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motion, the motion must be treated as a notice of appeal for purposes of determining the timeliness of a statement of election.	whether the statement of election has been timely filed.

Committee Note

The language of Rule 8005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• The word “a” in the heading to Rule 8005 was changed to “the”.

• In Rule 8005(a) the phrase “to have an appeal heard in a district court” was changed to “to have the district court hear an appeal”. In the same section, the word “substantially” was moved from after “conform” to before “conform”.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC finds the word “it” in 8005(d) to be ambiguous and suggests using “the motion” as in the current rule.

> ***Response*:** There is no ambiguity. The words “the motion” is the immediate antecedent to the word “it”. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 8006. Certifying a Direct Appeal to the Court of Appeals	**Rule 8006. Certifying a Direct Appeal to a Court of Appeals**
(a) EFFECTIVE DATE OF A CERTIFICATION. A certification of a judgment, order, or decree of a bankruptcy court for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) is effective when: (1) the certification has been filed; (2) a timely appeal has been taken under Rule 8003 or 8004; and (3) the notice of appeal has become effective under Rule 8002.	**(a) Effective Date of a Certification.** A certification of a bankruptcy court's judgment, order, or decree to a court of appeals for direct review under 28 U.S.C. § 158(d)(2) becomes effective when: (1) it is filed; (2) a timely appeal is taken under Rule 8003 or Rule 8004; and (3) the notice of appeal becomes effective under Rule 8002.
(b) FILING THE CERTIFICATION. The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date under Rule 8002 of the first notice of appeal from the judgment, order, or decree for which direct review is sought. A matter is pending in the district court or BAP thereafter.	**(b) Filing the Certification.** The certification must be filed with the clerk of the court where the matter is pending. For purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the first notice of appeal concerning that matter becomes effective under Rule 8002. After that time, the matter is pending in the district court or BAP.
(c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES. (1) *How Accomplished.* A joint certification by all the appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made by using the appropriate Official Form. The parties may supplement the certification with a short statement of the basis for the certification, which may include the information listed in subdivision (f)(2).	**(c) Joint Certification by All Appellants and Appellees.** (1) ***In General.*** A joint certification by all appellants and appellees under 28 U.S.C. § 158(d)(2)(A) must be made using Form 424. The parties may supplement the certification with a short statement about its basis. The statement may include the information required by (f)(2).

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(2) *Supplemental Statement by the Court.* Within 14 days after the parties' certification, the bankruptcy court or the court in which the matter is then pending may file a short supplemental statement about the merits of the certification.	(2) ***Supplemental Statement by the Court.*** Within 14 days after the parties file the certification, the bankruptcy court—or the court where the matter is pending—may file a short supplemental statement about the certification's merits.
(d) THE COURT THAT MAY MAKE THE CERTIFICATION. Only the court where the matter is pending, as provided in subdivision (b), may certify a direct review on request of parties or on its own motion.	**(d) Court's Authority to Certify a Direct Appeal.** ~~On a party's request or on its own,~~ Only the court where the matter is pending under (b) may certify a direct appeal to a court of appeals. The court may do so on a party's request or on its own.
(e) CERTIFICATION ON THE COURT'S OWN MOTION.	**(e) Certification by the Court Acting on Its Own.**
(1) *How Accomplished.* A certification on the court's own motion must be set forth in a separate document. The clerk of the certifying court must serve it on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification must be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(2)(A)–(D).	(1) ***Separate Document Required; Service; Content.*** A certification by a court acting on its own must be set forth in a separate document. The clerk of the certifying court must serve the document on the parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). It must be accompanied by an opinion or memorandum that contains the information required by (f)(2)(A)–(D).
(2) *Supplemental Statement by a Party.* Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement regarding the merits of certification.	(2) ***Supplemental Statement by a Party.*** Within 14 days after the court's certification, a party may file with the clerk of the certifying court a short supplemental statement about the merits of certification.

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(f) CERTIFICATION BY THE COURT ON REQUEST.	**(f) Certification by the Court on Request.**
(1) *How Requested.* A request by a party for certification that a circumstance specified in 28 U.S.C. §158(d)(2)(A)(i)–(iii) applies—or a request by a majority of the appellants and a majority of the appellees—must be filed with the clerk of the court where the matter is pending within 60 days after the entry of the judgment, order, or decree.	(1) ***How Requested.*** A party's request for certification under 28 U.S.C. § 158(d)(2)(A)—or a request by a majority of the appellants and of the appellees—must be filed with the clerk of the court where the matter is pending. The request must be filed within 60 days after the judgment, order, or decree is entered.
(2) *Service and Contents.* The request must be served on all parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1), and it must include the following:	(2) ***Service; Content.*** The request must be served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1). The request must include:
(A) the facts necessary to understand the question presented;	(A) the facts needed to understand the question presented;
(B) the question itself;	(B) the question itself;
(C) the relief sought;	(C) the relief sought;
(D) the reasons why the direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and	(D) the reasons why a direct appeal should be allowed, including which circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)–(iii) applies; and
(E) a copy of the judgment, order, or decree and any related opinion or memorandum.	(E) the judgment, order, or decree, and any related opinion or memorandum.
(3) *Time to File a Response or a Cross-Request.* A party may file a response to the request within 14 days after the request is served, or such other time as the court where the matter is pending allows. A party may file a cross- request for certification within 14 days after the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first.	(3) ***Time to File a Response or a Cross-Request.*** (A) *Response.* A party may file a response within 14 days after the request has been served, or within such other time as the court where the matter is pending allows. (B) *Cross-Request.* A party may file a cross-request for certification within 14 days after the request has been served or within 60 days after the judgment, order, or decree has been entered—whichever occurs first.

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(4) *Oral Argument Not Required.* The request, cross-request, and any response are submitted without oral argument unless the court where the matter is pending orders otherwise. (5) *Form and Service of the Certification.* If the court certifies a direct appeal in response to the request, it must do so in a separate document. The certification must be served on the parties to the appeal in the manner required for service of a notice of appeal under Rule 8003(c)(1).	(4) ***Oral Argument Not Required.*** Unless the court where the matter is pending orders otherwise, a request, a cross-request, and any response will be submitted without oral argument. (5) ***Form of a Certification; Service.*** The court that certifies a direct appeal in response to a request must do so in a separate document served on all parties to the appeal in the manner required for serving a notice of appeal under Rule 8003(c)(1).
(g) PROCEEDING IN THE COURT OF APPEALS FOLLOWING A CERTIFICATION. Within 30 days after the date the certification becomes effective under subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with F.R.App.P. 6(c).	**(g) Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification.** Within 30 days after the certification has become effective under (a), a request for leave to take a direct appeal to a court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c).

Committee Note

The language of Rule 8006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8006(d) the words "On a party's request or on its own," were deleted from the beginning of the text, the word "Only" was inserted at the beginning of the text, and a new sentence was added at the end reading "The court may do so on a party's request or on its own."

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In 8006(d), the NBC suggests that the word "only" must be included in the restyled rule to avoid changing the meaning.

Response: Suggestion accepted and section rewritten accordingly.

In 8006(g) the NBC believes that reference to Fed. R. App. P. 6(c) is inappropriate because that rule has no provision or reference to leave to appeal. Instead, they suggest that the Rule should reference 28 U.SC. § 158(d)(2).

> ***Response***: FRAP 6 is the appellate rule (and the only appellate rule) that deals with bankruptcy appeals. It currently does not use the term "leave to appeal" (although proposed amendments may change its terminology) but the paragraph on "direct appeal by permission" (FRAP 6(c)) is indeed the applicable provision. No change was made in response to this comment.

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Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings	**Rule 8007. Stay Pending Appeal; Bond; Suspending Proceedings**
(a) INITIAL MOTION IN THE BANKRUPTCY COURT. (1) *In General.* Ordinarily, a party must move first in the bankruptcy court for the following relief: (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal; (B) the approval of a bond or other security provided to obtain a stay of judgment; (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or (D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e). (2) *Time to File.* The motion may be made either before or after the notice of appeal is filed.	**(a) Initial Motion in the Bankruptcy Court.** (1) ***In General.*** Ordinarily, a party must move first in the bankruptcy court for the following relief: (A) a stay of the bankruptcy court's judgment, order, or decree pending appeal; (B) the approval of a bond or other security provided to obtain a stay of judgment; (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or (D) an order suspending or continuing proceedings or granting other relief permitted by (e). (2) ***Time to File.*** The motion may be filed either before or after the notice of appeal is filed.
(b) MOTION IN THE DISTRICT COURT, THE BAP, OR THE COURT OF APPEALS ON DIRECT APPEAL. (1) *Request for Relief.* A motion for the relief specified in subdivision (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be made in the court where	**(b) Motion in the District Court, BAP, or Court of Appeals on Direct Appeal.** (1) ***In General.*** A motion for the relief specified in (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be filed in the court where the appeal is pending.

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the appeal is pending. (2) *Showing or Statement Required.* The motion must: (A) show that moving first in the bankruptcy court would be impracticable; or (B) if a motion was made in the bankruptcy court, either state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling. (3) *Additional Content.* The motion must also include: (A) the reasons for granting the relief requested and the facts relied upon; (B) affidavits or other sworn statements supporting facts subject to dispute; and (C) relevant parts of the record. (4) *Serving Notice.* The movant must give reasonable notice of the motion to all parties.	(2) ***Required Showing.*** The motion must: (A) show that moving first in the bankruptcy court would be impracticable; or (B) if a motion has already been made in the bankruptcy court, state whether the court has ruled on it, and if so, state any reasons given for the ruling. (3) ***Additional Requirements.*** The motion must also include: (A) the reasons for granting the relief requested and the facts relied on; (B) affidavits or other sworn statements supporting facts subject to dispute; and (C) relevant parts of the record. (4) ***Serving Notice.*** The movant must give reasonable notice of the motion to all parties.
(c) FILING A BOND OR OTHER SECURITY. The district court, BAP, or court of appeals may condition relief on filing a bond or other security with the bankruptcy court.	**(c)** ***Filing a Bond or Other Security as a Condition of Relief.*** The district court, BAP, or court of appeals may condition relief on filing a bond or other security with the bankruptcy court.

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(d) BOND OR OTHER SECURITY FOR A TRUSTEE OR THE UNITED STATES. The court may require a trustee to file a bond or other security when the trustee appeals. A bond or other security is not required when an appeal is taken by the United States, its officer, or its agency or by direction of any department of the federal government.	**(d)** ***Bond or Other Security for a Trustee; Not for the United States.*** The court may require a trustee who appeals to file a bond or other security. No bond or security is required when: (1) the United States, its officer, or its agency appeals; or (2) an appeal is taken by direction of any federal governmental department.
(e) CONTINUATION OF PROCEEDINGS IN THE BANKRUPTCY COURT. Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may: (1) suspend or order the continuation of other proceedings in the case; or (2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest.	**(e)** ***Continuing Proceedings in the Bankruptcy Court.*** Despite Rule 7062—but subject to the authority of the district court, BAP, or court of appeals—while the appeal is pending, the bankruptcy court may: (1) suspend or order the continuation of other proceedings in the case, or (2) issue any appropriate order to protect the rights of all parties in interest.

Committee Note

The language of Rule 8007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

NBC pointed out what appeared to be a typographical error in 8007(c) but was in fact a formatting error.

***Response*:** Error corrected.

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Rule 8008. Indicative Rulings	**Rule 8008. Indicative Rulings**
(a) RELIEF PENDING APPEAL. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may: (1) defer considering the motion; (2) deny the motion; or (3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.	**(a)** ***Motion for Relief Filed When an Appeal Is Pending; Bankruptcy Court's Options.*** If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may: (1) defer considering the motion; (2) deny the motion; (3) state that it would grant the motion if the court where the appeal is pending remands for that purpose; or (4) state that the motion raises a substantial issue.
(b) NOTICE TO THE COURT WHERE THE APPEAL IS PENDING. The movant must promptly notify the clerk of the court where the appeal is pending if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue.	**(b)** ***Notice to the Court Where the Appeal Is Pending.*** If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, t~~T~~he movant must promptly notify the clerk of the court where the appeal is pending~~ if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue~~.
(c) REMAND AFTER AN INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand.	**(c)** ***Remand After an Indicative Ruling.*** If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the district court or BAP may remand for further proceedings~~,~~ but ~~it~~ retains jurisdiction unless it expressly dismisses the appeal. If the district court or BAP remands but retains jurisdiction, the parties must promptly notify the clerk of that court when the bankruptcy court has decided the motion on remand.

Committee Note

The language of Rule 8008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8008(b) the phrase "if the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue" was moved from the end of the paragraph to the beginning at the request of the style consultants.

- In Rule 8008(c) the comma after the word "proceedings" was deleted and the word "it" was deleted.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In 8008(a) the NBC questions whether paragraph (4) should include language requiring the court to state the action it would take on the motion if it had authority to decide it. They suggest adding "and state whether the court would grant or deny the motion if the court had authority to do so."

> ***Response***: The only paragraph in 8008(a) that provides an indication of how the court would rule is paragraph (3), and the second part of that paragraph in the original rule is set apart by a comma and is clearly an independent clause. That is reemphasized in 8008(b) where there are two alternatives (the court states that it would grant the motion or the court states that the motion raises a substantial issue). In the second instance, the court does not indicate how it would rule. This would be a substantive change. No changes was made in response to this suggestion.

The NBC finds the "but it" phrase in 8008(c) to be ambiguous, potentially referring to the bankruptcy court. The suggest replacing it with "but the district court or BAP."

> ***Response***: The sentence has been rewritten to remove the word "it".

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Rule 8009. Record on Appeal; Sealed Documents	**Rule 8009. Record on Appeal; Sealed Documents**
(a) DESIGNATING THE RECORD ON APPEAL; STATEMENT OF THE ISSUES. (1) *Appellant.* (A) The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. (B) The appellant must file and serve the designation and statement within 14 days after: (i) the appellant's notice of appeal as of right becomes effective under Rule 8002; or (ii) an order granting leave to appeal is entered. A designation and statement served prematurely must be treated as served on the first day on which filing is timely. (2) *Appellee and Cross- Appellant.* Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal. (3) *Cross-Appellee.* Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file with the	**(a) Designating the Record on Appeal; Statement of the Issues; Content of the Record.** (1) ***Appellant's Designation and Statement of the Issues.*** The appellant must: (A) file with the bankruptcy clerk a designation of the items to be included in the record on appeal and a statement of the issues to be presented; and (B) file and serve the designation and statement on the appellee within 14 days after: • the notice of appeal as of right has become effective under Rule 8002; or • an order granting leave to appeal has been entered. Premature service is treated as service on the first day on which filing is timely. (2) ***Appellee's and Cross-Appellant's Designation and Statement of the Issues.*** (A) *Appellee.* Within 14 days after being served, the appellee may file with the bankruptcy clerk and serve on the appellant a designation of additional items to be included in the record. (B) *Cross-Appellant.* An appellee who files a cross-appeal must file and serve a designation of additional items to be included in the record and a statement of the issues to be presented on the cross-appeal.

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bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.	(3) ***Cross-Appellee's Designation.*** Within 14 days after the cross-appellant's designation and statement have been served, the cross-appellee may file with the bankruptcy clerk and serve on the cross-appellant a designation of additional items to be included in the record.
(4) *Record on Appeal.* The record on appeal must include the following:	(4) ***Record on Appeal.*** The record on appeal must include:
• docket entries kept by the bankruptcy clerk;	• the docket entries kept by the bankruptcy clerk;
• items designated by the parties;	• items designated by the parties;
• the notice of appeal;	• the notice of appeal;
• the judgment, order, or decree being appealed;	• the judgment, order, or decree being appealed;
• any order granting leave to appeal;	• any order granting leave to appeal;
• any certification required for a direct appeal to the court of appeals;	• any certification required for a direct appeal to the court of appeals;
• any opinion, findings of fact, and conclusions of law relating to the issues on appeal, including transcripts of all oral rulings;	• any opinion, findings of fact and conclusions of law relating to the issues on appeal, ~~and~~ including transcripts of all oral rulings;
• any transcript ordered under subdivision (b);	• any transcript ordered under (b);
• any statement required by subdivision (c); and	• any statement required by (c); and
• any additional items from the record that the court where the appeal is pending orders.	• any other items from the record that the court where the appeal ~~orders~~is pending orders to be included.
(5) *Copies for the Bankruptcy Clerk*. If paper copies are needed, a party filing a designation of items must provide a copy of any of those items that the bankruptcy clerk requests. If the party fails to do so, the bankruptcy clerk must prepare the copy at the party's expense.	(5) ***Copies for the Bankruptcy Clerk.*** If paper copies are needed and the bankruptcy clerk requests copies of designated items, the party filing the designation must provide them. If the party fails to do so, the bankruptcy clerk must prepare them at that party's expense.

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(b) TRANSCRIPT OF PROCEEDINGS. (1) *Appellant's Duty to Order.* Within the time period prescribed by subdivision (a)(1), the appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript. (2) *Cross-Appellant's Duty to Order.* Within 14 days after the appellant files a copy of the transcript order or a certificate of not ordering a transcript, the appellee as cross-appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.	**(b) Transcript of Proceedings.** (1) ***Appellant's Duty to Order.*** Within the period prescribed by (a)(1), the appellant must: (A) order in writing from the reporter, as defined in Rule 8010(a)(1), a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript. (2) ***Appellee's Duty to Order as a Cross-Appellant.*** Within 14 days after the appellant has filed a copy of the transcript order—or a certificate stating that the appellant is not ordering a transcript—the appellee as cross-appellant must: (A) order in writing from the reporter~~, as defined in Rule 8010(a)(1),~~ a transcript of such additional parts of the proceedings as the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or (B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.

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(3) *Appellee's or Cross- Appellee's Right to Order.* Within 14 days after the appellant or cross- appellant files a copy of a transcript order or certificate of not ordering a transcript, the appellee or cross-appellee may order in writing from the reporter a transcript of such additional parts of the proceedings as the appellee or cross- appellee considers necessary for the appeal. A copy of the order must be filed with the bankruptcy clerk. (4) *Payment.* At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript. (5) *Unsupported Finding or Conclusion.* If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and copies of all relevant exhibits.	(3) ***Appellee's or Cross-Appellee's Right to Order.*** Within 14 days after the appellant or cross-appellant has filed a copy of a transcript order—or a certificate stating that the appellant or cross-appellant is not ordering a transcript—the appellee or cross-appellee: ~~(A)~~ (A) may order in writing from the reporter ~~(as defined in Rule 8010(a)(1))~~ a transcript of any additional parts of the proceeding that the appellee or cross-appellee considers necessary for the appeal; and (B) must file a copy of the order with the bankruptcy clerk. (4) ***Payment.*** At the time of ordering, a party must make satisfactory arrangements with the reporter to pay for the transcript. (5) ***Unsupported Finding or Conclusion.*** If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all relevant testimony and a copy of all relevant exhibits.
(c) STATEMENT OF THE EVIDENCE WHEN A TRANSCRIPT IS UNAVAILABLE. If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement	**(c) When a Transcript Is Unavailable.** (1) ***Statement of the Evidence.*** If a transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's

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must be filed within the time prescribed by subdivision (a)(1) and served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal.	recollection. The statement must be filed within the time prescribed by (a)(1) and served on the appellee. (2) ***Appellee's Response.*** The appellee may serve objections or proposed amendments within 14 days after being served. (3) ***Court Approval.*** The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the bankruptcy clerk in the record on appeal.
(d) AGREED STATEMENT AS THE RECORD ON APPEAL. Instead of the record on appeal as defined in subdivision (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court. The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal—must be approved by the bankruptcy court and must then be certified to the court where the appeal is pending as the record on appeal. The bankruptcy clerk must then transmit it to the clerk of that court within the time provided by Rule 8010. A copy of the agreed statement may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by F.R.App.P. 30.	**(d) Agreed Statement as the Record on Appeal.** (1) ***Agreed Statement.*** Instead of the record on appeal as defined in (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided in the bankruptcy court. (2) ***Content.*** The statement must set forth only those facts alleged and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is accurate, it—together with any additions that the bankruptcy court ~~may~~ considers necessary to a full presentation of the issues on appeal—must be: (A) approved by the bankruptcy court; and (B) certified to the court where the appeal is pending as the record on appeal. (3) ***Time to Send the Agreed Statement to the Appellate Court.*** The bankruptcy clerk must then send the

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	agreed statement to the clerk of the court where the appeal is pending within the time provided by Rule 8010. A copy may be filed in place of the appendix required by Rule 8018(b) or, in the case of a direct appeal to the court of appeals, by Fed. R. App. P. 30.
(e) CORRECTING OR MODIFYING THE RECORD. (1) *Submitting to the Bankruptcy Court.* If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item. (2) *Correcting in Other Ways.* If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted: (A) on stipulation of the parties; (B) by the bankruptcy court before or after the record has been forwarded; or (C) by the court where the appeal is pending. (3) *Remaining Questions.* All other questions as to the form and content of the record must be presented to the court where the appeal is pending.	**(e) Correcting or Modifying the Record.** (1) ***Differences About Accuracy~~; and~~ Improper Designations.*** If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike ~~it~~that item. (2) ***Omissions and Misstatements.*** If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and sent: (A) on stipulation of the parties; (B) by the bankruptcy court before or after the record has been sent; or (C) by the court where the appeal is pending. (3) ***Remaining Questions.*** All other questions ~~as to~~about the form and content of the record must be presented to the court where the appeal is pending.

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(f) SEALED DOCUMENTS. A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending.	**(f) Sealed Documents.** (1) ***In General.*** A document placed under seal by the bankruptcy court may be designated as a part of the record on appeal. But a document so designated: (A) must be identified without revealing confidential or secret information; and (B) may be sent only as (2) prescribes. (2) ***When to Send a Sealed Document.*** To have a sealed document sent as part of the record, a party must file in the court where the appeal is pending a motion to accept the document under seal. If the motion is granted, the movant must ~~so~~ notify the bankruptcy court, and the bankruptcy clerk must promptly send the sealed document to the clerk of the court where the appeal is pending.
(g) OTHER NECESSARY ACTIONS. All parties to an appeal must take any other action necessary to enable the bankruptcy clerk to assemble and transmit the record.	**(g) Duty to Assist the Bankruptcy Clerk.** All parties to an appeal must take any other action needed to enable the bankruptcy clerk to assemble and send the record.

Committee Note

The language of Rule 8009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The titles to Rule 8009(a)(1) and (a)(2) have been modified to add the phrase "and Statement of the Issues".

- The bullet pointes in Rule 8009(a)(4) have been modified. In the first one, the phrase "kept by the bankruptcy clerk" has been added the end. What used to be the seventh bullet point has been combined with the sixth as in the existing rule. In the final bullet point the language "where the appeal orders is pending" has been replaced with "where the appeal is pending orders to be included."

- In Rule 8009(b)(2)(A) and (b)(3)(A), the phrase ", as defined in Rule 8010(a)(1)," has been deleted after the word "reporter".

- In Rule 8009(d)(2) the words "may consider" were changed to "considers."

- In Rule 8009(e)(1), the word "and" was deleted from the heading, and the word "it" was changed to "that item."

- In Rule 8009(e)(3), the words "as to" were changed to "about."

- In Rule 8009(f)(2) the word "so" was deleted.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests modifications to the titles to 8009(a)(1) and (a)(2) to add the concept of the Statement of Issues.

> ***Response***: Suggestion accepted.

In the first bullet point of 8009(a)(4), the NBC suggests retaining the words "kept by the bankruptcy clerk" as in the original rule because there could have been prior appeals whose dockets should not be covered by this bullet point.

> ***Response***: Suggestion accepted.

The NBC suggests that the seventh bullet point, which in the original rule was part of the sixth, is now overbroad because there could be oral rulings that have nothing to do with the appeal. They suggest adding language that limits those oral rulings to those related to resolution of the issues in the appeal, or retaining the current language.

> ***Response***: The former seventh bullet point has been included in the sixth, as in the original rule.

The NBC finds the final bullet point confusing and suggests rewriting it, using the term "reviewing court" rather than "court where the appeal is pending."

> ***Response***: Language has been added to make it clear that the material is ordered to be included by the court where the appeal is pending, but the term "reviewing court" is not one used in the Bankruptcy Rules.

In Rule 8009(b)(3)(A) the NBC suggests that the phrase "as defined in Rule 8010(a)(1)" should be set off by commas rather than parens, and that consideration should be given to a means of avoiding that phrase in the three different places it appears in Rule 8009(b).

> ***Response***: In the original rule, the third reference in Rule 8009(b) to "the

reporter" in 8009(b)(3) did not contain any cross-reference to the definition. Because the cross-reference is in the same rule, Rule 8009(b)(1)(A), we see no reason to retain the cross-reference in (b)(2)(A) or (b)(3)(A). They have been deleted.

NBC finds the use of the word "it" in Rule 8009(e)(1) to be ambiguous and states that it could be interpreted to apply to the records as a whole. They suggest using "that item" as in the existing rule.

Response: Suggestion accepted.

- **Jeffrey Cozad (BK02022-0002-0010)**

Mr. Cozad suggests that the words "submitted to" in rule 8009(c)(3) be changed to "filed in", the words "submit to" in Rule 8009(d)(1) be changed to "file in" and the words "submitted to" in Rule 8009(e)(1) be changed to "filed in."

***Response*:** Rule 8009(c)(3) is modeled on Fed. R. App. P. 10(c), which uses the words "submitted to". Rule 8009(d)(1) is modeled on Fed. R. App. P. 10(d), which uses the words "submit to". Rule 8009(e)(1) is modeled on Fed. R. App. P. 10(e)(1), which uses the words "submitted to". Using the same terminology is appropriate. No change was made in response to this comment.

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Rule 8010. Completing and Transmitting the Record	**Rule 8010. Transcribing the Proceedings; Filing the Transcript; Sending the Record**
(a) REPORTER'S DUTIES. (1) *Proceedings Recorded Without a Reporter Present.* If proceedings were recorded without a reporter being present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule. (2) *Preparing and Filing the Transcript.* The reporter must prepare and file a transcript as follows: (A) Upon receiving an order for a transcript in accordance with Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment of the request that shows when it was received, and when the reporter expects to have the transcript completed. (B) After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing. (C) If the transcript cannot be completed within 30 days after receiving the order, the reporter must request an extension of time from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted. (D) If the reporter does not file the transcript on time, the bankruptcy clerk must notify the bankruptcy judge.	**(a) Reporter's Duties.** (1) ***Proceedings Recorded Without a Court Reporter Present.*** If proceedings are recorded without a reporter present, the person or service selected under bankruptcy court procedures to transcribe the recording is the reporter for purposes of this rule. (2) ***Preparing and Filing the Transcript.*** The reporter must prepare and file a transcript as follows: (A) *Initial Steps.* Upon receiving a transcript order under Rule 8009(b), the reporter must file in the bankruptcy court an acknowledgment showing when the order was received and when the reporter expects to have the transcript completed. (B) *Filing the Transcript.* After completing the transcript, the reporter must file it with the bankruptcy clerk, who will notify the district, BAP, or circuit clerk of its filing. (C) *Extending the Time to Complete a Transcript.* If the transcript cannot be completed within 30 days after the order has been received, the reporter must request an extension from the bankruptcy clerk. The clerk must enter on the docket and notify the parties whether the extension is granted. (D) *Failure to File on Time.* If the reporter fails to file the transcript on time, the bankruptcy clerk must notify the bankruptcy judge.

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(b) CLERK'S DUTIES.	**(b) Clerk's Duties.**
(1) *Transmitting the Record—In General.* Subject to Rule 8009(f) and subdivision (b)(5) of this rule, when the record is complete, the bankruptcy clerk must transmit to the clerk of the court where the appeal is pending either the record or a notice that the record is available electronically.	(1) ***Sending the Record.*** Subject to Rule 8009(f) and ~~paragraph~~ (5) below, when the record is complete, the bankruptcy clerk must send to the clerk of the court where the appeal is pending either the record or a notice that ~~the record~~it is available electronically.
(2) *Multiple Appeals.* If there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must transmit a single record.	(2) ***Multiple Appeals.*** ~~When~~ If there are multiple appeals from a judgment, order, or decree, the bankruptcy clerk must send a single record.
(3) *Receiving the Record.* Upon receiving the record or notice that it is available electronically, the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal.	(3) ***Docketing the Record in the Appellate Court.*** Upon receiving the record—or a notice that it is available electronically—the district, BAP, or circuit clerk must enter that information on the docket and promptly notify all parties to the appeal.
(4) *If Paper Copies Are Ordered.* If the court where the appeal is pending directs that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense.	(4) ***If the Court Orders Paper Copies.*** If the court where the appeal is pending orders that paper copies of the record be provided, the clerk of that court must so notify the appellant. If the appellant fails to provide them, the bankruptcy clerk must prepare them at the appellant's expense.
(5) *When Leave to Appeal is Requested.* Subject to subdivision (c), if a motion for leave to appeal has been filed under Rule 8004, the bankruptcy clerk must prepare and transmit the record only after the district court, BAP, or court of appeals grants leave.	(5) ***Motion for Leave to Appeal.*** Subject to (c), if a motion for leave to appeal is filed under Rule 8004, the bankruptcy clerk must prepare and send the record only after the motion is granted.

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(c) RECORD FOR A PRELIMINARY MOTION IN THE DISTRICT COURT, BAP, OR COURT OF APPEALS. This subdivision (c) applies if, before the record is transmitted, a party moves in the district court, BAP, or court of appeals for any of the following relief: • leave to appeal; • dismissal; • a stay pending appeal; • approval of a bond or other security provided to obtain a stay of judgment; or • any other intermediate order. The bankruptcy clerk must then transmit to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal or a notice that those parts are available electronically.	**(c) When a Preliminary Motion Is Filed in the District Court, BAP, or Court of Appeals.** (1) ***In General.*** This subdivision (c) applies if, before the record is sent, a party moves in the district court, BAP, or court of appeals for: (A) leave to appeal; (B) dismissal; (C) a stay pending appeal; (D) approval of a bond or other security provided to obtain a stay of judgment; or (E) any other intermediate order. (2) ***Sending the Record.*** The bankruptcy clerk must send to the clerk of the court where the relief is sought any parts of the record designated by a party to the appeal—or send a notice that they are available electronically.

Committee Note

The language of Rule 8010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 8010(a)(1) the word "were" was replaced with "are".

• In Rule 8010(b)(1), the word "paragraph" has been deleted, and the words "the record" have been replaced by "it".

• In Rule 8010(b)(2) the word "When" has been replaced with "If".

• In Rule 8010(c)(1), the five bullet points have been replaced with letters (A) through (E).

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 8010(a)(2)(C), the NBC finds the reference to an "order" unclear and suggests adding the word "transcript" before it (to distinguish from any order subject to the notice of appeal.

> ***Response***: The existing rule refers to "an order for a transcript" only in 8010(a)(2)(A) and then just uses the term "order" in (C). The restyled rule follows this pattern, referring to a "transcript order in 8010(a)(2)(A) and "order" in (C). No change was made in response to this comment.

The NBC noted a spacing problem in (a)(2)(D).

> ***Response***: This is not a typo, but is one of the many formatting issues that are being addressed.

The NBC pointed out that the use of the phrase "paragraph (5) below" in Rule 8010(b)(1) was inconsistent with the usage elsewhere and suggested removing the word "paragraph".

> ***Response***: Suggestion accepted.

In Rule 8010(b)(5), the NBC suggests that the obligation to prepare the record should not be triggered solely by a motion for leave to appeal because under Rule 8004(d) a reviewing court may treat a notice of appeal as a motion for leave to appeal. They suggest replacing "if a motion for leave to appeal is filed" with "if a party files a motion specifically requesting leave to appeal."

> ***Response***: The existing rule uses the phrase "if a motion for leave to appeal has been filed." This would be a substantive change. No change was made in response to this suggestion.

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Rule 8011. Filing and Service; Signature	**Rule 8011. Filing and Service; Signature**
(a) FILING.	**(a) Filing.**
(1) *With the Clerk*. A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.	(1) ***With the Clerk.*** A document required or permitted to be filed in a district court or BAP must be filed with the clerk of that court.
(2) *Method and Timeliness*.	(2) ***Method and Timeliness.***
(A) *Nonelectronic Filing*.	(A) *Nonelectronic Filing*.
(i) *In General*. For a document not filed electronically, filing may be accomplished by mail addressed to the clerk of the district court or BAP. Except as provided in subdivision (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed for filing.	(i) In General. For a document not filed electronically, filing may be accomplished by mail addressed to the ~~clerk of the~~ district~~court~~ or BAP clerk. Except as provided in (ii) and (iii), filing is timely only if the clerk receives the document within the time set for filing.
(ii) *Brief or Appendix*. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is: • mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or • dispatched to a third-party commercial carrier for delivery within 3 days to the clerk.	(ii) Brief or Appendix. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is: • mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid; or • dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.
(iii) *Inmate Filing*. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 8011(a)(2)(A)(iii). A document not filed electronically by an inmate confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and:	(iii) Inmate Filing. If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this item (iii). A document not filed electronically by an inmate

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• it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or • the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this Rule 8011(a)(2)(A)(iii). (B) *Electronic Filing.* (i) owed or required by local rule. By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is all (ii) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney: • may file electronically only if allowed by court order or by local rule; and • may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules.	confined in an institution is timely if it is deposited in the institution's internal mailing system on or before the last day for filing and: • it is accompanied by a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or by evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or • the appellate court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies this item (iii). (B) *Electronic Filing.* (i) By a Represented Person—Generally Required; Exceptions. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for cause or is allowed or required by local rule. (ii) By an Unrepresented Individual—When Allowed or Required. An individual not represented by an attorney: • may file electronically only if allowed by court order or by local rule; and

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(C) *Copies*. If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular case the filing or furnishing of a specified number of paper copies. (3) *Clerk's Refusal of Documents*. The court's clerk must not refuse to accept for filing any document transmitted for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.	• may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions. (iii) Same as a Written Paper. A document filed electronically is a written paper for purposes of these rules. (C) *When Paper Copies Are Required.* No paper copies are required when a document is filed electronically. If a document is filed by mail or by delivery to the district court or BAP, no additional copies are required. But the district court or BAP may, by local rule or order in a particular case, require that a specific number of paper copies be filed or furnished. (3) ***Clerk's Refusal of Documents.*** The ~~court's~~ court clerk must not refuse to accept for filing any document ~~presented for that purpose~~ solely because it is not presented in proper form as required by these rules or by any local rule or practice.
(b) SERVICE OF ALL DOCUMENTS REQUIRED. Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.	**(b)** ***Service of All Documents Required.*** Unless a rule requires service by the clerk, a party must, at or before the time of the filing of a document, serve it on the other parties to the appeal. Service on a party represented by counsel must be made on the party's counsel.

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(c) MANNER OF SERVICE.	**(c) Manner of Service.**
(1) *Nonelectronic Service.* Nonelectronic service may be by any of the following: (A) personal delivery; (B) mail; or (C) third-party commercial carrier for delivery within 3 days.	(1) ***Nonelectronic Service.*** Nonelectronic service may be by any of the following: (A) personal delivery; (B) mail; or (C) third-party commercial carrier for delivery within 3 days.
(2) *Electronic Service.* Electronic service may be made by sending a document to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing.	(2) ***Service By Electronic Means.*** Electronic service may be made by: (A) sending a document to a registered user by filing it with the court's electronic-filing system; or (B) using other electronic means that the person served consented to in writing.
(3) *When Service Is Complete.* Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.	(3) ***When Service Is Complete.*** Service by mail or by third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on filing or sending, unless the person making service receives notice that the document was not received by the person served.
(d) PROOF OF SERVICE.	**(d) Proof of Service.**
(1) *What Is Required.* A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:	(1) ***Requirements.*** A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

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(A) an acknowledgment of service by the person served; or (B) proof of service consisting of a statement by the person who made service certifying: (i) the date and manner of service; (ii) the names of the persons served; and (iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served. (2) *Delayed Proof.* The district or BAP clerk may permit documents to be filed without acknowledgment or proof of service, but must require the acknowledgment or proof to be filed promptly thereafter. (3) *Brief or Appendix.* When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.	(A) an acknowledgement of service by the person served; or (B) proof of service consisting of a statement by the person who made service certifying: (i) the date and manner of service; (ii) the names of the persons served; and (iii) the mail or electronic address, the fax number, or the address of the place of delivery—as appropriate for the manner of service—for each person served. (2) ***Delayed Proof of Service.*** A district or BAP clerk may accept a document for filing without an acknowledgement or proof of service, but must require the acknowledgment or proof of service to be filed promptly thereafter. (3) ***For a Brief or Appendix.*** When a brief or appendix is filed, the proof of service must also state the date and manner by which it was filed.
(e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a	**(e) Signature Always Required.** (1) ***Electronic Filing.*** Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the counsel's electronic signature. A filing made through a person's electronic-filing account and authorized by that

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signature block, constitutes the person's signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.	person—together with that person's name on a signature block—constitutes the person's signature. (2) ***Paper Filing.*** Every document filed in paper form must be signed by the person filing it or, if the person is represented, by the person's counsel.

Committee Note

The language of Rule 8011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 8011(a)(2)(A)(i), the words "clerk of the district court or BAP" have been changed to "district or BAP clerk", a change that is making consistent the treatment of that phrase.

• The word "by" was inserted before the word "delivery" in 8011(a)(2)(C).

• In 8011(a)(3) the word "court's" was changed to "court" and the words "presented for that purpose" were deleted.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 8011(a)(2)(A)(i) and (ii), NBC objects to the absence of any language permitting personal filing of paper documents with the clerk.

> ***Response***: The addition of language providing for personal delivery of physical documents to the clerk would be a substantive change and, as NBC acknowledges, is "perhaps obvious." We have made no change in response to this suggestion.

In Rule 8011(a)(2)(B)(ii), the NBC thinks that the reference to "an individual not represented by an attorney" excludes pro se attorneys who have filing privileges and that the language should be modified to read "an individual not represented by an attorney who otherwise is not authorized by court order or rule to file matters with the court electronically."

> ***Response***: This would be a substantive change. We have made no change in response to this suggestion.

ORIGINAL	REVISION
Rule 8012. Disclosure Statement	**Rule 8012. Disclosure Statement**
(a) NONGOVERNMENTAL COPRORATIONS. Any nongovernmental corporation that is a party to a proceeding in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.	**(a) Disclosure by a Nongovernmental Corporation.** Any nongovernmental corporation that is a party to a district-court or BAP proceeding ~~in the district court or BAP~~ or that seeks to intervene must file a statement that: (1) identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock; or (2) states that there is no such corporation. ~~The same requirement applies to a nongovernmental corporation that seeks to intervene.~~
(b) DISCLOSURE ABOUT THE DEBTOR. The debtor, the trustee, or, if neither is a party, the appellant must file a statement that: (1) identifies each debtor not named in the caption; and (2) for each debtor that is a corporation, discloses the information required by Rule 8012(a).	**(b) Disclosure About the Debtor.** The debtor, the trustee, or, if neither is a party, the appellant must file a statement that: (1) identifies each debtor not named in the caption; and (2) for each debtor that is a corporation, discloses the information required by (a).
(c) TIME TO FILE; SUPPLEMENTAL FILING. A Rule 8012 statement must: (1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing; (2) be included before the table of contents in the principal brief; and (3) be supplemented whenever the information required by Rule 8012 changes.	**(c) Time to File; Supplemental Filing.** A Rule 8012 statement must: (1) be filed with the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first—~~,~~ unless a local rule requires earlier filing; (2) be included before the table of contents in the principal brief; and (3) be supplemented whenever the information required by this rule changes.

Committee Note

The language of Rule 8012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- Rule 8012(a) has been modified to conform in style to Fed. R. Civ. P. 7.1(a). This includes inserting subsections, and replacing the last sentence with an insertion of the words "or that seeks to intervene" before "must file a statement". Also in (a), the words "a proceeding in the district court or BAP" have been replaced with "a district-court or BAP proceeding" at the request of the style consultants.

- In (c)(1) the comma following the word "first" was replaced by an em dash.

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggested changing the words "that identifies" to "identifying" and the word "states" to "stating" in Rule 8012(a).

> ***Response:*** Because of the change in format of Rule 8012(a), those changes are not appropriate.

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Rule 8013. Motions; Intervention	**Rule 8013. Motions; Interventions**
(a) CONTENTS OF A MOTION; RESPONSE; REPLY. (1) *Request for Relief.* A request for an order or other relief is made by filing a motion with the district or BAP clerk. (2) *Contents of a Motion.* (A) *Grounds and the Relief Sought.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it. (B) *Motion to Expedite an Appeal.* A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. If the district court or BAP grants the motion, it may accelerate the time to transmit the record, the deadline for filing briefs and other documents, oral argument, and the resolution of the appeal. A motion to expedite an appeal may be filed as an emergency motion under subdivision (d). (C) *Accompanying Documents.* (i) Any affidavit or other document necessary to support a motion must be served and filed with the motion. (ii) An affidavit must contain only factual information, not legal argument.	**(a) Content of a Motion; Response; Reply.** (1) ***Request for Relief.*** A request for an order or other relief is made by filing a motion with the district or BAP clerk. (2) ***Content of a Motion.*** (A) *Grounds, ~~and the~~ Relief Sought, and Supporting Argument.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument ~~necessary to support~~supporting it. (B) *Motion to Expedite an Appeal.* A motion to expedite an appeal must explain what justifies considering the appeal ahead of other matters. The motion may be filed as an emergency motion under (d). If it is granted, the district court or BAP may accelerate the time to: (i) send the record; (ii) file briefs and other documents; (iii) conduct oral argument; and (iv) resolve the appeal. (C) *Accompanying Documents.* (i) Supporting Document. Any affidavit or other document necessary to support a motion must be served and filed with the motion. (ii) Content of Affidavit. An affidavit must contain only factual information, not legal argument. (iii) Motion Seeking Substantive Relief. A motion seeking substantive relief must include a copy of the

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(ii) A motion seeking substantive relief must include a copy of the bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit. (D) *Documents Barredor Not Required.* (i) A separate brief supporting or responding to a motion must not be filed. (ii) Unless the court orders otherwise, a notice of motion or a proposed order is not required. (3) *Response and Reply; Time to File*. Unless the district court or BAP orders otherwise, (A) any party to the appeal may file a response to the motion within 7 days after service of the motion; and (B) the movant may file a reply to a response within 7 days after service of the response, but may only address matters raised in the response.	bankruptcy court's judgment, order, or decree, and any accompanying opinion as a separate exhibit. (D) *Documents Barred or Not Required.* (i) No Separate Brief. A separate brief supporting or responding to a motion must not be filed. (ii) Notice and Proposed Order Not Required. Unless the court orders otherwise, a notice of motion or a proposed order is not required. (3) ***Response and Reply; Time to File.*** Unless the district court or BAP orders otherwise: (A) any party to the appeal may—within 7 days after the motion is served—file a response to the motion; and (B) the movant may—within 7 days after the response is served—file a reply that addresses only matters raised in the response.
(b) DISPOSITION OF A MOTION FOR A PROCEDURAL ORDER. The district court or BAP may rule on a motion for a procedural order—including a motion under Rule 9006(b) or (c)—at any time without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify it within 7 days after the procedural order is served.	**(b) Disposition of a Motion for a Procedural Order.** The district court or BAP may rule on a motion for a procedural order—including a motion under Rule 9006(b) or (c)—at any time, without awaiting a response. A party adversely affected by the ruling may move to reconsider, vacate, or modify it within 7 days after the order is served.
(c) ORAL ARGUMENT. A motion will be decided without oral argument unless the district court or BAP orders otherwise.	**(c) Oral Argument.** A motion will be decided without oral argument unless the district court or BAP orders otherwise.

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(d) EMERGENCY MOTION.	**(d) Emergency Motion.**
(1) *Noting the Emergency.* When a movant requests expedited action on a motion because irreparableharm would occur during the time needed to consider a response, the movant must insert the word "Emergency" before the title of the motion.	(1) ***Noting the Emergency.*** A movant who requests expedited action—because irreparable harm would occur during the time needed to consider a response—must insert "Emergency" before the motion's title.
(2) *Contents of the Motion.* The emergency motion must	(2) ***Content.*** An emergency motion must:
(A) be accompanied by an affidavit setting out the nature of the emergency;	(A) be accompanied by an affidavit setting forth the nature of the emergency;
(B) state whether all grounds for it were submitted to the bankruptcy court and, if not, why the motion should not be remanded for the bankruptcy court to consider;	(B) state whether all grounds for it were previously submitted to the bankruptcy court and, if not, why the motion should not be remanded;
(C) include the e-mail addresses, office addresses, and telephone numbers of moving counsel and, when known, of opposing counsel and any unrepresented parties to the appeal; and	(C) include: (i) the email address, office address, and telephone number of the moving counsel; and (ii) when known, the same information as in (i) for opposing counsel and any unrepresented party to the appeal; and
(D) be served as prescribed by Rule 8011.	(D) be served as Rule 8011 prescribes.
(3) *Notifying Opposing Parties.* Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented parties in time for them to respond. The affidavit accompanying the emergency motion must state when and how notice was given or state why giving it was impracticable.	(3) ***Notifying Opposing Parties.*** Before filing an emergency motion, the movant must make every practicable effort to notify opposing counsel and any unrepresented party in time for them to respond. The affidavit accompanying the motion must state: (A) when and how notice was given; or (B) why giving ~~notice~~ it was impracticable.

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(e) POWER OF A SINGLE BAP JUDGE TO ENTERTAIN A MOTION. (1) *Single Judge's Authority.* A BAP judge may act alone on any motion, but may not dismiss or otherwise determine an appeal, deny a motion for leave to appeal, or deny a motion for a stay pending appeal if denial would make the appeal moot. (2) *Reviewing a Single Judge's Action.* The BAP may review a single judge's action, either on its own motion or on a party's motion.	**(e) Motion Considered by a Single BAP Judge.** (1) ***Judge's Authority.*** A BAP judge may act alone on any motion but may not: (A) dismiss or otherwise determine an appeal; (B) deny a motion for leave to appeal; or (C) deny a motion for a stay pending appeal if denial would make the appeal moot. (2) ***Reviewing a Single Judge's Action.*** The BAP, on its own or on a party's motion, may review a single judge's action.
(f) FORM OF DOCUMENTS; LENGTH LIMITS; NUMBER OF COPIES. (1) Format of a Paper Document. Rule 27(d)(1) F.R.App.P. applies in the district court or BAP to a paper version of a motion, response, or reply. (2) Format of an Electronically Filed Document. A motion, response, or reply filed electronically must comply with the requirements for a paper version regarding covers, line spacing, margins, typeface, and type style. It must also comply with the length limits under paragraph (3). (3) Length Limits. Except by thedistrict court's or BAP's permission, andexcluding the accompanying documents authorized by subdivision (a)(2)(C):	**(f) Form of Documents; Length Limits; Number of Copies.** (1) ***Document Filed in Paper Form.*** Fed. R. App. P. 27(d)(1) applies to a motion, response, or reply filed in paper form in the district court or BAP. (2) ***Document Filed Electronically.*** A motion, response, or reply filed electronically must comply with the requirements in (1) for covers, line spacing, margins, typeface, and type style. It must also comply with the length limits in (3). (3) ***Length Limits.*** Except by the district court's or BAP's permission, and excluding the accompanying documents authorized by (a)(2)(C):

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(A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words; (B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages; (C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and (D) a handwritten or typewritten reply must not exceed 10 pages. (4) *Paper Copies.* Paper copies must be provided only if required by local rule or by an order in a particular case.	(A) a motion or a response to a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 5,200 words; (B) a handwritten or typewritten motion or a response to a motion must not exceed 20 pages; (C) a reply produced using a computer must include a certificate under Rule 8015(h) and not exceed 2,600 words; and (D) a handwritten or typewritten reply must not exceed 10 pages. (4) ***Providing Paper Copies.*** Paper copies must be provided only if required by a local rule or by an order in a particular case.
(g) INTERVENING IN AN APPEAL. Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed. It must concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the	**(g) Motion for Leave to Intervene.** (1) ***Time to File.*** Unless a statute provides otherwise, an entity seeking to intervene in an appeal in the district court or BAP must move for leave to intervene and serve a copy of the motion on all parties to the appeal. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the appeal is docketed.

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bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate.	(2) ***Content.*** The motion must concisely state: (A) the movant's interest; (B) the grounds for intervention; (C) whether intervention was sought in the bankruptcy court; (D) why intervention is being sought at this stage of the proceedings; and ~~(D)~~(E) why participating as an amicus curiae—rather than intervening—would not be adequate.

Committee Note

The language of Rule 8013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8013(a)(2)(A), the title was amended to read "Grounds; Relief Sought; and Supporting Argument." In the text, the words "necessary to support" were changed to "supporting".

- In Rule 8013(d)(3)(B), the word "notice" was changed to "it".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 8013(b) the NBC again pointed out a spacing problem.

> ***Response***: This formatting issue is being addressed.

In Rule 8013(g)(2), the NBC noted that the (E) is missing from the list of (A)-(E).

> ***Response***: Corrected.

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Rule 8014. Briefs	**Rule 8014. Briefs**
(a) APPELLANT'S BRIEF. The appellant's brief must contain the following under appropriate headings and in the order indicated:	**(a) Appellant's Brief.** The appellant's brief must contain the following under appropriate headings and in the order indicated:
(1) a corporate disclosure statement, if required by Rule 8012;	(1) a disclosure statement, if required by Rule 8012;
(2) a table of contents, with page references;	(2) a table of contents, with page references;
(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;	(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
(4) a jurisdictional statement, including:	(4) a jurisdictional statement, including:
(A) the basis for the bankruptcy court's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;	(A) the basis for the bankruptcy court's subject-matter jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;
(B) the basis for the district court's or BAP's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;	(B) the basis for the district court's or BAP's jurisdiction, citing applicable statutory provisions and stating relevant facts establishing jurisdiction;
(C) the filing dates establishing the timeliness of the appeal; and	(C) the filing dates establishing the timeliness of the appeal; and
(D) an assertion that the appeal is from a final judgment, order, or decree, or information establishing the district court's or BAP's jurisdiction on another basis;	(D) an assertion that the appeal is from a final judgment, order, or decree—, or information establishing the district court's or BAP's jurisdiction on another basis;
	(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review;
	(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and

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(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review; (6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record; (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings; (8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; (9) a short conclusion stating the precise relief sought; and (10) the certificate of compliance, if required by Rule 8015(a)(7) or (b).	identifying the rulings presented for review, with appropriate references to the record; (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings; (8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; (9) a short conclusion stating the precise relief sought; and (10) the certificate of compliance, if required by Rule 8015(a)(7) or (b).

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(b) APPELLEE'S BRIEF. The appellee's brief must conform to the requirements of subdivision (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement: (1) the jurisdictional statement; (2) the statement of the issues and the applicable standard of appellate review; and (3) the statement of the case.	**(b) Appellee's Brief.** The appellee's brief must conform to the requirements of (a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement: (1) the jurisdictional statement; (2) the statement of the issues and the applicable standard of appellate review; and (3) the statement of the case.
(c) REPLY BRIEF. The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with the requirements of subdivision (a)(2)–(3).	**(c) Reply Brief.** The appellant may file a brief in reply to the appellee's brief. A reply brief must comply with (a)(2)–(3).
(d) STATUTES, RULES, REGULATIONS, OR SIMILAR AUTHORITY. If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum.	**(d) Setting Out Statutes, Rules, Regulations, or Similar Authorities.** If the court's determination of the issues presented requires the study of the Code or other statutes, rules, regulations, or similar authority, the relevant parts must be set out in the brief or in an addendum.
(e) BRIEFS IN A CASE INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.	**(e) Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
(f) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to a party's	**(f) Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief

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attention after the party's brief has been filed—or after oral argument but before a decision— a party may promptly advise the district or BAP clerk by a signed submission setting forth the citations. The submission, which must be served on the other parties to the appeal, must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be made within 7 days after the party is served, unless the court orders otherwise, and must be similarly limited.	has been filed—or after oral argument but before a decision—a party may promptly advise the district or BAP clerk by a signed submission, with a copy to all other parties, setting forth the citations. The submission must state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission must not exceed 350 words. Any response must be similarly limited, and it must be made within 7 days after service~~,~~ unless the court orders otherwise~~, and must be similarly limited~~.

Committee Note

The language of Rule 8014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 8014(a)(4)(D) the style consultants have replaced the comma following "decree" with a dash.

• In Rule 8014(f) the words "similarly limited, and it must be" were inserted after the words "response must be" in the last sentence, the comma was deleted after the word "service" and the phrase ", and must be similarly limited" was deleted at the end of the last sentence.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 8014(a)(3) the NBC finds the use of em dashes to set off the description of what must be in a table of authorities "odd" and the words "they are" ambiguous.

> ***Response***: This provision of the restyled rule is identical to the existing rule. No change was made in response to this comment.

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Rule 8015. Form and Length of Briefs; Form of Appendices and Other Papers	**Rule 8015. Form and Length of a Brief; Form of an Appendix or Other Paper**
(a) PAPER COPIES OF A BRIEF. If a paper copy of a brief may or must be filed, the following provisions apply:	**(a) Paper Copies of a Brief.** If a paper copy of a brief may or must be filed, the following provisions apply:
(1) *Reproduction.*	(1) ***Reproduction.***
(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.	(A) *Printing.* The brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.	(B) *Text.* Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.	(C) *Other Reproductions.* Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.
(2) *Cover.* The front cover of a brief must contain:	(2) ***Cover.*** The front cover of the brief must contain:
(A) the number of the case centered at the top;	(A) the number of the case centered at the top;
(B) the name of the court;	(B) the name of the court;
(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);	(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);
(D) the nature of the proceeding and the name of the court below;	(D) the nature of the proceeding and the name of the court below;
(E) the title of the brief, identifying the party or parties for whom the brief is filed; and	(E) the title of the brief, identifying the party or parties for whom the brief is filed; and
	(F) the name, office address, telephone number, and e-mail address of counsel representing the party for whom the brief is filed.

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(F) the name, office address, telephone number, and e-mail address of counsel representing the party for whom the brief is filed. (3) *Binding*. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open. (4) *Paper Size, Line Spacing, and Margins*. The brief must be on 8 1⁄2-by-11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. (5) *Typeface*. Either a proportionally spaced or monospaced face may be used. (A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger. (B) A monospaced face may not contain more than 10 1⁄2 characters per inch. (6) *Type Styles*. A brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.	(3) ***Binding.*** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open. (4) ***Paper Size, Line Spacing, and Margins.*** The brief must be on 8½”-by-11” paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there. (5) ***Typeface.*** Either a proportionally spaced or monospaced face may be used. (A) *Proportional Spacing.* A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger. (B) *Monospacing.* A monospaced face may not contain more than 10½ characters per inch. (6) ***Type Styles.*** The brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. (7) ***Length.*** (A) *Page Limitation.* A principal brief must not exceed 30 pages, or a reply brief 15 pages, unless it complies with (B). (B) *Type-Volume Limitation.* (i) Principal Brief. A principal brief is acceptable if it contains a certificate

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(7) Length. (A) Page Limitation. A principal brief must not exceed 30 pages,or a reply brief 15 pages, unless it complies with subparagraph (B). (B) Type-volume Limitation. (i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and: • contains no more than 13,000 words; or • uses a monospaced face and contains no more than 1,300 lines of text. (ii) A reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in item (i).	under (h) and: • contains no more than 13,000 words; or • uses a monospaced face and contains no more than 1,300 lines of text. (ii) Reply Brief. A reply brief is acceptable if it includes a certificate under (h) and contains no more than half the type volume specified in item (i).

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(b) ELECTRONICALLY FILED BRIEFS. A brief filed electronically must comply with subdivision (a), except for (a)(1), (a)(3), and the paper requirement of (a)(4).	**(b) Brief Filed Electronically.** A brief filed electronically must comply with (a)—except for (a)(1), (a)(3), and the paper requirement of (a)(4).
(c) PAPER COPIES OF APPENDICES. A paper copy of an appendix must comply with subdivision (a)(1), (2), (3), and (4), with the following exceptions: (1) An appendix may include a legible photocopy of any document found in the record or of a printed decision. (2) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1⁄2-by-11 inches, and need not lie reasonably flat when opened.	**(c) Paper Copies of an Appendix.** A paper copy of an appendix must comply with (a)(1), (2), (3), and (4), with the following exceptions: (1) ~~Photocopy of Court Document. An~~ an appendix may include a legible photocopy of any document found in the record or of a printed decision~~.~~; and (2) ~~Odd-Sized Document. When~~when necessary ~~to facilitate~~for ~~inclusion of~~including odd- sized documents such as technical drawings, an appendix may be a size other than 8½” by 11”, and need not lie reasonably flat when opened.
(d) ELECTRONICALLY FILED APPENDICES. An appendix filed electronically must comply with subdivision (a)(2) and (4), except for the paper requirement of (a)(4).	**(d) Appendix Filed Electronically.** An appendix filed electronically must comply with (a)(2) and (4)—except for the paper requirement of (a)(4).
(e) OTHER DOCUMENTS. (1) *Motion.* Rule 8013(f) governs the form of a motion, response, or reply. (2) *Paper Copies of Other Documents.* A paper copy of any other document, other than a submission under Rule 8014(f), must comply with	**(e) Other Documents.** (1) ***Motion.*** Rule 8013(f) governs the form of a motion, response, or reply. (2) ***Paper Copies of Other Documents.*** A paper copy of any other document—except one submitted under Rule 8014(f)—must comply with (a), with the following exceptions:

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subdivision (a), with the following exceptions: (A) A cover is not necessary if the caption and signature page together contain the information required by subdivision (a)(2). (B) Subdivision (a)(7) does not apply. (3) *Other Documents Filed Electronically.* Any other document filed electronically, other than a submission under Rule 8014(f), must comply with the appearance requirements of paragraph (2).	(A) a cover is not necessary if the caption and signature page together contain the information required by (a)(2); and (B) the length limits of (a)(7) do not apply. (3) ***Document Filed Electronically.*** Any other document filed electronically—except a document submitted under Rule 8014(f)—must comply with the requirements of (2).
(f) LOCAL VARIATION. A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by Part VIII of these rules. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by Part VIII of these rules.	**(f) Local Variation.** A district court or BAP must accept documents that comply with the form requirements of this rule and the length limits set by this Part VIII. By local rule or order in a particular case, a district court or BAP may accept documents that do not meet all the form requirements of this rule or the length limits set by this Part VIII.
(g) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not: • the cover page; • disclosure statement under Rule 8012; • table of contents; • table of citations; • statement regarding oral argument;	**(g) Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit, but the following items do not: • cover page; • disclosure statement under Rule 8012; • table of contents; • table of citations; • statement regarding oral argument;

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• addendum containing statutes, rules, or regulations; • certificates of counsel; • signature block; • proof of service; and • any item specifically excluded by these rules or by local rule.	• addendum containing statutes, rules, or regulations; • certificate of counsel; • signature block; • proof of service; and • any item specifically excluded by these rules or by local rule.
(h) CERTIFICATE OF COMPLIANCE. (1) *Briefs and Documents That Require a Certificate.* A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of mono-spaced type—in the document. (2) *Acceptable Form.* The certificate requirement is satisfied by a certificate of compliance that conforms substantially to the appropriate Official Form.	**(h) Certificate of Compliance.** (1) ***Briefs and Documents That Require a Certificate.*** A brief submitted under Rule 8015(a)(7)(B), 8016(d)(2), or 8017(b)(4)—and a document submitted under Rule 8013(f)(3)(A), 8013(f)(3)(C), or 8022(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The individual preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document. (2) ***Using the Official Form.*** A certificate of compliance that conforms substantially to Form 417C satisfies the certificate requirement.

Committee Note

The language of Rule 8015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The titles for Rule 8015(c)(1) and (2) were omitted; it is not the style convention to have titles

on paragraphs that are not independent of the text above.

- In Rule 8015(c)(2) the words "to facilitate inclusion of" were replaced with "for including".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the reference to "e-mail" in rule 8015(a)(2)(F) should be "email".

Response: Suggestion accepted.

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Rule 8016. Cross-Appeals	**Rule 8016. Cross-Appeals**
(a) APPLICABILITY. This rule applies to a case in which a cross- appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, except as otherwise provided in this rule.	**(a) Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 8014(a)–(c), 8015(a)(7)(A)–(B), and 8018(a)(1)–(3) do not apply to such a case, unless this rule states otherwise.
(b) DESIGNATION OF APPELLANT. The party who files a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.	**(b) Designation of Appellant.** The party who files a notice of appeal first is the appellant for purposes of this rule and Rule 8018(a)(4) and (b) and Rule 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.
(c) BRIEFS. In a case involving a cross-appeal: (1) *Appellant's Principal Brief.* The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a). (2) *Appellee's Principal and Response Brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement. (3) *Appellant's Response and Reply Brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same	**(c) Briefs.** In a case involving a cross-appeal: (1) ***Appellant's Principal Brief.*** The appellant must file a principal brief in the appeal. That brief must comply with Rule 8014(a). (2) ***Appellee's Principal and Response Brief.*** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8014(a), but the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement. (3) ***Appellant's Response and Reply Brief.*** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), but none of the following need appear unless the appellant is dissatisfied with the

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brief, reply to the response in the appeal. That brief must comply with Rule 8014(a)(2)–(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal: (A) the jurisdictional statement; (B) the statement of the issues and the applicable standard of appellate review; and (C) the statement of the case. (4) *Appellee's Reply Brief.* The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.	appellee's statement in the cross-appeal: (A) the jurisdictional statement; (B) the statement of the issues; (C) the statement of the case; and (D) the statement of the applicable standard of appellate review. (4) ***Appellee's Reply Brief.*** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8014(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.
(d) LENGTH. (1) *Page Limitation.* Unless it complies with paragraph (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages. (2) *Type-volume Limitation.* (A) The appellant's	**(d) Length.** (1) ***Page Limitation.*** Unless it complies with (2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages. (2) ***Type-Volume Limitation.*** (A) *Appellant's Brief.* The appellant's principal brief or the appellant's response and reply brief is

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principal brief or the appellant's response and reply brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 13,000 words; or (ii) uses a monospaced face and contains no more than 1,300 lines of text. (B) The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 15,300 words; or (ii) uses a monospaced face and contains no more than 1,500 lines of text. (C) The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half of the type volume specified in subparagraph (A).	acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 13,000 words; or (ii) uses a monospaced face and contains no more than 1,300 lines of text. (B) *Appellee's Principal and Response Brief.* The appellee's principal and response brief is acceptable if it includes a certificate under Rule 8015(h) and: (i) contains no more than 15,300 words; or (ii) uses a monospaced face and contains no more than 1,500 lines of text. (C) *Appellee's Reply Brief.* The appellee's reply brief is acceptable if it includes a certificate under Rule 8015(h) and contains no more than half the type volume specified in (A).
(e) TIME TO SERVE AND FILE A BRIEF. Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits: (1) the appellant's principal brief,	**(e) Time to Serve and File a Brief.** Briefs must be served and filed as follows, unless the district court or BAP by order in a particular case excuses the filing of briefs or sets different time limits: (1) the appellant's principal brief, within 30 days after the docketing of a notice

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within 30 days after the docketing of notice that the record has been transmitted or is available electronically; (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served; (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing.	that the record has been sent or is available electronically; (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served; (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served~~,~~ but at least 7 days before scheduled argument—unless the district court or BAP, for ~~good~~ cause, allows a later filing.

Committee Note

The language of Rule 8016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8016(e)(4) a dash has been inserted after the word "argument," and the phrase "good cause" has been changed to "cause".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC noted a spacing problem in Rule 8016(b).

Response: This is part of the formatting problem which is being addressed.

The NBC suggested that the use of the phrase "good cause" in Rule 8016(e)(4) was inconsistent with the other restyled rules that changed that phrase to "cause".

Response: All instances of "good cause" have been changed to "cause."

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Rule 8017. Brief of an Amicus Curiae	**Rule 8017. Brief of an Amicus Curiae**
(a) DURING INITIAL CONSIDERATION OF A CASE ON THE MERITS. (1) *Applicability*. This Rule 8017(a) governs amicus filings during a court's initial consideration of a case on the merits. (2) *When Permitted*. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own motion, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae. (3) *Motion for Leave to File*. The motion must be accompanied by the proposed brief and state: (A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal. (4) *Contents and Form*. An amicus brief must comply with Rule 8015. In addition to the requirements of Rule 8015, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a	**(a) During the Initial Consideration of a Case on the Merits.** (1) ***Applicability.*** This subdivision (a) governs amicus filings during a court's initial consideration of a case on the merits. (2) ***When Permitted.*** The United States, ~~or~~ its officer or agency, or a state may file an amicus brief without the parties' consent ~~of the parties~~ or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a district court or BAP may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. On its own, and with notice to all parties to an appeal, the district court or BAP may request a brief by an amicus curiae. (3) ***Motion for Leave to File.*** ~~The~~ A motion for leave must be accompanied by the proposed brief and state: (A) the movant's interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal. (4) ***Content and Form.*** An amicus brief must comply with Rule 8015. In addition, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 8012. An amicus

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disclosure statement like that required of parties by Rule 8012. An amicus brief need not comply with Rule 8014, but must include the following: (A) a table of contents, with page references; (B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited; (C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; (D) unless the amicus curiae is one listed in the first sentence of subdivision (a)(2), a statement that indicates whether: (i) a party's counsel authored the brief in whole or in part; (ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person; (E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and	brief need not comply with Rule 8014, but must include the following: (A) a table of contents, with page references; (B) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited; (C) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; (D) unless the amicus curiae is one listed in the first sentence of (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; (E) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and (F) a certificate of compliance, if required by Rule 8015(h). (5) ***Length.*** Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the

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(F) a certificate of compliance, if required by Rule 8015(h). (5) *Length.* Except by the district court's or BAP's permission, an amicus brief must be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief. (6) *Time for Filing.* An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer. (7) *Reply Brief.* Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief. (8) *Oral Argument.* An amicus curiae may participate in oral argument only with the district court's or BAP's permission.	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 leave to file when required—within 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief within 7 days after the appellant's principal brief is filed. The district court or BAP may grant leave for later filing, specifying the time within which an opposing party may answer. (7) ***Reply Brief.*** Except by the district court's or BAP's permission, an amicus curiae may not file a reply brief. (8) ***Oral Argument.*** An amicus curiae may participate in oral argument only with the district court's or BAP's permission.

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(b) DURING CONSIDERATION OF WHETHER TO GRANT REHEARING.	**(b) During Consideration of Whether to Grant Rehearing.**
(1) *Applicability*. This Rule 8017(b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a case provides otherwise.	(1) ***Applicability.*** This subdivision (b) governs amicus filings during a district court's or BAP's consideration of whether to grant rehearing, unless a local rule or order in a particular case provides otherwise.
(2) *When Permitted*. The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.	(2) ***When Permitted.*** The United States, ~~or~~ its officer or agency, or a state may file an amicus brief without the parties' consent ~~of the parties~~ or leave of court. Any other amicus curiae may file a brief only by leave of court.
(3) *Motion for Leave to File*. Rule 8017(a)(3) applies to a motion for leave.	(3) ***Motion for Leave to File.*** Paragraph (a)(3) applies to a motion for leave to file.
(4) *Contents, Form, and Length*. Rule 8017(a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.	(4) ***Content, Form, and Length.*** Paragraph (a)(4) applies to the amicus brief. The brief must include a certificate under Rule 8015(h) and not exceed 2,600 words.
(5) *Time for Filing*. An amicus curiae supporting the motion for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.	(5) ***Time ~~for Filing~~to File.*** An amicus curiae supporting a motion for rehearing or supporting neither party must file its brief—accompanied by a motion for leave to file when required—within 7 days after the motion is filed. An amicus curiae opposing the motion for rehearing must file its brief—accompanied by a motion for leave to file when required—no later than the date set by the court for the response.

Committee Note

The language of Rule 8017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8017(a)(2) in the first sentence a comma was inserted after the words "United States" and after "agency" and the word "or" before "its officer" was deleted. In addition, the phrase "consent of the parties" was replaced with "parties' consent".

- In (a)(3) the first word of the sentence was changed from "The" to "A".

- In the first sentence of (b)(2) the same changes that were made in the first sentence of (a)(2).

- the title of (b)(5) was changed to replace the words "for Filing" with "to File".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC makes the same comment on Rule 8017(a)(4)(B) that it made on Rule 8014(a)(3), objecting to the em dashes and suggesting that the words "they are" are ambiguous.

> ***Response***: Just as was true for Rule 8014(a)(3), the language of the restyled rule is identical to the language of the existing rule. No change was made as a result of this comment.

ORIGINAL	REVISION
Rule 8018. Serving and Filing Briefs; Appendices	**Rule 8018. Serving and Filing Briefs and Appendices**
(a) TIME TO SERVE AND FILE A BRIEF. The following rules apply unless the district court or BAP by order in a particular case excuses the filing of briefs or specifies different time limits: (1) The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically. (2) The appellee must serve and file a brief within 30 days after service of the appellant's brief. (3) The appellant may serve and file a reply brief within 14 days after service of the appellee's brief, but a reply brief must be filed at least 7 days before scheduled argument unless the district court or BAP, for good cause, allows a later filing. (4) If an appellant fails to file a brief on time or within an extended time authorized by the district court or BAP, an appellee may move to dismiss the appeal—or the district court or BAP, after notice, may dismiss the appeal on its own motion. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission.	**(a) Time to Serve and File a Brief.** Unless the district court or BAP by order in a particular case excuses the filing of briefs or sets a different time, the following time limits apply: (1) ***Appellant's Brief.*** The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been sent or that it is available electronically. (2) ***Appellee's Brief.*** The appellee must serve and file a brief within 30 days after the appellant's brief is served. (3) ***Appellant's Reply Brief.*** The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but at least 7 days before scheduled argument—unless the district court or BAP, for ~~good~~ cause, allows a later filing. (4) ***Consequence of Failure to File.*** If an appellant fails to file a brief on time or within an extended time authorized under (a)(3), the district court or BAP may—on its own after notice or on the appellee's motion—dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the district court or BAP grants permission.
(b) DUTY TO SERVE AND FILE AN APPENDIX TO THE BRIEF.	**(b) Duty to Serve and File an Appendix.** (1) ***Appellant's Duty.*** Subject to (e) and Rule 8009(d), the appellant must serve

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(1) *Appellant*. Subject to subdivision (e) and Rule 8009(d), the appellant must serve and file with its principal brief excerpts of the record as an appendix. It must contain the following: (A) the relevant entries in the bankruptcy docket; (B) the complaint and answer, or other equivalent filings; (C) the judgment, order, or decree from which the appeal is taken; (D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal; (E) the notice of appeal; and (F) any relevant transcript or portion of it. (2) *Appellee*. The appellee may also serve and file with its brief an appendix that contains material required to be included by the appellant or relevant to the appeal or cross-appeal, but omitted by the appellant. (3) *Cross-Appellee*. The appellant as cross-appellee may also serve and file with its response an appendix that contains material relevant to matters raised initially by the principal brief in the cross-appeal, but omitted by the cross-appellant.	and file with its principal brief an appendix containing excerpts from the record. It must contain: (A) the relevant docket entries; (B) the complaint and answer~~,~~ or equivalent filings; (C) the judgment, order, or decree from which the appeal is taken; (D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal; (E) the notice of appeal; and (F) any relevant transcript or portion of it. (2) ***Appellee's ~~Duty~~Appendix.*** The appellee may serve and file with its brief an appendix containing any material that is required to be included or is relevant to the appeal or cross-appeal but that is omitted from the appellant's appendix. (3) ***~~Appellant's Duty as~~ Cross-Appellee's Appendix.*** The appellant—as cross-appellee—may also serve and file with its response an appendix containing material that is relevant to matters raised initially by the cross-appeal~~,~~ but that is omitted by the cross-appellant.

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(c) FORMAT OF THE APPENDIX. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of documents or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, and the like) should be omitted.	**(c) Format of the Appendix.** (1) ***Content.*** The appendix must: (A) begin with a table of contents identifying the page at which each part begins. ; (B) put the The relevant docket entries must follow after the table of contents. ; (C) then put other Other parts of the record must follow chronologically. These provisions apply: ; (D) ***Page Numbers.*** when When transcript pages are placed in the appendix included, show, the transcript page numbers must be shown in brackets immediately before the included pages. ; and (E) ***Omissions.*** Omissions indicate omissions from the text of a document or of the transcript must be indicated by asterisks. (2) ***Immaterial Formal Matters***. The appendix should not include Immaterial immaterial formal matters, such as (captions, subscriptions, and acknowledgments, and the like).
(d) EXHIBITS. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.	**(d) Reproduction of Reproducing Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.

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(e) APPEAL ON THE ORIGINAL RECORD WITHOUT AN APPENDIX. The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the district court or BAP orders the parties to file.	**(e) Appeal on the Original Record Without an Appendix.** The district court or BAP may, either by rule for all cases or classes of cases or by order in a particular case: (1) dispense with the appendix~~,~~; and (2) permit an appeal to proceed on the original record with the submission of any relevant parts that the district court or BAP orders the parties to file.

Committee Note

The language of Rule 8018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8018(a)(3) the phrase "good cause" was changed to "cause."

- In (b)(1)(B) a comma was inserted after the word "answer."

- In (b)(3) a comma was removed following the word "cross-appeal."

- Rule 8018(c) was reformatted to create a subsection (1) and (2). In (1) we placed the bulk of the text in the opening paragraph into a list of required elements in the Appendix. Subsection (2) deals with immaterial formal matters. Various other stylistic changes were made.

- The heading of Rule 8018(d) was changed from "Reproduction of Exhibits" to "Reproducing Exhibits".

- In (e)(1), the comma after "appendix" was changed to a semi-colon.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC noted that the phrase "good cause" appears in Rule 8018(a)(3) and other instances of that phrase were changed to "cause."

Response: Change was made throughout.

The NBC suggested changing the titles of Rule 8018(b)(2) and (b)(3), because there is no "duty" imposed by the text on either party. They suggested changing the titles to "Appellee's Appendix" and "Cross-Appellee's Appendix".

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 8018.1. District-Court Review of a Judgment that the Bankruptcy Court Lacked the Constitutional Authority to Enter	**Rule 8018.1. Reviewing a Judgment That the Bankruptcy Court Lacked Authority to Enter**
If, on appeal, a district court determines that the bankruptcy court did not have the power under Article III of the Constitution to enter the judgment, order, or decree appealed from, the district court may treat it as proposed findings of fact and conclusions of law.	If, on appeal, a district court determines that the bankruptcy court did not have authority under Article III of the Constitution to enter the judgment, order, or decree being appealed, the district court may treat it as proposed findings of fact and conclusions of law.

Committee Note

The language of Rule 8018.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that the word "authority" in Rule 8018.1 should be changed to "power" (with a corresponding change to the title) because Article III of the U.S. Constitution refers to the "judicial Power of the United States."

> ***Response***: In Stern v. Marshall, 564 U.S. 462 ((2011) Chief Justice Roberts consistently uses the term constitutional "authority." The holding of ***Stern*** is described by using that term in Executive Benefits Insurance Agency v. Arkison, 573 U.S. 25 (2014) which gave rise to the adoption of this Rule. The concept of judicial power and judicial authority under Article III are interchangeable. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 8019. Oral Argument	**Rule 8019. Oral Argument**
(a) PARTY'S STATEMENT. Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted.	**(a) Party's Statement.** Any party may file, or a district court or BAP may require, a statement explaining why oral argument should, or need not, be permitted.
(b) PRESUMPTION OF ORAL ARGUMENT AND EXCEPTIONS. Oral argument must be allowed in every case unless the district judge—or all the BAP judges assigned to hear the appeal—examine the briefs and record and determine that oral argument is unnecessary because (1) the appeal is frivolous; (2) the dispositive issue or issues have been authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.	**(b) Presumption of Oral Argument; Exceptions.** Oral argument must be allowed in every case unless the district judge—or ~~all the~~each BAP judge~~s~~ assigned to hear the appeal—examines the briefs and record and determines that oral argument is unnecessary because: (1) the appeal is frivolous; (2) the dispositive issue or issues have been authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.
(c) NOTICE OF ARGUMENT; POSTPONEMENT. The district court or BAP must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.	**(c) Notice of Oral Argument; Motion to Postpone.** The district court or BAP must advise all parties of the date, time, and place for oral argument~~,~~ and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably before the hearing date.
(d) ORDER AND CONTENTS OF ARGUMENT. The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities.	**(d) Order and Content of the Argument.** The appellant opens and concludes the argument. Counsel must not read at length from briefs, the record, or authorities.

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(e) CROSS-APPEALS AND SEPARATE APPEALS. If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.	**(e) Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or BAP orders otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.
(f) NONAPPEARANCE OF A PARTY. If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise.	**(f) Nonappearance of a Party.** If the appellee fails to appear for argument, the district court or BAP may hear the appellant's argument. If the appellant fails to appear for argument, the district court or BAP may hear the appellee's argument. If neither party appears, the case will be decided on the briefs unless the district court or BAP orders otherwise.
(g) SUBMISSION ON BRIEFS. The parties may agree to submit a case for decision on the briefs, but the district court or BAP may direct that the case be argued.	**(g) Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the district court or BAP may order that the case be argued.
(h) USE OF PHYSICAL EXHIBITS AT ARGUMENT; REMOVAL. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom unless the district court or BAP directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.	**(h) Use of Physical Exhibits at Argument; Removal.** ~~Any~~ An attorney intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, ~~counsel~~ the attorney must remove the exhibits from the courtroom unless the district court or BAP orders otherwise. The clerk may destroy or dispose of them if ~~counsel~~ the attorney does not reclaim them within a reasonable time after the clerk gives notice to do so.

Committee Note

The language of Rule 8019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 8019(b) the phrase "all BAP judges" was changed to "each BAP judge".

• A comma was deleted after the words "oral argument" in the text of (c).

• In the title to (d), the word "the" was inserted before the word "Argument."

• in (h), the word "Any" at the beginning of the text was changed to "An" and the two usages of the word "counsel" were changed to "the attorney".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggests that Rule 8019(b) be modified to avoid mixing singular and plural forms in the main sentence by changing "all BAP judges" to "each BAP judge."

> ***Response:*** Suggested accepted.

In the last sentence of Rule 8019(h) the NBC thinks the word "them" is ambiguous. They suggest using "the exhibits."

> ***Response:*** The entirety of Rule 8019(h) is about physical exhibits. The immediately prior sentence imposes a duty on the attorney to remove the exhibits after argument. The sentence at issue allows the clerk to dispose of "them" (the exhibits) if they are not reclaimed. There is nothing else the term "them" could refer to. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 8020. Frivolous Appeal and Other Misconduct	**Rule 8020. Frivolous Appeal; Other Misconduct**
(a) FRIVOLOUS APPEAL—DAMAGES AND COSTS. If the district court or BAP determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.	**(a) Frivolous Appeal—; Damages and Costs.** If the district court or BAP determines that an appeal is frivolous, it may, then after a separately filed motion is filed or the court gives notice from the court and a reasonable opportunity to respond, it may award just damages and single or double costs to the appellee.
(b) OTHER MISCONDUCT. The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including failure to comply with any court order. First, however, the court must afford the attorney or party reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.	**(b) Other Misconduct; Sanctions.** The district court or BAP may discipline or sanction an attorney or party appearing before it for other misconduct, including a failure to comply with a court order. But the court must first give the attorney or party reasonable notice and an opportunity to show cause to the contrary—and if requested, grant a hearing.

Committee Note

The language of Rule 8020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the heading of Rule 8020(a), the dash was replaced with a semi-colon. In the text of Rule 8020(a) the words "it may," were replaced with the word "then", the phrase "separately filed motion or notice from the court" was replaced with "separate motion is filed or the court gives notice", the word "a" was inserted before "reasonable opportunity to response" and the words "it may" were inserted before the word "award."

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8021. Costs	**Rule 8021. Costs**
(a) AGAINST WHOM ASSESSED. The following rules apply unless the law provides or the district court or BAP orders otherwise: (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise; (2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant; (3) if a judgment, order, or decree is reversed, costs are taxed against the appellee; (4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders.	**(a) Against Whom Assessed.** The following rules apply unless the law provides or the district court or BAP orders otherwise: (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise; (2) if a judgment~~, order, or decree~~ is affirmed, costs are taxed against the appellant; (3) if a judgment~~, order, or decree~~ is reversed, costs are taxed against the appellee; (4) if a judgment~~, order, or decree~~ is affirmed or reversed in part, modified, or vacated, costs are taxed only as the district court or BAP orders.
(b) COSTS FOR AND AGAINST THE UNITED STATES. Costs for or against the United States, its agency, or its officer may be assessed under subdivision (a) only if authorized by law.	**(b) Costs for and Against the United States.** Costs for or against the United States, its agency, or its officer may be assessed under (a) only if authorized by law.
(c) COSTS ON APPEAL TAXABLE IN THE BANKRUPTCY COURT. The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule: (1) the production of any required copies of a brief, appendix, exhibit, or the record;	**(c) Costs on Appeal Taxable in the Bankruptcy Court.** The following costs on appeal are taxable in the bankruptcy court for the benefit of the party entitled to costs under this rule: (1) producing any required copies of a brief, appendix, exhibit, or the record; (2) preparing and sending the record; (3) the reporter's transcript, if needed to determine the appeal;

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(2) the preparation and transmission of the record; (3) the reporter's transcript, if needed to determine the appeal; (4) premiums paid for a bond or other security to preserve rights pending appeal; and (5) the fee for filing the notice of appeal.	(4) premiums paid for a bond or other security to preserve rights pending appeal; and (5) the fee for filing the notice of appeal.
(d) BILL OF COSTS; OBJECTIONS. A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after service of the bill of costs, unless the bankruptcy court extends the time.	**(d) Bill of Costs; Objections.** A party who wants costs taxed must, within 14 days after ~~entry of~~a judgment on appeal is entered, file with the bankruptcy clerk and serve an itemized and verified bill of costs. Objections must be filed within 14 days after the bill of costs is served, unless the bankruptcy court extends the time.

Committee Note

The language of Rule 8021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8021(a)(2), (3) and (4) the phrase "judgment, order, or decree" has been replaced with the word "judgment" because the definition of "judgment" includes appealable orders.

- In Rule 8021(d) the phrase "entry of judgment on appeal" was replaced with "a judgment on appeal is entered."

Summary of Public Comment

• Jeffrey Cozad (BK-202200002-0010)

Mr. Cozad suggested that the word "taxed" in rule 8021(a)(1) should be changed to "awarded".

> ***Response***: rule 8021(a)(1) is modeled on Fed. R. App. P. 39(a)(1), which uses the word "taxed". No change was made in response to this comment.

Mr. Cozad also suggested that the word "assessed" in Rule 8021(b) be changed to "awarded".

Response: Rule 8021(b) is modeled on Fed. R. App. P. 39(b), which uses the word "assessed". No change was made in response to this comment.

In Rule 8021(a)(2), (a)(3) and (a)(4), the introductory phrase is "if a judgment, order, or decree". He questioned the inclusion of the word "decree", and whether there are any circumstances under which a decree could be entered or affirmed or reversed.

Response: The NBC made a general comment about the use of this phrase, and in this instance the comparable provisions of Fed. R. App. P. 39(a)(2)-(4) use only the word "judgment". "Judgment" is defined to include any appealable order in Rule 9001(7). Both for conformity and because it has no substantive impact, we have replaced "judgment, order, or decree" with "judgment."

ORIGINAL	REVISION
Rule 8022. Motion for Rehearing	**Rule 8022. Motion for Rehearing**
(a) TIME TO FILE; CONTENTS; RESPONSE; ACTION BY THE DISTRICT COURT OR BAP IF GRANTED. (1) *Time*. Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after entry of judgment on appeal. (2) *Contents*. The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. Oral argument is not permitted. (3) *Response*. Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request. (4) *Action by the District Court or BAP*. If a motion for rehearing is granted, the district court or BAP may do any of the following: (A) make a final disposition of the appeal without reargument; (B) restore the case to the calendar for reargument or resubmission; or (C) issue any other appropriate order.	**(a) Time to File; Content; Response; Action by the District Court or BAP If Granted.** (1) ***Time.*** Unless the time is shortened or extended by order or local rule, any motion for rehearing by the district court or BAP must be filed within 14 days after a judgment on appeal is entered. (2) ***Content.*** The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in support of the motion. ~~Oral argument is not permitted.~~ (3) ***Response.*** Unless the district court or BAP requests, no response to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted ~~in the absence of~~without such a request. (4) ***No Oral Argument.*** Oral argument is not permitted. ~~(3)~~(5) ***Action by the District Court or BAP.*** If a motion for rehearing is granted, the district court or BAP may do any of the following: (A) make a final disposition of the appeal without reargument; (B) restore the case to the calendar for reargument or resubmission; or (C) issue any other appropriate order.

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(b) FORM OF THE MOTION; LENGTH. The motion must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as provided by Rule 8011. Except by the district court's or BAP's permission: (1) a motion for rehearing produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and (2) a handwritten or typewritten motion must not exceed 15 pages.	**(b) Form; Length.** ~~The~~ A motion for rehearing must comply in form with Rule 8013(f)(1) and (2). Copies must be served and filed as Rule 8011 provides. Except by the district court's or BAP's permission: (1) a motion produced using a computer must include a certificate under Rule 8015(h) and not exceed 3,900 words; and (2) a handwritten or typewritten motion must not exceed 15 pages.

Committee Note

The language of Rule 8022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8022(a)(1) the word "a" was inserted before "judgment".

- In (a)(2) the last sentence was deleted and a new (a)(4) was inserted called "No Oral Argument" with the text "Oral argument is not permitted." Former (a)(4) has been renumbered (a)(5).

- In (a)(3) the words "in the absence of" were replaced with "without".

- The first word of (b) has been changed from "The" to "A".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8023. Voluntary Dismissal	**Rule 8023. Voluntary Dismissal**
(a) STIPULATED DISMISSAL. The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.	**(a) Stipulated Dismissal.** The clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any court fees that are due.
(b) APPELLANT'S MOTION TO DISMISS. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.	**(b) Appellant's Motion to Dismiss.** An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.
(c) OTHER RELIEF. A court order is required for any relief under Rule 8023(a) or (b) beyond the dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.	**(c) Other Relief.** A court order is required for any relief beyond the ~~mere~~ dismissal of an appeal—including approving a settlement, vacating an action of the bankruptcy court, or remanding the case to it.
(d) COURT APPROVAL. This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.	**(d) Court Approval.** This rule does not alter the legal requirements governing court approval of a settlement, payment, or other consideration.

Committee Note

The language of Rule 8023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8023(c) the word "mere" was removed before "dismissal" to conform to the amendment to the rule effective Dec. 1, 2022.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8024. Clerk's Duties on Disposition of the Appeal	**Rule 8024. Clerk's Duties on Disposition of the Appeal**
(a) JUDGMENT ON APPEAL. The district or BAP clerk must prepare, sign, and enter the judgment after receiving the court's opinion or, if there is no opinion, as the court instructs. Noting the judgment on the docket constitutes entry of judgment.	**(a) Preparing the Judgment.** After receiving the court's opinion—or instructions if there is no opinion—the district or BAP clerk must: (1) prepare and sign the judgment; and (2) note it on the docket, which act constitutes entry of judgment.
(b) NOTICE OF A JUDGMENT. Immediately upon the entry of a judgment, the district or BAP clerk must: (1) transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the bankruptcy clerk, together with a copy of any opinion; and (2) note the date of the transmission on the docket.	**(b) Giving Notice of the Judgment.** Immediately after ~~entering~~ a judgment is entered, the district or BAP clerk must: (1) send notice of its entry, together with a copy of any opinion, to: • the parties to the appeal; • the United States trustee; and • the bankruptcy clerk; and (2) note on the docket the date the notice was sent.
(c) RETURNING PHYSICAL ITEMS. If any physical items were transmitted as the record on appeal, they must be returned to the bankruptcy clerk on disposition of the appeal.	**(c) Returning Physical Items.** On disposition of the appeal, the district or BAP clerk must return to the bankruptcy clerk any physical items sent as the record on appeal.

Committee Note

The language of Rule 8024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8024(b) the phrase "entering a judgment" was replaced with "a judgment is entered".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8025. Stay of a District Court or BAP Judgment	**Rule 8025. Staying a District Court or BAP Judgment**
(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after entry.	**(a) Automatic Stay of a Judgment on Appeal.** Unless the district court or BAP orders otherwise, its judgment is stayed for 14 days after its entry.
(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. (1) *In General.* On a party's motion and notice to all other parties to the appeal, the district court or BAP may stay its judgment pending an appeal to the court of appeals. (2) *Time Limit.* The stay must not exceed 30 days after the judgment is entered, except for cause shown. (3) *Stay Continued.* If, before a stay expires, the party who obtained the stay appeals to the court of appeals, the stay continues until final disposition by the court of appeals. (4) *Bond or Other Security.* A bond or other security may be required as a condition for granting or continuing a stay of the judgment. A bond or other security may be required if a trustee obtains a stay, but not if a stay is obtained by the United States or its officer or agency or at the direction of any department of the United States government.	**(b) Stay Pending an Appeal to ~~a~~ the United States Court of Appeals.** (1) ***In General.*** On a party's motion with notice to all other parties to the appeal, ~~The~~ the district court or BAP may ~~on a party's motion with notice to all other parties to the appeal—~~ stay its judgment pending an appeal to the court of appeals. (2) ***Time Limit.*** Except for cause ~~shown~~, the stay must not exceed 30 days after the judgment is entered. (3) ***Stay Continued When an Appeal Is Filed.*** If, before a stay expires, the party who obtained it appeals to a court of appeals, the stay continues until final disposition by the court of appeals. (4) ***Bond or Other Security.*** A bond or other security may be required as a condition for granting or continuing a stay. If a trustee obtains a stay, a bond or other security may be required~~,~~. ~~but not~~But neither is required if a stay is obtained by the United States or its officer or agency, or by direction of any department of the United States government.
(c) AUTOMATIC STAY OF AN ORDER, JUDGMENT, OR DECREE OF A BANKRUPTCY COURT. If the	**(c) Automatic Stay of ~~a~~ the Bankruptcy Court's Order, Judgment, or Decree.** If ~~a~~ the district court or BAP enters a judgment

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district court or BAP enters a judgment affirming an order, judgment, or decree of the bankruptcy court, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the appellate stay.	affirming ~~a~~the bankruptcy court's order, judgment, or decree, a stay of the district court's or BAP's judgment automatically stays the bankruptcy court's order, judgment, or decree ~~for the duration of~~while the appellate stay is in effect.
(d) POWER OF A COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any of its judges to do the following: (1) stay a judgment pending appeal; (2) stay proceedings while an appeal is pending; (3) suspend, modify, restore, vacate, or grant a stay or an injunction while an appeal is pending; or (4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment to be entered.	**(d) Power of a Court of Appeals or ~~One of~~ Its Judges Not Limited.** This rule does not limit the power of a court of appeals or ~~one~~ any of its judges to: (1) stay a judgment pending appeal; (2) stay proceedings while an appeal is pending; (3) suspend, modify, restore, vacate, or grant a stay or injunction while an appeal is pending; or (4) issue any order appropriate to preserve the status quo or the effectiveness of any judgment that might be entered.

Committee Note

The language of Rule 8025 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the heading of Rule 8025(b) the word "a" was changed to "the".

- In Rule 8025(b)(1), the phrase "on a party's motion with notice to all other parties to the appeal" was moved from after "BAP may" to the beginning of the paragraph.

- In (b)(2) the word "shown" after "cause" was deleted.

- In (b)(4) the last sentence was divided into two separate sentences and the words "But neither is required" were inserted at the beginning of the second of those sentences.

• In the heading to Rule 8025(c) the word "a" was changed to "the" and in the text the word "a" before "district court" and before "bankruptcy court's order" was changed to "the".

• In the title to Rule 8025(d) the words "One of" were deleted, and in the text the word "one" was changed to "any".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC expressed concern that in Rule 8025(b)(4) the position of the phrase "If a trustee obtains a stay" could indicate that the phase modifies the entire sentence, including the portion describing a stay obtained by the United States. They suggest breaking the sentence into two parts.

Response: Suggestion accepted.

The NBC suggests not changing the phrase "any of its judges" in Rule 8025(d) to "one of its judges" as the restyled rule does. They note that some courts of appeals might use motion panels with more than one judge.

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law	**Rule 8026. Making and Amending Local Rules; Procedure When There Is No Controlling Law**
(a) LOCAL RULES BY CIRCUIT COUNCILS AND DISTRICT COURTS. (1) *Adopting Local Rules.* A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the BAP. A district court may make and amend rules governing the practice and procedure on appeal from a judgment, order, or decree of a bankruptcy court to the district court. Local rules must be consistent with, but not duplicative of, Acts of Congress and these Part VIII rules. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals. (2) *Numbering.* Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (3) *Limitation on Imposing Requirements of Form.* A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.	**(a) Local Rules.** (1) ***Making and Amending Local Rules.*** (A) *BAP Local Rules.* A circuit council that has authorized a BAP under 28 U.S.C. § 158(b) may make and amend local rules governing the practice and procedure on appeal to the BAP from a bankruptcy court's judgment, order, or decree. (B) *District-Court Local Rules.* A district court may make and amend local rules governing the practice and procedure on appeal to the district court from a bankruptcy court's judgment, order, or decree. (C) *Procedure.* Fed. R. Civ. P. 83 governs the procedure for making and amending local rules. A local rule must be consistent with—but not duplicate—an Act of Congress and these Part VIII rules. (2) ***Numbering.*** Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (3) ***Limitation on Enforcing a Local Rule Relating to Form.*** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.
(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. (1) *In General.* A district court or BAP may regulate practice in any manner consistent with federal law,	**(b) Procedure When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law, these rules, the Official Forms, and the district's local rules. For any requirement set out elsewhere, a

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applicable federal rules, the Official Forms, and local rules. (2) *Limitation on Sanctions.* No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, applicable federal rules, the Official Forms, or local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.	sanction or other disadvantage may be imposed for noncompliance only if the alleged violator was given actual notice of the requirement in the particular case. ~~(1) ***In General.*** A district court or BAP may regulate practice in any manner consistent with federal law, applicable federal rules, the official forms, and local rules.~~ ~~(2) ***Limit on Imposing Sanctions.*** Unless an alleged violator has been given actual notice of a requirement in the particular case, no sanction or other disadvantage may be imposed for failing to comply with any requirement not in federal law, applicable federal rules, the official forms, or local rules.~~

Committee Note

The language of Rule 8026 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The title to Rule 8026(a)(3) was modified to change the word "Limit" to "Limitation".

- Rule 8026(b) was replaced with language that is identical to Rule 9029(c) which covers the same topic in a different context.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8027. Notice of a Mediation Procedure	**Rule 8027. Notice of a Mediation Procedure**
If the district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must notify the parties promptly after docketing the appeal of: (a) the requirements of the mediation procedure; and (b) any effect the mediation procedure has on the time to file briefs.	If ~~a~~ the district court or BAP has a mediation procedure applicable to bankruptcy appeals, the clerk must, after docketing the appeal, promptly notify the parties ~~promptly after docketing the appeal~~ of: (a) the requirements of the mediation procedure; and (b) any effect ~~the mediation procedure~~it has on the time to file briefs.

Committee Note

The language of Rule 8027 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- Rule 8027 was modified by changing the word "a" before "district court" to "the" and by inserting the phrase ", after docketing the appeal, promptly" before the word "notify" and deleting the phrase "promptly after docketing the appeal" after the word "parties."

- In (b) the words "the mediation procedure" were replaced with "it".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 8028. Suspension of Rules in Part VIII	**Rule 8028. Suspending These Part VIII Rules**
In the interest of expediting decision or for other cause in a particular case, the district court or BAP, or where appropriate the court of appeals, may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8012, 8020, 8024, 8025, 8026, and 8028.	To expedite a decision or for other cause, a district court or BAP—or when appropriate, the court of appeals—may, in a particular case, suspend the requirements of these Part VIII rules—, except Rules 8001–8007, 8012, 8020, 8024–8026, and 8028.

Committee Note

The language of Rule 8028 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 8028 the dash after the phrase "Part VIII rules" was replaced with a comma.

Summary of Public Comment

- No comments were submitted.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

9000 Series

ORIGINAL	REVISION
PART IX—GENERAL PROVISIONS	**PART IX. GENERAL PROVISIONS**
Rule 9001. General Definitions	**Rule 9001. Definitions**
The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in § 102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated: (1) "Bankruptcy clerk" means a clerk appointed pursuant to 28 U.S.C. § 156(b). (2) "Bankruptcy Code" or "Code" means title 11 of the United States Code. (3) "Clerk" means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court. (4) "Court" or "judge" means the judicial officer before whom a case or proceeding is pending. (5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control. (6) "Firm" includes a partnership or professional corporation of attorneys or accountants. (7) "Judgment" means any	**(a) In the Code.** The definitions of words and phrases in §§ 101, 902, 1101, and 1502 and the rules of construction in § 102 apply in these rules.
	(b) In These Rules. In these rules, the following words and phrases have these meanings: (1) "Bankruptcy clerk" means a clerk appointed under 28 U.S.C. § 156(b). (2) ~~"Bankruptcy Code" or~~"Clerk" means a bankruptcy clerk if one has been appointed; otherwise, it means the district-court clerk. ~~(2)~~(3) "Code" means Title 11 ~~U.S.C.~~of the United States Code. ~~(3) "Clerk" means a bankruptcy clerk if one has been appointed; otherwise, it means the district clerk.~~ (4) "Court" or "judge" means the judicial officer who presides over the case or proceeding. (5) "Debtor," when the debtor is not a natural person and either is required by these rules to perform an act or must ~~be compelled to~~ appear for examination, includes~~ any or all of the following~~: (A) if the debtor is a corporation and if the court so designates: • any or all of its officers, directors, trustees, or members of a similar controlling body; • a controlling stockholder or member; or • any other person in control; or (B) if the debtor is a partnership:

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appealable order. (8) "Mail" means first class, postage prepaid. (9) "Notice provider" means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4). (10) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm. (11) "Trustee" includes a debtor in possession in a chapter 11 case. (12) "United States trustee" includes an assistant United States trustee and any designee of the United States trustee.	• any or all of its general partners; or • if the court so designates, any other person in control. (6) "Firm" includes a partnership or professional corporation of attorneys or accountants. (7) "Judgment" means any appealable order. (8) "Mail" means first-class mail, postage prepaid. (9) "Notice provider" means an entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4). (10) "Regular associate" means an attorney regularly employed by, associated with, or counsel to an individual or firm. (11) "Trustee" includes a debtor in possession in a Chapter 11 case. (12) "United States trustee" includes ~~any~~ an assistant United States trustee and a United States trustee's designee.

Committee Note

The language of Rule 9001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 9001(b)(2) the definition of Bankruptcy Code was deleted because it is never used. Under Rule 1001(c) any section number is a reference to a section of the Bankruptcy Code (defined in Rule 1001(a)). Because of the deletion, the definition of "Clerk" was moved from (b)(3) to (b)(2).

• In Rule 9001(b)(5) the words "be compelled to" and "any or all of the following" were removed.

• In Rule 9001(b)(12), the work "any" was changed to "an" and the word "a" was inserted before "United States trustee's designee."

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggest that Rule 9001(b)(2) use the same description of Title 11 as is used in Rule 1001(a), that is, Title 11 of the United States Code.

> ***Response:*** Suggestion accepted.

In Rule 9001(b)(4) the NBC suggested adding the word "bankruptcy" before "case" because there might be confusion if the claim or cause of action has been removed.

> ***Response***: It is precisely because a bankruptcy case or cause of action may be heard in a court other than a bankruptcy court (upon removal, appeal, etc.) that this definition is written the way it is. There can be only one judicial officer presiding over a case or proceeding at a time. No change was made in response to this comment.

In Rule 9001(b)(5) the NBC suggests some unnecessary language be deleted.

> ***Response***: Suggestion accepted.

• **Jeffrey Cozad (BK-2022-0002-0010)**

Mr. Cozad suggests changing the definition of "mail" in Rule 9001(b)(8) to add "any other class of mail that is just as expeditious" and "dispatched to a third-party commercial carrier for delivery within 3 days."

> ***Response***: This is a substantive change. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under the Code	**Rule 9002. Meaning of Words in the Federal Rules of Civil Procedure**
The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context: (1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter. (2) "Appeal" means an appeal as provided by 28 U.S.C. § 158. (3) "Clerk" or "clerk of the district court" means the court officer responsible for the bankruptcy records in the district. (4) "District Court," "trial court," "court," "district judge," or "judge" means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge. (5) "Judgment" includes any order appealable to an appellate court.	Unless they are inconsistent with the context, the following words and phrases in the Federal Rules of Civil Procedure—when made applicable by these rules—have these meanings: (a) "Action" or "civil action" means an adversary proceeding or, when appropriate: (1) a contested petition; (2) a proceeding to vacate an order for relief; or (3) a proceeding to determine any other contested matter. (b) "Appeal" means an appeal under 28 U.S.C. § 158. (c) "Clerk" or "clerk of the district court" means the officer responsible for maintaining the district's bankruptcy records. (d) "District court," "trial court," "court," "district judge," or "judge" means "bankruptcy judge" if the case or proceeding is pending before a bankruptcy judge. (e) "Judgment" includes any appealable order.

Committee Note

The language of Rule 9002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9002(d) the quotation marks are removed around the words "bankruptcy judge."

The word "an" in Rule 9002(e) is changed to "any" to conform to Rule 9001(7).

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests that the em dashes in the introduction of Rule 9002 be changed to commas.

> ***Response***: This is a matter of style, and on style we defer to the decisions of the style consultants.

In Rule 9002(d) the NBC suggests deleting the quotation marks around "bankruptcy judge."

> ***Response***: Suggestion accepted.

In Rule 9002(e), the NBC suggests that "an" should be "any" to conform to Rule 9001(7).

> ***Response***: Suggestion accepted.

ORIGINAL	REVISION
Rule 9003. Prohibition of Ex Parte Contacts	**Rule 9003. Ex Parte Contacts Prohibited**
(a) GENERAL PROHIBITION. Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.	**(a) In General.** Unless permitted by applicable law, the following persons must refrain from ex parte meetings and communications with the court about matters affecting a particular case or proceeding: • an examiner; • a party in interest~~:~~; • a party in interest's attorney, accountant, or employee; and • the United States trustee and any of its assistants, agents, or employees.
(b) UNITED STATES TRUSTEE. Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.	**(b) Exception for a United States Trustee.** A United States trustee and any of its assistants, agents, or employees are not prohibited from communicating with the court about general administrative problems and improving ~~of~~ bankruptcy administration ~~and how to improve it —~~ including the operation of the United States trustee system.

Committee Note

The language of Rule 9003 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9003(b) the phrase "general problems of bankruptcy administration and how to improve it" was replaced with "general administrative problems and improving bankruptcy

administration".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests inserting the word "agents" after "accountant" in the third bullet point of Rule 9003(a), noting the word is included in (b).

> ***Response***: This would be a substantive change. No change was made in response to this suggestion.

The NBC made a drafting suggestion on Rule 9003(b) that would remove the need to use "it".

> ***Response:*** Suggestion accepted.

The NBC suggested replacing the em dash in (b) with a comma.

> ***Response***: This is a matter of style, and on style we defer to the style consultants.

ORIGINAL	REVISION
Rule 9004. General Requirements of Form	**Rule 9004. General Requirements of Form**
(a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.	**(a) Legibility; Abbreviations.** A petition, pleading, schedule, or other document must be clearly legible. ~~An~~ Commonly used English abbreviations ~~commonly used in English is~~ are acceptable.
(b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.	**(b) Caption.** ~~To be filed, a~~A document presented for filing must contain a caption that sets forth: (1) the court's name; (2) the case's title; (3) the case number and, if appropriate, adversary-proceeding number; and (4) a brief designation of the document's character.

Committee Note

The language of Rule 9004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The second sentence of Rule 9004(a) was rewritten to be more clear.

- The initial phrase in Rule 9004(b) was changed from "To be filed, a document" to "A document presented for filing".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested drafting the second sentence of Rule 9004(a).

***Response*:** Suggestion accepted with slight modifications.

The NBC suggested changing the initial phrase of Rule 9004(b) from "to be filed, a" to "A filed" to avoid the implication that a document is not deemed to be filed if it has an error in the caption.

Response: The language has been modified.

- **Jeffrey Cozad (BK-2022-0002-0010)**

Mr. Cozad agreed with NBC that the language at the beginning of Rule 9004(b) ("To be filed") could be interpreted to require the clerk to reject a document presented for filing if the caption is deficient. He provided alternative language.

Response: The language has been modified.

ORIGINAL	REVISION
Rule 9005. Harmless Error	**Rule 9005. Harmless Error**
Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.	Fed. R. Civ. P. 61 applies in a bankruptcy case. When appropriate, the court may order the correction of any error or defect—or the cure of any omission—that does not affect a substantial rights.

Committee Note

The language of Rule 9005 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The word "a" was inserted before the word "substantial" and the word "rights" was changed to "right".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention	**Rule 9005.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention**
Rule 5.1 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 5.1 applies in a bankruptcy case.

Committee Note

The language of Rule 9005.1 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9006.[1] Computing and Extending Time; Time for Motion Papers	**Rule 9006. Computing and Extending Time; Motions**
(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time. (1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. (2) *Period Stated in Hours.* When the period is stated in hours: (A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday. (3) *Inaccessibility of Clerk's Office.*	**(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time. (1) ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. (2) ***Period Stated in Hours.*** When the period is stated in hours: (A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same ~~hour~~ time on the next day that is not a Saturday, Sunday, or legal holiday. (3) ***Inaccessibility of the Clerk's Office When a Filing Is Due.*** Unless the

[1] Rule 9006 original text shows changes on track to go into effect on December 1, 2023.

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Unless the court orders otherwise, if the clerk's office is inaccessible:	court orders otherwise, if the clerk's office is inaccessible:
(A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or	(A) on the last day for filing under (1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
(B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.	(B) during the last hour for filing under (2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:	(4) ***"Last Day" Defined.*** Unless a different time is set by statute, local rule, or order in a case, the last day ends:
(A) for electronic filing, at midnight in the court's time zone; and	(A) for electronic filing, at midnight in the court's time zone; and
(B) for filing by other means, when the clerk's office is scheduled to close.	(B) for filing by other means, when the clerk's office is scheduled to close.
(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.	(5) ***"Next Day" Defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event, and backward when measured before an event.
(6) *"Legal Holiday" Defined.* "Legal holiday" means:	(6) ***"Legal Holiday" Defined.*** "Legal holiday" means:
(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;	(A) the day set aside by statute for observing New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, ~~and~~ or Christmas Day;
(B) any day declared a holiday by the President or Congress; and	(B) any day declared a holiday by the President or Congress; and
(C) for periods that are measured after an event, any other day	(C) for periods that are measured after an event, any other day declared a holiday by the ~~State~~ state where the

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declared a holiday by the state where the district court is located. (In this rule, “state” includes the District of Columbia and any United States commonwealth or territory.)	district court is located. (In this rule, “~~State~~state” includes the District of Columbia and any United States commonwealth or territory.)
(b) ENLARGEMENT. (1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.	**(b) Extending Time.** (1) ***In General.*** This paragraph (1) applies when these rules, a notice given under these rules, or a court order requires or allows an act to be performed at or within a specified period. Except as provided in (2) and (3), the court may—at any time and for cause ~~shown~~—extend the time to act if: (A) with or without a motion or notice, ~~the~~ a request to extend is made before the period (or a previously extended period) expires; or (B) on motion made after the specified period expires, the failure to act within that period resulted from excusable neglect.
(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.	(2) ***Exceptions.*** The court must not extend the time to act under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.
(3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).	(3) ***Extensions Governed by Other Rules.*** The court may extend the time to: (A) act under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033—but ~~only to the extent and under the conditions stated in~~only as permitted by those rules; and (B) file the statement required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c).

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(c) REDUCTION. (1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced. (2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).	**(c) Reducing Time ~~Limits~~.** (1) ***When Permitted.*** When a rule, notice given under a rule, or court order requires or allows an act to be done within a specified time, the court may—for cause ~~shown~~ and with or without a motion or notice—reduce the ~~period~~ time~~to act~~. (2) ***When Not Permitted.*** The court may not reduce the time to act under Rule 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, or 9033(b). Also, the court may not~~,~~ ~~under Rule 1007(c),~~ reduce the time set by Rule 1007(c) to file the statement required by Rule 1007(b)(7).
(d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, any written response shall be served not later than one day before the hearing, unless the court permits otherwise.	**(d) Time to Serve a Motion and a Response.** (1) ***In General.*** A written motion (other than one that may be heard ex parte) and notice of any hearing must be served at least 7 days before the hearing date, unless the court or these rules set a different period. Any affidavit supporting the motion must be served with it. An order to change the period may be granted for cause on ex parte~~An~~ application ~~to change the period for service may be made ex parte for cause shown~~. (2) ***Response.*** Except as provided in Rule 9023, any written response must be served at least 1 day before the hearing~~—~~, unless the court allows otherwise.

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(e) TIME OF SERVICE. Service of process and service of any paper other than process or of notice by mail is complete on mailing.	**(e) Service Complete on Mailing.** Service by mail of process, any other document, or notice is complete upon mailing.
(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D) OR (F) F.R.CIV.P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).	**(f) Additional Time After Certain ~~Kinds of~~ Service.** When a party may or must act within a specified time after being served and service is made by mail or under Fed. R. Civ. P. 5(b)(2)(D) (leaving with the clerk) or (F) (other means consented to), 3 days are added after the period would otherwise expire under (a).
(g) GRAIN STORAGE FACILITY CASES. This rule shall not limit the court's authority under § 557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility.	**(g) Grain-Storage Facility.** This rule does not limit the court's authority under § 557 to issue an order governing procedures in a case in which the debtor owns or operates a grain-storage facility.

Committee Note

The language of Rule 9006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9006(a)(2)(C) the word "hour" is changed to "time."

- The words "Labor Day" were inserted in Rule 9006(a)(6)(A) before the words "Columbus Day" and the word "and" before "Christmas Day" was changed to "or".

- In Rule 9006(a)(6)(C) the two times the word "state" appears it is no longer capitalized.

- In the introductory language of Rule 9006(b)(1) the word "shown" is deleted after "cause".

- In Rule 9006(b)(1)(A) the words "the request" are replaced with "a request to extend".

• In Rule 9006(b)(3)(A) the words "to the extent and under the conditions stated in" were replaced with "as permitted by".

• The title of Rule 9006(c) is modified to eliminate the word "Limits".

• In Rule 9006(c)(1) the word "shown" is deleted after "cause" and the words "period to act" are replaced with the word "time".

• The phrase ", under Rule 1007(c), " in Rule 9006(c)(1) is eliminated and the words "set by Rule 1007(c) are inserted after the words "reduce the time".

• The heading of Rule 9006(d) is amended to add the words "and a Response".

• In Rule 9006(d)(1), the word "written" is inserted before "motion" and the last sentence is rewritten to be clearer.

• In Rule 9006(d)(2), the word "written" is inserted before "response" and the em dash is replaced with a comma.

• The title of Rule 9006(f) is modified to remove the words "Kinds of".

Summary of Public Comment

• **Aderant (BK-2022-0002-0008)**

Aderant submitted a comment suggesting that in Rule 9006(a)(6) on legal holidays there was repeated language listing Independence Day twice and omitting Labor Day. There is no repeated language; the first holiday using that language is "Juneteenth Independence Day" (June 19) and the second is "Independence Day" (July 4). The inadvertent omission of "Labor Day" has been corrected. ("Labor Day" was included in the version of the rule approved by the Standing Committee in June 2022.)

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

NBC finds some of the usages of em dashes "Unnecessarily abrupt breaks" and suggests using commas.

> ***Response***: This is a matter of style, and we defer to the style consultants on matters of style. The style consultants decided to change the em dash in Rule 9006(d)(2) to a comma before receiving this comment. No change was made in response to this comment.

In Rule 9006(a)(2)(C), the NBC suggests replacing the word "hour" with "time" (used in the original rule) because "hour" might include any time during a sixty-minute period and would be a substantive change.

Response: Suggestion accepted.

NBC noted that Labor Day was missing in the list of holidays in (a)(6)(A).

Response: Corrected.

In Rule 9006(b)(1)(A), the NBC suggests that "the request" should be changed to "a request to extend" because there may be more than one, and because there is no prior mention of a request.

Response: Suggestion accepted.

The NBC suggests conforming the end of Rule 9006(b)(3)(B) with the end of Rule 9006(b)(3)(A) as in the original rule.

Response: Rule 9006(b)(3)(A) was conformed to (b)(3)(B).

The NBC suggests that the titles of Rule 9006(b) and (c) should be use parallel language.

Response: Suggestion accepted.

In Rule 9006(c)(1) the NBC suggests replacing the word "period" with "time" which is parallel to (c)(2). They also suggest eliminating the language "to act" at the end of the paragraph as unnecessary.

Response: Suggestion accepted.

The NBC suggests rewriting the final sentence of Rule 9006(c)(2). The action to reduce the time is not taken under Rule 1007(c); that is the section that specifies the time for filing the statement.

Response: The sentence has been rewritten.

In Rule 9006(d), the NBC suggests changing the title to "Time to Serve Papers" because the section deals with both Motions and Responses.

Response: The title has been changed to "Time to Serve a Motion and a Response."

The NBC objects to the deletion of the word "written" in Rule 9006(d)(1) and (d)(2) because the substance of those sections does not apply to routine oral motions and responses made during a hearing or trial.

Response: Suggestion accepted.

The NBC finds the restyled version of the last sentence of Rule 9006(d)(1) confusing and suggests it be rewritten.

Response: The sentence has been rewritten.

In Rule 9006(f), the NBC suggests deleting the words "Kinds of" from the title.

Response: Suggestion accepted.

In Rule 9006(f), the NBC also suggests deleting the parenthetical descriptions after the references to FRCP 5(b)(2)(D) and (F) as "unnecessary."

Response: Although not necessary, they are in the existing rule and are helpful to those who do not know what the rules cover. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9007. General Authority to Regulate Notices	**Rule 9007. Authority to Regulate Notices.**
When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.	**(a) In General.** Unless these rules provide otherwise, when notice is to be given, the court must designate: (1) the deadline for giving it; (2) the entities to whom it must be given; and (3) the form and manner of giving it. **(b) Combined Notices**. When feasible, the court may order ~~any~~ notices under these rules to be combined.

Committee Note

The language of Rule 9007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9007(b) the word "any" was deleted.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9008. Service or Notice by Publication	**Rule 9008. Service or Notice by Publication**
Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.	When these rules require or authorize service or notice by publication, and to the extent that they do not provide otherwise, the court must determine the form and manner of publication—including the newspaper or other medium to be used and the number of publications.

Committee Note

The language of Rule 9008 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC finds the use of the word "they" to be ambiguous and suggests it be changed to "these rules."

Response: The only plural reference in the rule is to "these rules" and that reference appears in the immediately preceding phrase so there is no ambiguity. No change was made in response to this comment.

The NBC suggests replacing the em dash with a comma.

Response: This is a matter of style and we defer to the style consultants on matters of style. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9009. Forms	**Rule 9009. Using Official Forms; Director's Forms**
(a) OFFICIAL FORMS. The Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that: (1) expand the prescribed areas for responses in order to permit complete responses; (2) delete space not needed for responses; or (3) delete items requiring detail in a question or category if the filer indicates—either by checking "no" or "none" or by stating in words—that there is nothing to report on that question or category.	**(a) Official Forms.** The Official Forms prescribed by the Judicial Conference of the United States must be used without alteration—unless alteration is authorized by these rules, the form itself, or the national instructions for a particular ~~official~~ form. ~~An Official Form~~A form may be modified to permit minor changes not affecting wording or the order of presentation, including a change that: (1) expands the prescribed response area to permit a complete response; (2) deletes space not needed for a response; or (3) deletes items requiring detail in a question or category if the filer indicates—either by checking "no" or "none," or by stating in words—that there is nothing to report on that item.
(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.	**(b) Director's Forms.** The Director of the Administrative Office of the United States Courts may issue additional forms.
(c) CONSTRUCTION. The forms shall be construed to be consistent with these rules and the Code.	**(c) Construing Forms.** The forms must be construed to be consistent with these rules and the Code.

Committee Note

The language of Rule 9009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 9009(a) the phrase "particular official form" was changed to "particular form" and the phrase "An Official Form" was changed to "A form".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC questioned the references to the official forms in Rule 9009(a), finding them inconsistent with other references.

> ***Response***: Throughout the restyled rules, when an Official Bankruptcy Form is referred to by number, it is called "Form [ ]". See Rule 1001(d). In all other places (other than in Rule 1001) the Official Bankruptcy Forms are referred to as "Official Forms." The two lower-case references to a "form" in Rule 9009(a) are used because they are relating back to the "Official Forms" mentioned at the beginning of the first sentence. No change was made in response to this comment.

In the introductory clause of Rule 9009(a), the NBC suggests replacing the em dash with a comma.

> ***Response***: This is a matter of style, and on style was defer to the style consultants. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9010. Representation and Appearances; Powers of Attorney	**Rule 9010. Authority to Act Personally or by an Attorney; Power of Attorney**
(a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.	**(a) In General.** A debtor, creditor, equity security holder, indenture trustee, committee, or other party may: (1) appear in a case and act either on the entity's own behalf or through an attorney authorized to practice in the court; and (2) perform~~—through an authorized agent, attorney-in-fact, or proxy—~~ any act not constituting the practice of law, by an authorized agent, attorney-in-fact, or proxy.
(b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.	**(b) Attorney's Notice of Appearance.** An attorney appearing for a party in a case must file a notice of appearance ~~that contains~~containing the attorney's name, office address, and telephone number—unless the appearance is already noted in the record.
(c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.	**(c) Power of Attorney to Represent a Creditor.** The authority of an agent, attorney-in-fact, or proxy to represent a creditor—for any purpose other than executing and filing a proof of claim or accepting or rejecting a plan—must be evidenced by a power of attorney that substantially conforms ~~substantially~~ to the appropriate version of Form 411. A power of attorney must be acknowledged before: (1) an officer listed in 28 U.S.C. § 459 or § 953 or in Rule 9012; or (2) a person authorized to administer oaths under the state law where the oath is administered.

Committee Note

The language of Rule 9010 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 9010(a)(2), the language was returned to that of the existing rule except that "attorney in fact" was changed to "attorney-in-fact".

• In Rule 9010(b) the phrase "that contains" was changed to "containing".

• In Rule 9010(c) the phrase "conforms substantially" was changes to "substantially conforms".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggested inserting the word "including" in Rule 9010(a)(2) to make clear that party does not have to act through an authorized agent, attorney-in-fact or proxy to perform acts other than the practice of law.

> ***Response***: The existing version of the rule does not have the word "including" and may also be ambiguous about whether the power to perform those acts without doing it through an agent, etc., is conferred on a party. The restyled version eliminated the ambiguity. To preserve it, we will return to the original language.

The NBC suggests changing the words "that contains" in Rule 9010(b) to "containing".

> ***Response***: Suggestion accepted.

In Rule 9010(b) the NBC suggested retaining the existing phrase "conforming substantially" instead of (what is now) "that substantially conforms".

> ***Response***: No reason was given for the proposed change, and we do not see any reason to revert to the original language because the restyled language has no different meaning.

ORIGINAL	REVISION
Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers	**Rule 9011. Signing Documents; Representations to the Court; Sanctions; Verifying and Providing Copies**
(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.	**(a) Signature.** Every petition, pleading, written motion, and other document—except a list, schedule, or statement, or ~~any~~ an amendment to one of them—must be signed by at least one attorney of record in the attorney's individual name. A party not represented by an attorney must sign all documents. Each document must state the signer's address and telephone number, if any. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention.
(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—[2] (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other	**(b) Representations to the Court.** By presenting to the court a petition, pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances: (1) it is not presented for any improper purpose, such as to harass, ~~or to~~ cause unnecessary delay, or needlessly increase litigation costs; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law; (3) the allegations and factual contentions have evidentiary support—or if specifically so identified, are likely to have evidentiary support after a

[2] So in original. The comma probably should not appear.

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factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.	reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence—or if specifically so identified, are reasonably based on a lack of information or belief.
(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. (1) *How Initiated.* (A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations	**(c) Sanctions.** (1) ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that (b) has been violated, the court may, subject to the conditions ~~stated below~~in this subdivision (c), impose an appropriate sanction on any attorney, law firm, or party that committed the violation or is responsible for it. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee. (2) ***By Motion.*** (A) *In General.* A motion for sanctions must be made separately from any other motion or request, describe the specific conduct alleged to violate (b), and be served under Rule 7004. (B) *When to File.* The motion for sanctions must not be filed or presented to the court if the challenged document, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected within 21 days after the motion was served (or within another period as the court may order). This limitation does not apply if the conduct alleged is filing

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committed by its partners, associates, and employees. (B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto. (2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in sub-paragraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation. (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2). (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned. (3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.	a petition in violation of (b). (C) *Awarding Damages.* If warranted, the court may award to the prevailing party the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. (3) ***By the Court.*** On its own, the court may enter an order describing the specific conduct that appears to violate (b) and directing an attorney, law firm, or party to show cause why ~~conduct specifically described in the order~~it has not violated (b). (4) ***Nature of a Sanction; Limitations.*** (A) *In General.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or deter comparable conduct by others similarly situated. The sanction may include: (i) a nonmonetary directive; (ii) an order to pay a penalty into court; or (iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of all or part of the reasonable attorney's fees and other expenses directly resulting from the violation. (B) *Limitations on a Monetary Sanction.* The court must not impose a monetary sanction: (i) against a represented party for violating (b)(2); or (ii) on its own, unless it issued the show-cause order under (c)(3) before voluntary dismissal or settlement of the claims made by or against the

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	party that is, or whose attorneys are, to be sanctioned. (5) ***Content of a Court Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
(d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.	**(d) Inapplicability to Discovery.** Subdivisions (a)–(c) do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to Rules 7026–7037.
(e) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.	**(e) ~~Verification~~Verifying a Document.** A document filed in a bankruptcy case need not be verified unless these rules provide otherwise. When these rules require verification, an unsworn declaration under 28 U.S.C. § 1746 suffices.
(f) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.	**(f) Copies of Signed or Verified Documents.** When these rules require copies of a signed or verified document, if the original is signed or verified, a copy that conforms to the original suffices.

Committee Note

The language of Rule 9011 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9011(a) the word "any" was changed to "an" and the words "of them" were inserted after "one".

- In Rule 9011(b)(1) a comma was inserted after "harass" and the words "or to" were

deleted.

• In Rule 9011(c)(1) the words "stated below" were replaced with "in this subdivision (c)".

• The word "the" was inserted between the phrases "prevailing party" and "reasonable expenses" in Rule 9011(c)(2)(C).

• Rule 9011(c)(3) was rewritten to replace the words "may order" with "may enter an order describing the specific conduct that appears to violate (b) and directing". The words "conduct specifically described in the order" were replaced with "it."

• The title to Rule 9011(e) was changed To "Verifying a Document".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 9011(a), the NBC believes the phrase "amendment to one" is "more awkward and less clear than the existing language of 'amendment thereto'".

> ***Response***: The word "thereto" does not appear in the restyled rules. We have inserted "of those" after "one" which may improve the awkwardness.

In Rule 9011(b), the NBC finds the phrase "advocating it" ambiguous and "strange" (given that one does not advocate petitions or documents. They suggested "advocating a position set forth therein" or using another word.

> ***Response***: The language of 9011(b) is identical to that in Fed. R. Civ. P. 11(b). No change was made in response to this comment.

In Rule 9011(b)(1), the NBC suggested inserting a comma after "harass" and deleting the words "or to".

> ***Response***: The style consultants had already decided to make that change.

The NBC suggested replacing the word "the" at the beginning of each of (b)(2), (b)(3), and (b)(4) with the word "its".

> ***Response***: The original rule uses the term "the" in each of these places and we see no reason to change for the restyled rule. No change was made in response to this comment.

In Rule 9011(c)(1), the NBC suggests replacing the phrase "conditions stated below" with

"conditions stated in this rule" as more consistent with the restyling usage.

> ***Response***: Suggestion accepted.

In Rule 9011(c)(2)(C) the NBC found the placement together of two nouns--"prevailing party" and "reasonable expenses"—to be confusing and suggested inserting the word "any" between them.

> ***Response***: The original rule had the word "the" between the two phrases, and we have reinserted that word.

ORIGINAL	REVISION
Rule 9012. Oaths and Affirmations	**Rule 9012. Oaths and Affirmations**
(a) PERSONS AUTHORIZED TO ADMINISTER OATHS. The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.	**(a) Who May Administer an Oath.** These persons may administer an oath or affirmation or take an acknowledgment: • a bankruptcy judge; • a clerk; • a deputy clerk; • a United States trustee; • an officer authorized to ~~do so~~administer oaths in a proceeding before a federal court or by state law in the state where the oath is taken; or • a United States diplomatic or consular officer in a foreign country.
(b) AFFIRMATION IN LIEU OF OATH. When in a case under the Code an oath is required to be taken a solemn affirmation may be accepted in lieu thereof.	**(b) Affirmation as an Alternative.** If an oath is required, a solemn affirmation suffices.

Committee Note

The language of Rule 9012 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9012(a), fifth bullet point, the words "do so" were changed to "administer oaths".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested changing the fifth bullet point in Rule 9012(a) to cover affirmations and acknowledgments at the end of the bullet point as they are at the beginning by replacing "where the oath is taken" with "where administered or taken".

> ***Response***: The same objective can be achieved by changing the word "oath" to "action" (to cover administering oaths or affirmations or taking acknowledgments).

ORIGINAL	REVISION
Rule 9013. Motions: Form and Service	**Rule 9013. Motions; Form and Service**
A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on: (a) the trustee or debtor in possession and on those entities specified by these rules; or (b) the entities the court directs if these rules do not require service or specify the entities to be served.	**(a) Request for an Order.** A request for an order must be made by written motion unless: (1) an application is authorized by these rules; or (2) the request is made during a hearing.
	(b) Form and Service of ~~the~~ a Motion. ~~The~~ A motion must state its grounds with particularity and set forth the relief or order ~~sought~~requested. Unless a written motion may be considered ex parte, the movant must, within the time prescribed by Rule 9006(d), serve the motion on: • the trustee or debtor in possession and those entities specified by these rules; or • if these rules do not require service or specify the entities to be served, the entities designated by the court.

Committee Note

The language of Rule 9013 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 9013(b) the word "the" in the title is changed to "a" and the first word of the section is changed from "The" to "A". This makes it consistent with Rule 9013(a) which deals with "A request" for "an order". In addition, the word "sought" was changed to "requested", again mirroring the word "request" in Rule 9013(a)(2).

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested adding a third enumerated exception in Rule 9013(a) to the written motion requirement when "a pleading in an adversary proceeding is authorized or required by

these rules" which they believe is implicit in the existing and restyled rule.

> ***Response***: This would be a substantive change. No change was made in response to this comment.

The NBC suggests that the title to Rule 9013(b) be changed to refer to "a" motion rather than "the" motion, and that the first word of the section be changed from "The" to "A".

> ***Response***: Suggestion accepted.

The NBC also suggests that the word "sought" in Rule 9013(b) be changed to "requested" which is consistent with Rule 9013(a)(2).

> ***Response***: Suggestion accepted.

ORIGINAL	REVISION
Rule 9014. Contested Matters	**Rule 9014. Contested Matters**
(a) MOTION. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.	**(a) Motion Required.** In a contested matter not otherwise governed by these rules, relief must be requested by motion. Reasonable notice and an opportunity to be heard must be given to the party against whom relief is sought. No response is required unless the court orders otherwise.
(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P.	**(b) Service.** (1) ***Motion.*** The motion must be served within the time prescribed by Rule 9006(d) and in the manner for serving a summons and complaint provided by Rule 7004. (2) ***Response.*** Any written response must be served within the time prescribed by Rule 9006(d). (3) ***Later Filings.*** After a motion is served, any other document must be served in the manner prescribed by Fed. R. Civ. P. 5(b).
(c) APPLICATION OF PART VII RULES. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7042, 7052, 7054–7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pretrial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a	**(c) Applying Part VII Rules.** (1) ***In General.*** Unless this rule or a court order provides otherwise, the following rules apply in a contested matter: 7009, 7017, 7021, 7025–7026, 7028–7037, 7041–7042, 7052, 7054–7056, 7064, 7069, and 7071. At any stage of a contested matter, the court may order that one or more other Part VII rules apply. (2) ***Exception.*** Unless the court orders otherwise, the following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in a contested matter: • (a)(1), mandatory disclosure; • (a)(2), disclosures about expert testimony;

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deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.	• (a)(3), other pretrial disclosures; and • (f), mandatory meeting before a scheduling conference~~/discovery plan~~. (3) ***Procedural Order.*** In issuing any procedural order under this subdivision (c), the court must give the parties notice and a reasonable opportunity to comply. (4) ***Perpetuating Testimony.*** An entity desiring to perpetuate testimony may do so in the manner provided by Rule 7027 for taking a deposition before an adversary proceeding.
(d) TESTIMONY OF WITNESSES. Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.	**(d) Taking Testimony on a Disputed Factual Issue.** A witness's testimony on a disputed material factual issue must be taken in the same manner as testimony in an adversary proceeding.
(e) ATTENDANCE OF WITNESSES. The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.	**(e) Determining Whether a Hearing Will Be an Evidentiary Hearing.** The court must provide procedures that allow parties—at a reasonable time before a scheduled hearing—to determine whether it will be an evidentiary hearing at which witnesses may testify.

Committee Note

The language of Rule 9014 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the heading of Rule 9014(b)(3), the word "Filing" was changed to "Filings".
- In Rule 9014(c)(1), the word "contested" was inserted before the word "matter".
- In the last bullet point in Rule 9014(c)(2), the phrase "/discovery plan" were deleted.

• The title to Rule 9014(d) was modified to add the phrase "on a Disputed Factual Issue" after "Testimony".

• The title to Rule 9014(e) was modified to add the word "Determining Whether a Hearing Will Be an" before the word "Evidentiary".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests that in the second sentence of Rule 9014(c)(1) the word "contested" be inserted before the word "matter".

> ***Response***: Suggestion accepted.

The NBC thinks that in the bullet points in Rule 9014(c)(2) the phrases describing the content of the various Federal Rules of Civil Procedure should be deleted and the text should then be collapsed into a sentence with no bullet points.

> **Response**: The existing rule has the descriptive text, and we believe it is useful for those who are not familiar with the Federal Rules of Civil Procedure. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9015. Jury Trials	**Rule 9015. Jury Trial.**
(a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, 47–49, and 51, F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.	**(a) In General.** In a bankruptcy case or proceeding, Fed. R. Civ. P. 38–39, 47–49, 51, and 81(c) (insofar as it applies to jury trials) apply~~,~~. ~~but~~ But a demand for a jury trial under Fed. R. Civ. P. 38(b) must be filed in accordance with Rule 5005.
(b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.	**(b) Jury Trial Before a Bankruptcy Judge.** The parties may—jointly or separately—file a statement consenting to a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) if: (1) the right to a jury trial applies; (2) a timely demand has been filed under Fed. R. Civ. P. 38(b); (3) the bankruptcy judge has been specially designated to conduct the jury trial; and (4) the statement is filed within any time specified by local rule.
(c) APPLICABILITY OF RULE 50 F.R.CIV.P. Rule 50 F.R.Civ.P. applies in cases and proceedings, except that any renewed motion for judgment or request for a new trial shall be filed no later than 14 days after the entry of judgment.	**(c) Judgment as a Matter of Law; Motion for a New Trial.** Fed. R. Civ. P. 50 applies in a bankruptcy case or proceeding—except that a renewed motion for judgment, or a request for a new trial, must be filed within 14 days after the judgment is entered.

Committee Note

The language of Rule 9015 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested that most of Rule 8015(b) be deleted as replicating the requirements of 28 U.S.C. § 157(e) and overlapping Rule 8015(a).

> ***Response***: That would be a substantive change from the current rule. No change was made in response to this comment.

The NBC would replace the em dash in Rule 9015(c) with a comma.

> ***Response***: That is a matter of style, and we defer to the style consultants on matters of style. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9016. Subpoena	**Rule 9016. Subpoena**
Rule 45 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 45 applies in a bankruptcy case.

Committee Note

The language of Rule 9016 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9017. Evidence	**Rule 9017. Evidence**
The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.	The Federal Rules of Evidence and Fed. R. Civ. P. 43, 44, and 44.1 apply in a bankruptcy case.

Committee Note

The language of Rule 9017 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter	**Rule 9018. Secret, Confidential, Scandalous, or Defamatory Matter**
On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.	**(a) In General.** On motion or on its own, the court may~~—~~, with or without notice~~—~~, issue any order that justice requires to: (1) protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information; (2) protect an entity from scandalous or defamatory matter in any document filed in a bankruptcy case; or (3) protect governmental matters made confidential by statute or regulation. **(b) Motion to Vacate or Modify an Order Issued Without Notice.** An entity affected by an order issued under (a) without notice may move to vacate or modify it. After notice and a hearing, the court must rule on the motion.

Committee Note

The language of Rule 9018 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The em dashes in Rule 9018(a) were replaced with commas.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9019. Compromise and Arbitration	**Rule 9019. Compromise or Settlement; Arbitration**
(a) COMPROMISE. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.	**(a) Approving a Compromise or Settlement.** On the trustee's motion and after notice and a hearing, the court may approve a compromise or settlement. Notice must be given to: • ~~the~~ all creditors; • the United States trustee; • the debtor; • all indenture trustees as provided in Rule 2002; and • any other entity the court designates.
(b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.	**(b) Compromising or Settling Controversies in Classes.** After a hearing on such notice as the court may ~~direct~~order, the court may: (1) ~~fix~~ designate a class or classes of controversies; and (2) authorize the trustee to compromise or settle controversies within the class or classes without further hearing or notice.
(c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.	**(c) Arbitration of Controversies Affecting an Estate.** If the parties so stipulate, the court may authorize a controversy affecting an estate to be submitted to final and binding arbitration.

Committee Note

The language of Rule 9019 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The words "or Settlement" were inserted in the title to Rule 9019 and the title to Rule 9019(a) after the word "Compromise".

• In the first bullet point in Rule 9019(a), the word "the" was changed to "all" and in the fourth bullet point the word "all" was inserted before "indenture".

• In Rule 9019(b) the word "direct" was replaced with "order".

• In Rule 9019(b)(1) the word "fix" was replaced with "designate".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggests changing the language in the first bullet point under Rule 9019(a) from "the creditors" to "all creditors", consistent with Rule 2002(a).

> ***Response***: Suggestion accepted.

Similarly, the NBC suggests inserting the word "all" before "indenture trustees" in the fourth bullet point under (a) to be consistent with Rule 2002(a).

> ***Response***: Suggestion accepted.

The NBC suggests changing the subheading for Rule 9019(b) from "Controversies in Classes" to "Classes of Controversies".

> ***Response***: The existing rule uses the term "Controversies Within Classes"; "Controversies in Classes" expresses the substance of that existing title. No change was made in response to this suggestion.

The NBC suggests returning the heading of Rule 9019(d) to "Arbitration". They believe the additional language adds nothing because a bankruptcy court does not have jurisdiction over a controversy unless it affects the estate.

> ***Response***: the text of both the original rule and the restyled rules refer to controversies "affecting the estate". It is appropriate for the heading to use the same phrase. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9020. Contempt Proceedings	**Rule 9020. Contempt Proceedings**
Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.	Rule 9014 governs a motion for a contempt order made by the United States trustee or a party in interest.

Committee Note

The language of Rule 9020 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9021. Entry of Judgment	**Rule 9021. When a Judgment or Order Becomes Effective**
A judgment or order is effective when entered under Rule 5003.	A judgment or order becomes effective when it is entered under Rule 5003.

Committee Note

The language of Rule 9021 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9022. Notice of Judgment or Order	**Rule 9022. Notice of a Judgment or Order**
(a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F.R.Civ.P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.	**(a) Issued by a Bankruptcy Judge.** (1) ***In General.*** Upon entering a judgment or order, the clerk must: (A) promptly serve notice of the entry on the contesting parties and other entities the court designates; (B) do so in the manner provided by Fed. R. Civ. P. 5(b); (C) except in a Chapter 9 case, promptly send a copy of the judgment or order to the United States trustee; and (D) note service on the docket. (2) ***Lack of Notice; Time to Appeal.*** Except as permitted by Rule 8002, lack of notice of the entry does not affect the time to appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed.
(b) JUDGMENT OR ORDER OF DISTRICT JUDGE. Notice of a judgment or order entered by a district judge is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of a judgment or order entered by a district judge.	**(b) Issued by a District Judge.** Notice of a district judge's judgment or order is governed by Fed. R. Civ. P. 77(d). Except in a Chapter 9 case, the clerk must promptly send a copy of the judgment or order to the United States trustee.

Committee Note

The language of Rule 9022 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• In Rule 9022(b), the words "of the judgment or order" have been inserted after the word "copy".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC believes that it is not clear what the clerk is supposed to send a copy of pursuant to the last sentence of Rule 9022(b) and suggests adding "of the judgment or order".

Response: Suggestion accepted.

• **Jeffrey Cozad (BK-2022-0002-0010)**

Mr. Cozad also requested the addition of the language "of the judgment or order" to the last sentence of Rule 9022(b), noting that the same language appeared in (a)(1)(C).

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 9023. New Trials; Amendment of Judgments	**Rule 9023. New Trial; Altering or Amending a Judgment**
Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.	(a) ~~By Motion~~Application of Civil Rule 59. Except as this rule and Rule 3008 provide otherwise, Fed. R. Civ. P. 59 applies in a bankruptcy case. ~~(a)~~(b) By Motion. A motion for a new trial or to alter or amend a judgment must be filed within 14 days after the judgment is entered. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending. ~~(b)~~(c) **By the Court.** Within 14 days after judgment is entered, the court may, on its own, order a new trial.

Committee Note

The language of Rule 9023 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The title to Rule 9023 has been amended by adding the words "Altering or" before the word "Amending".

- The text of Rule 9023(a) has been divided into two subsections, (a) with the title of "Application of Civil Rule 59" the text of which contains the first sentence of the former (a), and (b) with the title "By Motion" which has the remaining two sentences of former (a). Former (b) is now (c).

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9024. Relief from Judgment or Order	**Rule 9024. Relief from a Judgment or Order**
Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.	**(a) In General.** Fed. R. Civ. P. 60 applies in a bankruptcy case—except that: (1) the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an uncontested order allowing or disallowing a claim against the estate; (2) a complaint to revoke a discharge in a Chapter 7 case must be filed within the time allowed by § 727(e); and (3) a complaint to revoke an order confirming a plan must be filed within the time allowed by § 1144, 1230, or 1330. **(b) Indicative Ruling**. In some instances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.

Committee Note

The language of Rule 9024 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9024(a)(1), the words "against the estate" were added after the word "claim".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

In the introduction to Rule 9024(a) the NBC suggests replacing the em dash with a comma.

> ***Response***: This is a matter of style, and on style we defer to the style consultants. No change was made in response to this comment.

In Rule 9024(a), the NBC notes that the term "claim" has a much broader meaning in civil practice than in bankruptcy practice, and even in the Bankruptcy Code the term "claim" is not

confined to a claim against the debtor or the estate. Therefore, they suggest keeping the original language "claim against the estate".

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 9025. Security: Proceedings Against Security Providers	**Rule 9025. Security; Proceeding Against a Security Provider**
Whenever the Code or these rules require or permit a party to give security, and security is given with one or more security providers, each provider submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.	When the Code or these rules require or permit a party to give security~~,~~ and the party gives security with one or more security providers, each provider submits to the court's jurisdiction. Liability may be determined in an adversary proceeding governed by the Part VII rules.

Committee Note

The language of Rule 9025 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The comma after the word "security" in the first sentence was deleted.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9026. Exceptions Unnecessary	**Rule 9026. Objecting to a Ruling or Order**
Rule 46 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 46 applies in a bankruptcy case.

Committee Note

The language of Rule 9026 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9027. Removal	**Rule 9027. Removing a Claim or Cause of Action from Another Court**
(a) NOTICE OF REMOVAL.	**(a) Notice of Removal.**
(1) *Where Filed; Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.	(1) ***Where Filed; Form and Content.*** A notice of removal must be filed with the clerk for the district and division where the state or federal civil action is pending. The notice must be signed—under Rule 9011—and must: (A) contain a short and plain statement of the facts that entitle the party to remove; (B) contain a statement that the party filing the notice does or does not consent to the bankruptcy court's entry of a final judgment or order; and (C) be accompanied by a copy of all process and pleadings.
(2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.	(2) ***Time to File When the Claim Was Filed Before the Bankruptcy Case ~~Was~~ Is Commenced.*** If the claim or cause of action in a civil action is pending when a bankruptcy case is commenced, the notice of removal must be filed within the longest of these periods: (A) 90 days after the order for relief in the bankruptcy case; (B) if the claim or cause of action has been stayed under § 362, 30 days after an order terminating the stay is entered; or (C) in a Chapter 11 case, 30 days after a trustee qualifies—but no later than 180 days after the order for relief.
(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause	(3) ***Time to File When the Claim Is Filed After the Bankruptcy Case Was Commenced.*** If a claim or cause of action is asserted in another court

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of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.	after the bankruptcy case was commenced, a party filing a notice of removal must do so within the shorter of these periods: (A) 30 days after receiving (by service or otherwise) the initial pleading setting forth the claim or cause of action sought to be removed; or (B) 30 days after receiving the summons if the initial pleading has been filed but not served with the summons.
(b) NOTICE. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.	**(b) Notice to Other Parties and to the Court from Which the Claim Was Removed.** A party filing a notice of removal must promptly: (1) serve a copy on all other parties to the removed claim or cause of action; and (2) file a copy with the clerk of the court from which it was removed.
(c) FILING IN NON-BANKRUPTCY COURT. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.	**(c) Effective Date of Removal.** Removal becomes effective when the notice is filed under (b)(2). The parties must proceed no further in the court from which the claim or cause of action was removed, unless ~~the claim or cause of action~~it is remanded.
(d) REMAND. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.	**(d) Remand After Removal.** A motion to remand is governed by Rule 9014. The party filing the motion must serve a copy on all parties to the removed claim or cause of action.
(e) PROCEDURE AFTER REMOVAL. (1) After removal of a claim or cause of action to a district court the	**(e) Procedure After Removal.** (1) ***Bringing Proper Parties Before the Court.*** After removal, the district court—or the bankruptcy judge to

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district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise. (2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed. (3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.	whom the bankruptcy case has been referred—may issue all necessary orders and process to bring before it all proper parties. It does not matter whether they were served by process issued by the court from which the claim or cause of action was removed, or otherwise. (2) ***Records of Prior Proceedings.*** The judge may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action that were filed in the court from which the removal occurred. (3) ***Statement by a Party ~~to a Removed Claim~~Other Than the Removing Party.*** A party who has filed a pleading ~~in~~ regarding a removed claim or cause of action—except the party filing the notice of removal—must: (A) file a statement that the party does or does not consent to the bankruptcy court's entry of a final order or judgment ~~of the bankruptcy court~~; (B) ~~ensure that~~sign the statement ~~is signed as~~under Rule 9011 ~~provides~~; (C) file it within 14 days after the notice of removal is filed; and (D) mail a copy to every other party to the removed claim or cause of action.
(f) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any	**(f) Process Regarding a Defendant After Removal.** If a defendant has not been served—or service has not been completed before removal or has been proved defective—then process or service may be completed or new process issued ~~as~~ under the Part VII rules ~~provide~~. A defendant served after removal may move to remand the claim or cause of action ~~to the court~~

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defendant on whom process is served after removal of the defendant's right to move to remand the case.	~~from which it was removed~~.
(g) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.	**(g) Applying Part VII Rules.** (1) ***In General.*** The Part VII rules apply to a claim or cause of action removed to a district court from a federal or state court, and they govern the procedure after removal. Repleading is not necessary unless the court orders otherwise. (2) ***Time to File an Answer.*** In a removed action, a defendant that has not previously done so must file an answer—or present other defenses or objections available under the Part VII rules. The defendant must do so within the longest of these periods: (A) 21 days after receiving—by service or otherwise—a copy of the initial pleading that sets forth the claim for relief; (B) 21 days after a summons on the original pleading was served; or (C) 7 days after the notice of removal was filed.
(h) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.	**(h) Clerk's Failure to Supply Certified Records of Court Proceedings.** If a party is entitled to copies of the records and proceedings in a civil action or proceeding in a federal or state court for use in the removed action or proceeding, the party may demand certified copies from that court's clerk. After the party pays for them or tenders the fees, if the clerk fails to provide them, the court to which the action or proceeding is removed may—after receiving an affidavit stating these facts—order that the record be supplied by affidavit or otherwise. The court may then proceed to trial and judgment, and may award all process, as if certified copies had

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	been filed.
(i) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.	**(i) Property Attached or Sequestered; Security; Injunction.** (1) ***Property Attached or Sequestered.*** The court from which a claim or cause of action has been removed must hold attached or sequestered property to answer the final judgment or decree in the same way it would have been held had there been no removal. (2) ***Security.*** Any bond, undertaking, or security given by either party before the removal remains valid. (3) ***Injunction.*** Any injunction or order issued, or other proceeding had, before the removal remains in effect until dissolved or modified by the court.

Committee Note

The language of Rule 9027 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The em dashes in Rule 9027(a)(1) have been deleted.

- In the heading to (a)(2) the word "Was" is changed to "Is".

- In Rule 9027(c), the words "the claim or cause of action" are replaced with the word "it".

- The heading to Rule 9027(e)(3) by replacing "to a Removed Claim" with "Other Than The Removing Party". In the text of that provision, the word "in" was replaced with "regarding." Clause (A) of (e)(3) has been modified to delete "of the bankruptcy court" and to insert "bankruptcy court's" before "entry". Clause (B) of (e)(3) has been modified to read "sign the

statement under Rule 9011.

• In Rule 9027(f) the word "then" was inserted after the second em dash, the phrase "as the Part VII rules provide" was replaced with "under the Part VII rules", and the phrase "to the court from which it was removed" was deleted.

• In (g)(1) a comma was inserted after the word "court" and the word "they" was inserted before the word "govern".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

In Rule 9027(a)(1) and (a)(2)(C) the NBC suggests deleting the em dashes.

> ***Response***: The style consultants have already decided to remove the em dashes in (a)(1) but they are retaining the em dash in (a)(2)(C). This is a matter of style, and on style we defer to the style consultants. No change was made in response to this comment.

The NBC suggests substituting the words "Nonbankruptcy Court" for "Court from Which the Claim Was Removed" in the heading of Rule 9027(b).

> ***Response***: Neither the text of Rule 9027(a), nor any other rule, uses the term "nonbankruptcy court" so it would be inappropriate to use it in the heading. No change was made in response to this comment.

The NBC suggests deleting the words "After Removal' from the heading of Rule 9027(d) as unnecessary.

> ***Response:*** All of the headings of Rules 9027(a)-(a) have a form of the word "removal" in them. The word emphasizes that this rule is about removal. No change was made in response to this comment.

In the last sentence of (e)(1) the NBC believes the word "they" is ambiguous.

> ***Response***: The final two words of the prior sentence were "proper parties" and they are the only thing that could possibly be served with process. No change was made in response to this comment.

In (e)(3) the NBC suggests substituting "for a removed claim" for "in a removed claim".

> ***Response***: Suggestion accepted.

In (e)(3)(A) the NBC suggested redrafting the language to read "consent to the bankruptcy court's entry of a final judgment or order", consistent with Rule 9027(a)(1)(B).

Response: Suggestion accepted.

In (e)(3)(B) the NBC suggests replacing the language with "sign the statement under Rule 9011."

Response: Suggestion accepted.

In (e)(3)(C), the NBC finds the word "it" to be ambiguous and suggests replacing it with "the statement".

Response: The entire section is dealing with the statement, and (e)(3)(A) and (B) both mention the statement. There is nothing else "it" could be. No change was made in response to this comment.

In (e)(3)(D) the NBC suggests adding the words "the statement" after "a copy".

Response: Again, the entire section deals with the statement. There is nothing else of which a copy could possibly be sent. No change was made in response to this comment.

In (f) the NBC finds the phrase "has been proved defective" awkward and suggests replacing it with "was defective".

Response: We believe the word "proved" (in the original rule it was "proves") requires some court proceeding establishing the defectiveness of the service. Eliminating the word would be a substantive change. No change was made in response to this comment.

Also in (f) the NBC suggests rewriting the last clause of the first sentence to read "issued under the Part VII rules" rather than "issued as the Part VII rules provide".

Response: Suggestion accepted.

Also in (f) the NBC suggests deleting everything in the last sentence after the words "move to remand" as unnecessary and perhaps including a cross-reference to (d).

Response: We have removed the words "to the court from which it was removed". We do not think a cross-reference to (d) is necessary.

The NBC suggests deleting the em dash in (g)(2).

Response: this is matter of style, and on style we defer to the style consultants. No change was made in response to this comment.

In (g)(2)(A) and (h) the NBC suggests replacing the em dashes with commas.

Response: this is matter of style, and on style we defer to the style consultants. No change was made in response to this comment.

In (i)(1) the NBC suggests deleting the words "been held" as unnecessary.

> ***Response***: The words are in the original rule, and we think they enhance comprehension. No change was made in response to this comment.

- **Jeffrey Cozad (BK-2022-0002-0010)**

In Rule 9027(b)(2) Mr. Cozad believes the word "it" is unclear and should be replaced with "the claim or cause of action."

> ***Response***: There is nothing that "it" could be other than the claim or cause of action" (which is referred to in (b)(1). A "notice of removal" cannot be removed. No change was made in response to this comment.

Mr. Cozad questions the need for (e)(2), saying it replicates (a)(1)(C).

> ***Response***: (a)(1)(C) deals with the court from the party seeks removal; (e)(2) deals with the court to which the claim or cause of action has been removed. No change was made in response to this comment.

In (f) Mr. Cozad suggests insertion of the work "then" after the second em dash.

> ***Response***: We have inserted the word "then".

In (g)(1) Mr. Cozad suggests replacing "Repleading" with "Filing a new complaint".

> ***Response***: The term "repleading" is used in the current rule. No change was made in response to this comment.

In (g)(2)(C) Mr. Cozad suggests adding the words "and served on that defendant" after the words "notice of removal was filed".

> ***Response***: the comparable language in the original rule is "within seven days following the filing of the notice of removal"; it does not include any reference to service. This would be a substantive change and no change was made in response to this comment.

Mr. Cozad finds the language of (h) "award all process" to be confusing.

> ***Response***: The original language was "all process awarded". This is not substantively different. No change was made in response to this comment.

In Rule 9027(i)(3), Mr. Cozad believes the restyled language does not make clear which court can modify the injunction.

> ***Response***: The language "the court" has not changed from the original rule. Inserting any language before "court" would be a substantive change. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9028. Disability of a Judge	**Rule 9028. Judge's Disability**
Rule 63 F.R.Civ.P. applies in cases under the Code.	Fed. R. Civ. P. 63 applies in a bankruptcy case.

Committee Note

The language of Rule 9028 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law	**Rule 9029. Adopting Local Rules; Limit on Enforcing a Local Rule; Absence of Controlling Law**
(a) LOCAL BANKRUPTCY RULES. (1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a non-willful failure to comply with the requirement.	**(a) Adopting Local Rules.** (1) ***By District Courts.*** Each district court, acting by a majority of its judges, may make and amend rules governing practice and procedure in all cases and proceedings within its bankruptcy jurisdiction. Fed. R. Civ. P. 83 governs the procedure for adopting local rules. The rules must: (A) be consistent with—but not duplicate—~~federal statutes~~Acts of Congress and these rules; (B) not prohibit or limit using Official Forms; and (C) conform to any uniform numbering system prescribed by the Judicial Conference of the United States. (2) ***Delegating Authority to the Bankruptcy Judges.*** A district court may—subject to any limitation or condition it may prescribe and Fed. R. Civ. P. 83—authorize the district's bankruptcy judges to ~~do the same~~make and amend local bankruptcy rules. **(b) Limit on Enforcing a Local Rule Regarding Form.** A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right~~s~~ because of a nonwillful failure to comply.
(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for	**(c) Procedure When There Is No Controlling Law.** A judge may regulate practice in any manner consistent with federal law, these rules, the Official Forms, and the district's local rules. ~~But for~~For any requirement set out elsewhere, a sanction or other disadvantage may be imposed for

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noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.	noncompliance only if the alleged violator ~~has been~~was given actual notice of the requirement in the particular case.

Committee Note

The language of Rule 9029 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9029(a)(1)(A), the words "federal statutes" were replaced with "Acts of Congress."

- In Rule 9029(a)(2) the words "do the same" were replaced with "make and amend local bankruptcy rules".

- In Rule 9029(b) the words "lose rights" were replaced with "lose any right".

- In Rule 9029(c) the word "But" was deleted and the beginning of the second sentence and the word "For" was capitalized. The words "has been" were changed to "were".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

In Rule 9029(a)(1)(A) the NBC believes that changing "Acts of Congress" to "federal statutes" may be a substantive change, because not all acts of Congress are codified in the federal statutes.

> ***Response***: Comment is accurate, and we have changed the language back.

The NBC suggests replacing the em dashes in (a)(1)(A) with commas.

> ***Response***: This is a matter of style, and on style we defer to the style consultants. No change was made in response to this comment.

In Rule 9029(a)(2) the NBC finds "do the same" to be ambiguous and suggests replacing it with "make and amend local bankruptcy rules"

> ***Response***: Suggestion accepted.

In Rule 9029(c) the NBC suggests deleting the word "But" at the beginning of the second sentence as unnecessary.

> ***Response***: Suggestion accepted.

The NBC suggests rewriting (c) by replacing "For any requirement set out elsewhere" with "For any requirement not contained in any of the foregoing".

> ***Response***: We do not use the word "foregoing" in the restyled rules. No change was made in response to the comment.

In the second sentence of (c), the NBC suggests inserting the words "or proceeding" after the word "case".

> ***Response***: The original rule uses the phrase "particular case" without a reference to a proceeding. This would be a substantive change. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9030. Jurisdiction and Venue Unaffected	**Rule 9030. Jurisdiction and Venue Not Extended or Limited**
These rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein.	These rules must not be construed to extend or limit the courts' jurisdiction ~~of the courts~~ or the venue of any matters.

Committee Note

The language of Rule 9030 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The title of the rule was modified by adding the phrase "Not Extended or Limited" to the end of it.

- The phrase "jurisdiction of the courts" was changed to "the courts' jurisdiction".

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggested retaining the original title of the rule because it is more descriptive.

> ***Response***: The word "unaffected" does not appear in the text, but we expanded the title to provide more information about the content of the rule.

ORIGINAL	REVISION
Rule 9031. Masters Not Authorized	**Rule 9031. Using Masters Not Authorized**
Rule 53 F.R.Civ.P. does not apply in cases under the Code.	Fed. R. Civ. P. 53 does not apply in a bankruptcy case.

Committee Note

The language of Rule 9031 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- No changes were made after publication and comment.

Summary of Public Comment

- **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests deleting the word "Using" from the title of the Rule.

> ***Response***: We believe it is helpful in describing the content of Fed. R. Civ. P. 53. No change was made in response to this comment.

ORIGINAL	REVISION
Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure	**Rule 9032. Effect of an Amendment to the Federal Rules of Civil Procedure**
The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules.	To the extent these rules incorporate by reference the Federal Rules of Civil Procedure, an amendment to ~~the Federal Rules of Civil Procedure~~those rules is also effective under these rules, unless the amendment or these rules provide otherwise.

Committee Note

The language of Rule 9032 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- The second time the phrase "the Federal Rules of Civil Procedure" appeared it was replaced with "those rules".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9033. Proposed Findings of Fact and Conclusions of Law	**Rule 9033. Proposed Findings of Fact and Conclusions of Law**
(a) SERVICE. In a proceeding in which the bankruptcy court has issued proposed findings of fact and conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.	**(a) Service.** When a bankruptcy court issues proposed findings of fact and conclusions of law, the clerk must promptly serve a copy, by mail, on every party and must note the date of mailing on the docket.
(b) OBJECTIONS: TIME FOR FILING. Within 14 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 14 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.	**(b) Objections; Time to File.** (1) ***Time to File.*** Within 14 days after being served, a party may file and serve objections. ~~The objections~~They must identify each proposed finding or conclusion objected to and state the grounds for objecting. A party may respond to another party's objections within 14 days after being served with a copy. (2) ***Ordering a Transcript.*** Unless the district judge orders otherwise, a party filing objections must promptly order a transcript of the record, ~~—~~or the parts of it that all parties agree ~~to~~ are~~—~~or the bankruptcy judge considers to be~~—~~sufficient.
(c) EXTENSION OF TIME. The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 21 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.	(3) ***Extending the Time.*** On request made before the time to file objections expires, the bankruptcy judge may, for cause, extend ~~the~~ any party's time to file ~~for any party~~ for no more than 21 days after the time otherwise ~~provided by this rule~~ expires. But a request made within 21 days after that time expires may be granted upon a showing of excusable neglect.

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(d) STANDARD OF REVIEW. The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.	**(c) Review by the District Judge.** The district judge: (1) must review de novo—on the record or after receiving additional evidence—any part of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made under (b); and (2) may accept, reject, or modify ~~them~~the proposed findings of fact or conclusions of law, take additional evidence, or remand the matter to the bankruptcy judge with instructions.

Committee Note

The language of Rule 9033 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9033(b)(1) the words "The objections" were replaced with "They".

In (b)(2), the em cash was replaced with a comma, and the phrase "agree to or the bankruptcy judge considers sufficient" is changed to "agree are—or the bankruptcy judge considers to be—sufficient."

In (b)(3) the phrase "the time to file for any party" was replaced with "any party's time to file, and the words "provided by this rule" were deleted.

In (c)(2) the word "them" was replaced with "the proposed findings of fact or conclusions of law".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests deleting the words "Time to File" from the title of Rule 9033(b) because "Time to File" is the name of (b)(1).

Response: We believe the title of rules and of subsections of rules should

describe their content, and Rule 9033(b) covers the time to file. No change was made in response to this comment.

The NBC suggests combining the first two sentences of (b)(1) as in the original rule "to enhance readability and comprehensibility and eliminate ambiguity in the first sentence as to what is being objected to".

Response: One of the goals of restyling is to break long sentences into short ones that are easier to understand. We think the second sentence makes quite clear to what the party may be objecting. No change was made in response to this comment.

In (b)(2) the NBC points out that the restyling no longer expresses the meaning of the original rule. The parties are not agreeing to anything; they are agreeing that the parts are sufficient.

Response: The section has been rewritten to make the meaning more clear.

The NBC suggests deleting the word "expires" at the end of the first sentence and the middle of the second sentence of Rule 9033(b)(3).

Response: The word comes from the original rule (which used the word "expiration" and "expired"). We believe it is necessary. No change was made in response to this comment.

In Rule 9033(b)(3), the NBC suggests deleting the word "But" at the beginning of the last sentence.

Response: This is a matter of style, and on style we defer to the style consultants. No change was made in response to this suggestion.

In Rule 9033(c)(2), the NBC believes that the word "them" is ambiguous and potentially alters the meaning of the current rule. The current rule contemplates that the district judge will accept, reject or modify the findings of fact or conclusions of law as a whole. The restyled version could be interpreted to provide that the district judge will accept, reject, or modify only those findings of fact or conclusions of law described in (c)(1), which are those to which a specific objection has been made. The NBC suggests returning to the original language.

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee	**Rule 9034. Sending Copies to the United States Trustee**
Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper: (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business; (b) the approval of a compromise or settlement of a controversy; (c) the dismissal or conversion of a case to another chapter; (d) the employment of professional persons; (e) an application for compensation or reimbursement of expenses; (f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit; (g) the appointment of a trustee or examiner in a chapter 11 reorganization case; (h) the approval of a disclosure statement; (i) the confirmation of a plan; (j) an objection to, or waiver or revocation of, the debtor's discharge; (k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies	Except in a Chapter 9 case or when the United States trustee requests otherwise, an entity filing a pleading, motion, objection, or similar document relating to any of the following must send a copy to the United States trustee within the time required for service: (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business; (b) the approval of a compromise or settlement of a controversy; (c) the dismissal or conversion of a case to another chapter; (d) the employment of a professional person; (e) an application for compensation or reimbursement of expenses; (f) a motion for, or the approval of an agreement regarding, the use of cash collateral or ~~the~~ authority to obtain credit; (g) the appointment of a trustee or examiner in a Chapter 11 case; (h) the approval of a disclosure statement; (i) the confirmation of a plan; (j) an objection to, or waiver or revocation of, the debtor's discharge; or (k) any other matter in which the United States trustee requests copies of filed ~~papers~~ documents or the court orders copies sent to the United States trustee.

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transmitted to the United States trustee.	

Committee Note

The language of Rule 9034 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In Rule 9034(f), the word "the" was deleted before "authority".

- In Rule 9034(k) the word "papers" was replaced with "documents".

Summary of Public Comment

• **National Bankruptcy Conference (BK-2022-0002-0007) (NBC)**

The NBC suggests the deletion of the word "the" before "authority" in Rule 9034(f).

Response: Suggestion accepted.

In Rule 9034(k) the NBC suggests replacing the word "papers" with "documents" consistent with the style throughout the restyled rules.

Response: Suggestion accepted.

ORIGINAL	REVISION
Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina	**Rule 9035. Applying These Rules in a Judicial District in Alabama ~~and~~ or North Carolina**
In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute effective in the case.	In a bankruptcy case filed in or transferred to a district in Alabama or North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent they are not inconsistent with any applicable federal statute.

Committee Note

The language of Rule 9035 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the title to the rule, the word "and" has been changed to "or".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggests that the word "and" be changed to "or" in the title to the rule.

Response: The change has already been made.

ORIGINAL	REVISION
Rule 9036. Notice and Service by Electronic Transmission	**Rule 9036. Electronic Notice and Service**
(a) IN GENERAL. This rule applies whenever these rules require or permit sending a notice or serving a paper by mail or other means. (b) NOTICES FROM AND SERVICE BY THE COURT. (1) *Registered Users*. The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system. (2) *All Recipients*. For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by	**(a) In General.** This rule applies whenever these rules require or permit sending a notice or serving a document by mail or other means. **(b) Notices ~~From~~ from and Service by the Court.** (1) ***To Registered Users***. The clerk may send notice to or serve a registered user by filing the notice or document with the court's electronic-filing system. (2) ***To All Recipients***. For any recipient, the clerk may send notice or serve a document by electronic means that the recipient consented to in writing, including by designating an electronic address for receiving notices. But these exceptions apply: (A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk must use that address; and (B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the document electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f). **(c) Notices ~~From~~ from and Service by an Entity.** An entity may send notice or serve a document in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B).

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the Director, unless the entity has designated an address under § 342(e) or (f) of the Code. (c) NOTICES FROM AND SERVICE BY AN ENTITY. An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B). (d) COMPLETING NOTICE OR SERVICE. Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk. (e) INAPPLICABILITY. This rule does not apply to any paper required to be served in accordance with Rule 7004.	**(d) ~~Completing~~ When Notice or Service Is Complete; Keeping an Address Current.** Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be notified or served. The recipient must keep its electronic address current with the clerk. **(e) Inapplicability**. This rule does not apply to any document required to be served in accordance with Rule 7004.

Committee Note

The language of Rule 9036 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

- In the titles of (b) and (c) the word "from" was changed to lower case.

- In the titles of (b)(1) and (b)(1) the word "To" was inserted at the beginning.

- In (d), the title of the section was changed from "completing Notice of Service" to "When Notice or service Is Complete; Keeping an Address Current".

Summary of Public Comment

- No comments were submitted.

ORIGINAL	REVISION
Rule 9037. Privacy Protection For Filings Made with the Court	**Rule 9037. Protecting Privacy for Filings**
(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only: (1) the last four digits of the social-security number and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number.	**(a) Redacted Filings.** Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual other than the debtor known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only: (1) the last four digits of a social-security and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number.
(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following: (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; (2) the record of an administrative or agency proceeding unless filed with a proof of claim; (3) the official record of a state-court proceeding; (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; (5) a filing covered by subdivision (c) of this rule; and	**(b) Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following: (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; (2) the record of an administrative or agency proceeding, unless filed with a proof of claim; (3) the official record of a state-court proceeding; (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; (5) a filing covered by (c); and (6) a filing subject to § 110.

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(6) a filing that is subject to § 110 of the Code.	
(c) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.	**(c) Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made it to file a redacted version for the public record.
(d) PROTECTIVE ORDERS. For cause, the court may by order in a case under the Code: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.	**(d) Protective Orders.** For cause, the court may by order in a case ~~under the Code~~: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.
(e) OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.	**(e) Option for Additional Unredacted Document Under Seal.** An entity filing a redacted document may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.
(f) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.	**(f) Option for Filing a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. A reference in the case to a listed identifier will be construed to refer to the corresponding item of information.
(g) WAIVER OF PROTECTION OF IDENTIFIERS. An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.	**(g) Waiver of Protection of Identifiers.** An entity waives the protection of (a) for the entity's own information by filing it without redaction and not under seal.

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(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT. (1) *Content of the Motion; Service.* Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must: (A) file a motion to redact identifying the proposed redactions; (B) attach to the motion the proposed redacted document; (C) include in the motion the docket or proof-of-claim number of the previously filed document; and (D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted. (2) *Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.* The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise.	**(h) Motion to Redact a Previously Filed Document.** (1) ***Content; Service.*** Unless the court orders otherwise, an entity seeking to redact from a previously filed document information that is protected under (a) must: (A) file a motion that identifies the proposed redactions; (B) attach to it the proposed redacted document; (C) include the docket number—or proof-of-claim number—of the previously filed document; and (D) serve the motion and attachment on~~;~~: • the debtor; • the debtor's attorney; • any trustee; • the United States trustee; • the ~~person~~ entity that~~who~~ filed the unredacted document; and • any individual whose personal identifying information is to be redacted. (2) ***Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.*** Pending its ruling, the court must promptly restrict access to the motion and the unredacted document. If the court grants the motion, the clerk must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies the motion, the restrictions must be lifted, unless the court orders otherwise.

Committee Note

The language of Rule 9037 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Changes Made After Publication and Comment

• The headings of all subsections that were restyled were returned to the versions in the existing rule and which also appear in Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1.

• In Rule 9037(d) the words "under the Code" were deleted.

• In the fifth bullet points of Rule 9037(h)(1)(D), the words "person who" were changed to "entity that".

Summary of Public Comment

• National Bankruptcy Conference (BK-2022-0002-0007) (NBC)

The NBC suggested deleting "with the court" after "filing" in Rule 9037(a).

> ***Response***: Rule 9037(a)-(g) are identical to the privacy rules for the Fed. R. Civ. P. (4.2) and the Fed. R. Crim. P. (49.1). We do not intend to stylize them.

The NBC suggests changing the subheading of (c) to Order to File Under Seal".

> ***Response***: Rule 9037(a)-(g) are identical to the privacy rules for the Fed. R. Civ. P. (4.2) and the Fed. R. Crim. P. (49.1). We do not intend to stylize them.

The NBC suggested a complete redrafting of Rule 9037(d).

> ***Response***: Rule 9037(a)-(g) are identical to the privacy rules for the Fed. R. Civ. P. (4.2) and the Fed. R. Crim. P. (49.1). We do not intend to stylize them.

In Rule 9037(h)(1)(B), the NBC finds the word "it" to be ambiguous. If you read (B) immediately after reading the prefatory language, the "it" has no antecedent. They suggest replacing it with the words "the motion".

> ***Response***: The style consultants have consistently taken the position that the "it" refers to the subject of the prior subsection, even if the prefatory language does not include that subject. No change was made in response to this comment.

The NBC notes that the semi-colon before the bullet points should be a colon.

Response: Suggestion accepted.

The NBC suggests that the word "person" in the fifth bullet point of (h)(1)(C) be changed to "entity", which is more inclusive.

Response: Suggestion accepted.

- **Jeffrey Cozad (BK-2022-0002-0010)**

Mr. Cozad suggests changing the title of Rule 9037(h) to Motion to File a Redacted Version of a Previously Filed Document". He thinks the current title suggests that the filer needs permission to do the redaction. Similarly he would change the language of (h)(1) from "seeking to redact from a previously filed document" to "seeing to file a redacted version of a previously filed document".

> ***Response***: Mr. Cozad's language would suggest that the rule is doing nothing with respect to the unredacted document already filed. The purpose of the rule is in fact to have a process to redact a document after it has been filed. That process does involve filing a redacted version of that document, but that is just the process for redacting. No change was made in response to this comment.

ORIGINAL[3]	REVISION
Rule 9038. Bankruptcy Rules Emergency	**Rule 9038. Bankruptcy Rules Emergency**
(a) CONDITIONS FOR AN EMERGENCY. The Judicial Conference of the United States may declare a Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impair the court's ability to perform its functions in compliance with these rules.	**(a)** ~~**CONDITIONS FOR AN EMERGENCY**~~**Conditions for an Emergency.** The Judicial Conference of the United States may declare a Bankruptcy Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a bankruptcy court, substantially impair the court's ability to perform its functions in compliance with these rules.
(b) DECLARING AN EMERGENCY. (1) *Content.* The declaration must: (A) designate the bankruptcy court or courts affected; (B) state any restrictions on the authority granted in (c); and (C) be limited to a stated period of no more than 90 days. (2) *Early Termination.* The Judicial Conference may terminate a declaration for one or more bankruptcy courts before the termination date. (3) *Additional Declarations.* The Judicial Conference may issue additional declarations under this rule.	**(b)** ~~**DECLARING AN EMERGENCY**~~ **Declaring an Emergency.** (1) ***Content.*** The declaration must: (A) designate the bankruptcy court or courts affected; (B) state any restrictions on the authority granted in (c); and (C) be limited to a stated period of no more than 90 days. (2) ***Early Termination.*** The Judicial Conference may terminate a declaration for one or more bankruptcy courts before the termination date. (3) ***Additional Declarations.*** The Judicial Conference may issue additional declarations under this rule.
(c) TOLLING AND EXTENDING TIME LIMITS. (1) *In an Entire District or Division.* When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and proceedings in the district or in a division: (A) order the extension or tolling of a Bankruptcy Rule, local	**(c)** ~~**TOLLING AND EXTENDING TIME LIMITS**~~**Tolling and Extending Time Limits.** (1) ***In an Entire District or Division.*** When an emergency is in effect for a bankruptcy court, the chief bankruptcy judge may, for all cases and

[3] Rule 9038 is scheduled to become effective on Dec. 1, 2023. The only changes are to the font of headings in its subsections to conform with the restyled rules.

ORIGINAL[3]	REVISION
rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a specified deadline, to commence a proceeding, file or send a document, hold or conclude a hearing, or take any other action, despite any other Bankruptcy Rule, local rule, or order; or (B) order that, when a Bankruptcy Rule, local rule, or order requires that an action be taken "promptly," "forthwith," "immediately," or "without delay," it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding. (2) *In a Specific Case or Proceeding.* When an emergency is in effect for a bankruptcy court, a presiding judge may take the action described in (1) in a specific case or proceeding. (3) *When an Extension or Tolling Ends.* A period extended or tolled under (1) or (2) terminates on the later of: (A) the last day of the time period as extended or tolled or 30 days after the emergency declaration terminates, whichever is earlier; or (B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was extended or tolled. (4) *Further Extensions or Shortenings.* A presiding judge may lengthen or shorten an extension or tolling in a specific case or proceeding. The judge may do so only for good cause after notice and a hearing and only on the judge's own motion or on motion of a party in interest or the United States trustee.	proceedings in the district or in a division: (A) order the extension or tolling of a Bankruptcy Rule, local rule, or order that requires or allows a court, a clerk, a party in interest, or the United States trustee, by a specified deadline, to commence a proceeding, file or send a document, hold or conclude a hearing, or take any other action, despite any other Bankruptcy Rule, local rule, or order; or (B) order that, when a Bankruptcy Rule, local rule, or order requires that an action be taken "promptly," "forthwith," "immediately," or "without delay," it be taken as soon as is practicable or by a date set by the court in a specific case or proceeding. (2) ***In a Specific Case or Proceeding.*** When an emergency is in effect for a bankruptcy court, a presiding judge may take the action described in (1) in a specific case or proceeding. (3) ***When an Extension or Tolling Ends.*** A period extended or tolled under (1) or (2) terminates on the later of: (A) the last day of the time period as extended or tolled or 30 days after the emergency declaration terminates, whichever is earlier; or (B) the last day of the time period originally required, imposed, or allowed by the relevant Bankruptcy Rule, local rule, or order that was extended or tolled. (4) ***Further Extensions or Shortenings.*** A presiding judge may lengthen or shorten an extension or tolling in a specific case or proceeding. The judge

ORIGINAL[3]	REVISION
(5) *Exception.* A time period imposed by statute may not be extended or tolled.	may do so only for good cause after notice and a hearing and only on the judge's own motion or on motion of a party in interest or the United States trustee. (5) ***Exception.*** A time period imposed by statute may not be extended or tolled.

Committee Note

The language of Rule 9038 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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

1 **Rule 1007. Lists, Schedules, Statements, and**
2 **Other Documents; Time to File**[2]

3 * * * * *

4 **(b) Schedules, Statements, and Other Documents.**

5 * * * * *

6 (7) ***Personal Financial-Management Course.***
7 Unless an approved provider has notified the
8 court that the debtor has completed a course
9 in personal financial management after filing
10 the petition or the debtor is not required to
11 complete one as a condition to discharge, an
12 individual debtor in a Chapter 7 or Chapter

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

[2] The changes indicated are to the restyled version of Rule 1007. The Committee Note that follows the rule describes both restyling and substantive changes.

13 13 case—or in a Chapter 11 case in which
14 § 1141(d)(3) applies—must file a ~~statement~~
15 ~~that such a course has been completed (Form~~
16 ~~423)~~ certificate of course completion issued
17 by the provider.
18 * * * * *
19 **(c) Time to File.**
20 * * * * *
21 (4) ***Financial-Management Course.*** Unless the
22 court extends the time to file, an individual
23 debtor must file the ~~statement~~ certificate
24 required by (b)(7) as follows:
25 (A) in a Chapter 7 case, within 60 days
26 after the first date set for the meeting
27 of creditors under § 341; and
28 (B) in a Chapter 11 or Chapter 13 case, no
29 later than the date the last payment is
30 made under the plan, or the date a

31 motion for a discharge is filed under

32 § 1141(d)(5)(B) or § 1328(b).

33 * * * * *

Committee Note

The language of Rule 1007 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

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

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

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

Rule 4004. Granting or Denying a Discharge[3]

* * * * *

(c) Granting a Discharge.

(1) ***Chapter 7.*** In a Chapter 7 case, when the times to object to discharge and to file a motion to dismiss the case under Rule 1017(e) expire, the court must promptly grant the discharge—except under these circumstances:

* * * * *

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

---

[3] The changes indicated are to the restyled version of Rule 4004. The Committee Note that follows the rule describes both restyling and substantive changes.

16 * * * * *

17 (4) ***Individual Chapter 11 or Chapter 13 Case.***

18 In a Chapter 11 case in which the debtor is an

19 individual—or in a Chapter 13 case—the

20 court must not grant a discharge if the debtor

21 has not filed a ~~statement~~ certificate required

22 by Rule 1007(b)(7).

23 * * * * *

Committee Note

The language of Rule 4004 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

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

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

1 **Rule 5009. Closing a Chapter 7, 12, 13, or 15**
2 **Case; Declaring Liens Satisfied**[4]

3 * * * * *

4 **(b) Chapter 7 or 13—Notice of a Failure to File a**
5 **~~Statement About Completing~~ Certificate of**
6 **Completion for a Course on Personal Financial**
7 **Management.** This subdivision (b) applies if an
8 individual debtor in a Chapter 7 or 13 case is required
9 to file a ~~statement~~ certificate under Rule 1007(b)(7)
10 and fails to do so within 45 days after the first date
11 set for the meeting of creditors under § 341(a). The
12 clerk must promptly notify the debtor that the case
13 will be closed without entering a discharge if the
14 ~~statement~~ certificate is not filed within the time
15 prescribed by Rule 1007(c).

16 * * * * *

[4] The changes indicated are to the restyled version of Rule 5009. The Committee Note that follows the rule describes both restyling and substantive changes.

Committee Note

The language of Rule 5009 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

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

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

1 **Rule 7001. Types of Adversary Proceedings**[1]

2 An adversary proceeding is governed by the rules in
3 this Part VII. The following are adversary proceedings:

4 (a) a proceeding to recover money or property—except
5 a proceeding to compel the debtor to deliver property
6 to the trustee, a proceeding by an individual debtor
7 to recover tangible personal property under § 542(a),
8 or a proceeding under § 554(b), § 725, Rule 2017, or
9 Rule 6002;

10 * * * * *

Committee Note

The language of Rule 7001 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

[1] The changes indicated are to the restyled version of Rule 7001. The Committee Note that follows the rule describes both restyling and substantive changes.

Paragraph (a) is amended to create an exception for certain turnover proceedings under § 542(a) of the Code. An individual debtor may need to obtain the prompt return from a third party of tangible personal property—such as an automobile or tools of the trade—in order to produce income to fund a plan or to regain the use of property that may be exempted. As noted by Justice Sotomayor in her concurrence in *City of Chicago v. Fulton*, 141 S. Ct. 585, 592-95 (2021), the more formal procedures applicable to adversary proceedings can be too time-consuming in such a situation. Instead, the debtor can now proceed by motion to require turnover of such property under § 542(a), and the procedures of Rule 9014 will apply. In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules will apply to the matter.

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

- **Bonial & Associates, P.C. (BK-2022-0002-0009).** Supports the amendment because it “will streamline the turnover process and should create consistency nationally.” Explains that “[c]reditors would benefit from one national and consistent approach to turnovers across all jurisdictions.”

1 **Rule 8023.1. Substitution of Parties**

2 **(a) Death of a Party.**

3 (1) ***After a Notice of Appeal Is Filed.*** If
4 a party dies after a notice of appeal
5 has been filed or while a proceeding
6 is pending on appeal in the district
7 court or BAP, the decedent's personal
8 representative may be substituted as a
9 party on motion filed with that court's
10 clerk by the representative or by any
11 party. A party's motion must be
12 served on the representative in
13 accordance with Rule 8011. If the
14 decedent has no representative, any
15 party may suggest the death on the
16 record, and the appellate court may
17 then direct appropriate proceedings.

18 (2) ***Before a Notice of Appeal Is Filed—***
19 ***Potential Appellant.*** If a party
20 entitled to appeal dies before filing a
21 notice of appeal, the decedent's
22 personal representative—or, if there
23 is no personal representative, the
24 decedent's attorney of record—may
25 file a notice of appeal within the time
26 prescribed by these rules. After the
27 notice of appeal is filed, substitution
28 must be in accordance with (1).
29 (3) ***Before a Notice of Appeal Is Filed—***
30 ***Potential Appellee.*** If a party against
31 whom an appeal may be taken dies
32 after entry of a judgment or order in
33 the bankruptcy court, but before a
34 notice of appeal is filed, an appellant
35 may proceed as if the death had not

36 occurred. After the notice of appeal is
37 filed, substitution must be in
38 accordance with (1).
39 **(b) Substitution for a Reason Other Than Death.** If a
40 party needs to be substituted for any reason other
41 than death, the procedure prescribed in (a) applies.
42 **(c) Public Officer: Identification; Substitution.**
43 (1) ***Identification of a Party.*** A public
44 officer who is a party to an appeal or
45 other proceeding in an official
46 capacity may be described as a party
47 by the public officer's official title
48 rather than by name. But the appellate
49 court may require the public officer's
50 name to be added.
51 (2) ***Automatic Substitution of an***
52 ***Officeholder.*** When a public officer
53 who is a party to an appeal or other

54 proceeding in an official capacity
55 dies, resigns, or otherwise ceases to
56 hold office, the action does not abate.
57 Subject to Rule 2012, the public
58 officer's successor is automatically
59 substituted as a party. Proceedings
60 after the substitution are to be in the
61 name of the substituted party, but any
62 misnomer that does not affect the
63 parties' substantial rights may be
64 disregarded. An order of substitution
65 may be entered at any time, but
66 failure to enter an order does not
67 affect the substitution.

Committee Note

Rule 8023.1 is derived from Fed. R. App. P. 43 and governs substitution of parties upon death or for any other reason in appeals to the district court or bankruptcy appellate panel from a judgment, order or decree of a bankruptcy court.

Changes Made After Publication and Comment

Several stylistic changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

Rule 9006. Computing and Extending Time; Motions[6]

* * * * *

(b) Extending Time.

* * * * *

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

* * * * *

(B) file the ~~statement~~ <u>certificate</u> required by Rule 1007(b)(7), and the schedules and statements in a small business case under § 1116(3)—but only as permitted by Rule 1007(c).

(c) Reducing Time Limits.

* * * * *

[6] The changes indicated are to the restyled version of Rule 9006, not yet in effect. The Committee Note that follows the rule describes both restyling and substantive changes.

16 (2) ***When Not Permitted.*** The court may not
17 reduce the time to act under Rule 2002(a)(7),
18 2003(a), 3002(c), 3014, 3015, 4001(b)(2) or
19 (c)(2), 4003(a), 4004(a), 4007(c), 4008(a),
20 8002, or 9033(b). Also, the court may not,
21 under Rule 1007(c), reduce the time to file
22 the ~~statement~~ certificate required by Rule
23 1007(b)(7).

Committee Note

The language of Rule 9006 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Additionally, the following substantive changes have been made.

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

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

No comments were submitted.

Mortgage Proof of Claim Attachment

(12/23)

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

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

Part 5 : Loan Payment History from First Date of Default

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

Mortgage Proof of Claim Attachment: Additional Page

(12/23)

Case number: ______________________

Debtor 1: ______________________

Part 5 : Loan Payment History from First Date of Default

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

Official Form 410 (Committee Note) (12/23)

Committee Note

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

Changes Made After Publication and Comment

No changes were made after publication and comment.

Summary of Public Comment

- **William M.E. Powers III (BK-2022-0002-0011).** Says the change is unnecessary because the Bankruptcy Reform Act of 1994 abrogated *Rake v. Wade*, 508 U.S. 464 (1993). Also suggests that mortgage servicers do not routinely separate interest and principal components for delinquent installments and that this amendment will require them to upgrade their systems to accommodate the form change or make manual calculations.

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

1 **Rule 3002.1. ~~Notice Relating to~~ Chapter 13—**
2 **~~Claims~~ Claim Secured by a**
3 **Security Interest in the Debtor's**
4 **Principal Residence ~~in a Chapter~~**
5 **~~13 Case~~[2]**

6 **(a)** **In General.** This rule applies in a Chapter 13 case to
7 a claim that is secured by a security interest in the
8 debtor's principal residence and for which the plan
9 provides for the trustee or debtor to make contractual
10 ~~installment~~ payments. Unless the court orders
11 otherwise, the ~~notice~~ requirements of this rule cease
12 when an order terminating or annulling the automatic
13 stay related to that residence becomes effective.

---

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

[2] The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

14 **(b) Notice of a Payment Change; Home-Equity Line**
15 **of Credit; Effect of an Untimely Notice;**
16 **Objection.**
17 (1) ***Notice by the Claim Holder—In General.***
18 The claim holder must file a notice of any
19 change in the payment amount, ~~of an~~
20 ~~installment payment~~ including ~~any change~~
21 one resulting from an interest-rate or escrow-
22 account adjustment. ~~At least 21 days before~~
23 ~~the new payment is due,the~~ The notice must
24 be ~~filed and~~ served on:
25 - the debtor;
26 - the debtor's attorney; and
27 - the trustee.
28 Except as provided in (b)(2), it must be
29 filed and served at least 21 days before the
30 new payment is due. ~~If the claim arises from~~
31 ~~a home-equityline of credit, the court may~~

32 ~~modify this requirement.~~

33 **_(2) Notice of a Change in a Home-Equity Line_**

34 **_of Credit._**

35 (A) *Deadline for the Initial Filing; Later*

36 *Annual Filing.* If the claim arises

37 from a home-equity line of credit, the

38 notice of a payment change must be

39 filed and served either as provided in

40 (b)(1) or within one year after the

41 bankruptcy-petition filing, and then at

42 least annually.

43 (B) *Content of the Annual Notice.* The

44 annual notice must:

45 (i) state the payment amount due

46 for the month when the notice

47 is filed; and

48 (ii) include a reconciliation

49 amount to account for any

50 overpayment or
51 underpayment during the
52 prior year.
53 (C) *Amount of the Next Payment.* The
54 first payment due at least 21 days
55 after the annual notice is filed and
56 served must be increased or decreased
57 by the reconciliation amount.
58 (D) *Effective Date.* The new payment
59 amount stated in the annual notice
60 (disregarding the reconciliation
61 amount) is effective on the first
62 payment due date after the payment
63 under (C) has been made and remains
64 effective until a new notice becomes
65 effective.
66 (E) *Payment Changes Greater Than $10.*
67 If the claim holder chooses to give

68 annual notices under (b)(2) and the
69 monthly payment increases or
70 decreases by more than $10 in any
71 month, the holder must file and serve
72 (in addition to the annual notice) a
73 notice under (b)(1) for that month.
74 (3) ***Effect of an Untimely Notice.*** If the claim
75 holder does not timely file and serve the
76 notice required by (b)(1) or (b)(2), the
77 effective date of the new payment amount is
78 as follows:
79 (A) when the notice concerns a payment
80 increase, on the first payment due
81 date that is at least 21 days after the
82 untimely notice was filed and served;
83 or

84 (B) when the notice concerns a payment
85 decrease, on the first payment due
86 date after the date of the notice.
87 (4) ***Party in Interest's Objection.*** A party in
88 interest who objects to ~~the~~ a payment
89 change noticed under (b)(1) or (b)(2) may
90 file and serve a motion to determine
91 ~~whether the change is required to maintain~~
92 ~~payments under § 1322(b)(5)~~the change's
93 validity. Unless the court orders otherwise,
94 if no motion is filed ~~by~~ before the day
95 ~~before~~ the new payment is due, the change
96 goes into effect on that date.
97 **(c) Fees, Expenses, and Charges Incurred After the**
98 **Case Was Filed; Notice by the Claim Holder.**
99 The claim holder must file a notice itemizing all
100 fees, expenses, and charges incurred after the case
101 was filed that the holder asserts are recoverable

102 against the debtor or the debtor's principal
103 residence. Within 180 days after the fees,
104 expenses, or charges ~~were~~ are incurred, the notice
105 must be filed and served on the individuals listed
106 in (b)(1).~~:~~
107 ~~• the debtor;~~
108 ~~• the debtor's attorney; and~~
109 ~~• the trustee.~~
110 **(d) Filing Notice as a Supplement to a Proof of Claim.**
111 A notice under (b) or (c) must be filed as a
112 supplement to ~~the~~ a proof of claim using Form 410S-
113 1 or 410S-2, respectively. The notice is not subject
114 to Rule 3001(f).
115 **(e) Determining Fees, Expenses, or Charges.** On a
116 party in interest's motion ~~filed within one year after~~
117 ~~the notice in (c) was served~~, the court must, after
118 notice and a hearing, determine whether paying any
119 claimed fee, expense, or charge is required by the

120 underlying agreement and applicable nonbankruptcy
121 law. ~~to cure a default or maintain payments under~~
122 ~~§ 1322(b)(5).~~The motion must be filed within one
123 year after the notice under (c) was served, unless a
124 party in interest requests and the court orders a
125 shorter period.

126 **(f) Motion to Determine Status; Response; Court**
127 **Determination.**

128 (1) ***Timing; Content and Service.*** At any time
129 after the date of the order for relief under
130 Chapter 13 and until the trustee files the
131 notice under (g)(1), the trustee or debtor may
132 file a motion to determine the status of any
133 claim described in (a). The motion must be
134 prepared using Form 410C13-M1 and be
135 served on:

136 • the debtor and the debtor's
137 attorney, if the trustee is the
138 movant;
139 • the trustee, if the debtor is the
140 movant; and
141 • the claim holder.
142 (2) ***Response; Content and Service.*** If the claim
143 holder disagrees with facts set forth in the
144 motion, it must file a response within 21 days
145 after the motion is served. The response must
146 be prepared using Form 410C13-M1R and be
147 served on the individuals listed in (b)(1).
148 (3) ***Court Determination.*** If the claim holder's
149 response asserts a disagreement with facts set
150 forth in the motion, the court must, after
151 notice and a hearing, determine the status of
152 the claim and enter an appropriate order. If
153 the claim holder does not respond to the

154 motion or files a response agreeing with the
155 facts set forth in it, the court may grant the
156 motion based on those facts.
157 **(fg) ~~Notice of the Final Cure Payment.~~ Trustee's End-**
158 **of-Case Notice of Payments Made; Response; Court**
159 **Determination.**
160 (1) ***~~Contents of a Notice~~ Timing and Content.***
161 Within ~~30~~ 45 days after the debtor completes
162 all payments due to the trustee under a
163 Chapter 13 plan, the trustee must file a notice:
164 (A) stating ~~that the debtor has paid infull~~
165 ~~the~~ what amount ~~required~~, if any, the
166 trustee paid to the claim holder to cure
167 any default ~~on the claim~~and whether
168 it has been cured; ~~and~~
169 (B) ~~the~~ stating what amount, if any, the
170 trustee paid to the claim holder for
171 contractual payments that came due

172 during the pendency of the case and
173 whether contractual payments are
174 current as of the date of the notice;
175 andthe claim holder of itsobligation to
176 file and serve a response under (g).
177 (C) informing the claim holder of its
178 obligation to file and serve a response
179 respond under (g)(3).
180 (2) ***Serving the Notice Service.*** The notice must
181 be prepared using Form 410C13-N and be
182 served on:
183 • the claim holder;
184 • the debtor; and
185 • the debtor's attorney.
186 (3) ***Response.*** The claim holder must file a
187 response to the notice within 28 days after its
188 service. The response, which is not subject
189 to Rule 3001(f), must be filed as a

190 supplement to the claim holder's proof of
191 claim. The response must be prepared using
192 Form 410C13-NR and be served on the
193 individuals listed in (b)(1).
194 ~~(3) ***The Debtor's Right to File.*** The debtor may~~
195 ~~file and serve the notice if:~~
196 ~~(A) the trustee fails to do so; and the~~
197 ~~debtor contends that the final cure~~
198 ~~payment has been made andall plan~~
199 ~~payments have been completed.~~
200 (4) ***Court Determination of a Final Cure and***
201 ***Payment.***
202 (A) *Motion*. After service of the response
203 under (g)(3) or within 45 days after
204 service of the trustee's notice under
205 (g)(1) if no response is filed by the
206 claim holder, the debtor or trustee
207 may file a motion to determine

208 whether the debtor has cured all
209 defaults and paid all required
210 postpetition amounts on a claim
211 described in (a). The motion must be
212 prepared using Form 410C13-M2 and
213 be served on the entities listed in
214 (f)(1).
215 (B) *Response.* If the claim holder
216 disagrees with the facts set forth in the
217 motion, it must file a response within
218 21 days after the motion is served.
219 The response must be prepared using
220 Form 410C13-M2R and be served on
221 the individuals listed in (b)(1).
222 (C) *Court Determination.* After notice
223 and a hearing, the court must
224 determine whether the debtor has
225 cured all defaults and paid all

226 required postpetition amounts. If the
227 claim holder does not respond to the
228 motion or files a response agreeing
229 with the facts set forth in it, the court
230 may enter an appropriate order based
231 on those facts.

232 ~~**(g) Response to a Notice of the Final Cure Payment.**~~

233 ~~**(1)** ***Required Statement.*** Within 21 days after the~~
234 ~~notice under (f) is served, the claim holder~~
235 ~~must file and serve a statement that:~~

236 ~~(A) indicates whether:~~

237 ~~(i) the claim holder agrees that~~
238 ~~the debtor has paid in full the~~
239 ~~amount required to cure any~~
240 ~~default on the claim; and~~

241 ~~(ii) the debtor is otherwise~~
242 ~~current on all payments under~~
243 ~~§ 1322(b)(5); and~~

244 ~~(B) itemizes the required cure or~~
245 ~~postpetition amounts, if any, that the~~
246 ~~claim holder contends remain unpaid~~
247 ~~as of the statement's date.~~
248 ~~(2) ***Persons to be Served.*** The holdermust serve~~
249 ~~the statement on:~~
250 ~~• the debtor;~~
251 ~~• the debtor's attorney; and~~
252 ~~• the trustee.~~
253 ~~(3) ***Statement to be a Supplement.*** Thestatement~~
254 ~~must be filed as a supplement to the proof of~~
255 ~~claim and is not subject to Rule 3001(f).~~
256 ~~**(h) Determining the Final Cure Payment.** On the~~
257 ~~debtor's or trustee's motion filed within 21 days after~~
258 ~~the statement under (g)is served, the court must, after~~
259 ~~notice and ahearing, determine whether the debtor~~
260 ~~has cured the default and made all required~~
261 ~~postpetition payments.~~

262 **(ih) Claim Holder's Failure to Give Notice or**
263 **Respond**. If the claim holder fails to provide any
264 information as required by (b), (c), or (g)this rule, the
265 court may, after notice and a hearing, take one or both
266 of these actionsdo one or more of the following:
267 (1) preclude the holder from presenting the
268 omitted information in any form as evidence
269 in a contested matter or adversary proceeding
270 in the case—unless the court determines that
271 the failure was substantially justified or is
272 harmless; and
273 (2) award other appropriate relief, including
274 reasonable expenses and attorney's fees
275 caused by the failure and, in appropriate
276 circumstances, noncompensatory sanctions;
277 and
278 (3) take any other action authorized by this rule.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to allow assessments of a mortgage claim's status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Subdivision (a), which describes the rule's applicability, is amended to delete the word "installment" in the phrase "contractual installment payment" in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended to provide more detailed provisions about notice of payment changes for home-equity lines of credit ("HELOCs") and to add provisions about the effective date of late payment change notices. The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(2), a HELOC claimant may choose to file only annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than $10. This provision also ensures at least 21 days' notice before a payment change takes effect.

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim

holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease.

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

Subdivision (f) is new. It provides a procedure for assessing the status of the mortgage at any point before the trustee files the notice under (g)(1). This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time to become current before the case is closed. The procedure is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The claim holder then must respond if it disagrees with facts stated in the motion, again using an Official Form to provide the required information. If the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine the status of the mortgage claim. If the claim holder fails to respond or does not dispute the facts set forth in the motion, the court may enter an order favorable to the moving party based on those facts.

Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file a notice of final cure and payment. An Official Form has been adopted for this purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and

whether the default has been cured. It will also state the amount, if any, that the trustee has paid on contractual obligations that came due during the case and whether those payments are current as of the date of the notice. The claim holder then must respond within 28 days after service of the notice, again using an Official Form to provide the required information.

Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion, using the appropriate Official Form, may be filed after the claim holder responds to the trustee's notice under (g)(1), or, if the claim holder fails to respond to the notice, within 45 days after the notice was served. If the claim holder disagrees with any facts in the motion, it must respond within 21 days after the motion is served, using the appropriate Official Form. The court will then determine the status of the mortgage. A Director's Form provides guidance on the type of information that should be included in the order.

Subdivision (h) was previously subdivision (i). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. It also expressly states that noncompensatory sanctions may be awarded in appropriate circumstances. Stylistic changes have also been made to the subdivision.

Rule 8006. Certifying a Direct Appeal to the Court of Appeals[1]

* * * * *

(g) Request After Certification for ~~Leave to Take a Direct Appeal to~~ a Court of Appeals ~~After Certification~~ to Authorize a Direct Appeal. Within 30 days after the certification has become effective under (a), ~~a request for leave to take a direct appeal to a court of appeals must be filed~~ any party to the appeal may ask the court of appeals to authorize a direct appeal by filing a petition with the circuit clerk in accordance with Fed. R. App. P. 6(c).

Committee Note

Rule 8006(g) is revised to clarify that any party to the appeal may file a request that a court of appeals authorize a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal.

[1] The changes indicated are to the restyled version of Rule 8006, not yet in effect.

Official Form 410C13-M1 (12/25)

United States Bankruptcy Court

_______________ District of _______________

In re _____________________________, Debtor Case No. ________
Chapter 13

Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:________________ **Court claim no**. (if known):____________

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: ____

____
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ ___________________

b. Total amount of the prepetition arrearage paid, if known: $ ___________________

c. Allowed amount of postpetition arrearage, if any: $ ___________________

d. Total amount of postpetition arrearage paid, if known: $ ___________________

e. Total amount of arrearages paid: $ ___________________

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c): $ ___________________

b. Amount of postpetition fees, expenses, and charges paid: $ ___________________

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition contractual obligations: $ __________________

5. I ask the court for an order under Rule 3002.1(f)(3) determining the status of the mortgage claim addressed by this motion and whether the payments required by the plan to be made as of the date of this motion have been made.

Signed: _______________________________
(Trustee/Debtor)

Date: ____/____/________

Official Form 410C13-M1R (12/25)

United States Bankruptcy Court
_______________ District of _______________

In re _____________________________, Debtor Case No. ________
Chapter 13

Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

_____________________________ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:________________ **Court claim no**. (if known):____________

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: ____

____
City State ZIP Code

2. Arrearages

Check one:

- ❑ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, the debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The total arrearage amount remaining unpaid as of the date of this response is:

  $ ___________________.

3. Postpetition Contractual Payments

Check all that apply:

- ❑ The debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

  Date last payment was received on the mortgage: ____/_____/______

  Date next postpetition payment from the debtor is due: ____/_____/______

Amount of the next postpetition payment that is due: $____________

Unpaid principal balance of the loan: $____________

Additional amounts due for any deferred or accrued interest: $____________

Balance of the escrow account: $____________

Balance of unapplied funds or funds held in a suspense account: $____________

❑ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/______

❑ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is $_____________________.

4. Itemized Payment History

Include if applicable:

Because the claim holder asserts that the arrearages have not been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

____ Date ____/_____/______
Signature

Print ____ Title ____________________
Name

Company ____

If different from the notice address listed on the proof of claim to which this response applies:

Address ____

Number Street

____

City State ZIP Code

Contact phone (______) _____– _________ Email ________________________

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder’s authorized agent.

Fill in this information to identify the case:

Debtor 1 ______________________________

Debtor 2 ______________________________
(Spouse, if filing)

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

Case number ______________________

Official Form 410C13-N

Trustee's Notice of Payments Made

12/25

The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).

Part 1: Mortgage Information

Name of claim holder: ______________________________

Court claim no. (if known): ____________

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:
____
Number Street
____
____
City State ZIP Code

Part 2: Statement of Completion

On ____________, debtor completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: ___________ (web address).

Part 3: Amount Needed to Cure Default

	Amount
a. Allowed amount of prepetition arrearage, if any:	$ __________
b. Total amount prepetition arrearage paid by the trustee as of date of notice:	$ __________
c. Allowed amount of postpetition arrearage, if any:	$ __________
d. Total postpetition arrearage paid by the trustee as of date of notice:	$ __________
e. Total amount of arrearages paid as of date of notice	$ __________

Has the debtor cured all arrearages?
- ❑ Yes
- ❑ No

Part 4: Postpetition Contractual Payment

Check one:

- ❑ Postpetition contractual payments are made by the debtor.
- ❑ Postpetition contractual payments are paid through the trustee.

If the trustee has made postpetition contractual payments, complete a-c below; otherwise leave blank.

a. Total amount of postpetition contractual payments made by the trustee as of date of notice: $ __________

b. Is the debtor current on postpetition contractual payments as of date of notice?
- ❑ Yes
- ❑ No

c. Next mortgage payment due: ____/______ MM / YYYY

Part 5: Postpetition Fees, Expenses, and Charges

Amount of allowed postpetition fees, expenses, and charges: $ ___________

Amount of postpetition fees, expenses, and charges paid by the trustee as of date of notice: $ ___________

Part 6: A Response Is Required by Bankruptcy Rule 3002.1(g)(3)

Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.

✘ ____ Date ____/_____/________
Signature

Trustee ____
First Name Middle Name Last Name

Address ____
Number Street

____
City State ZIP Code

Contact phone (______) _____– __________ Email ______________________

Fill in this information to identify the case:

Debtor 1 ______________________________

Debtor 2 ______________________________
(Spouse, if filing)

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

Case number ______________________________

Official Form 410C13-NR

Response to Trustee's Notice of Payments Made

12/25

The claim holder must respond to the Trustee's Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(2).

Part 1: Mortgage Information

Name of claim holder: ______________________________

Court claim no. (if known): ____________

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

____
Number Street

____

____
City State ZIP Code

Part 2: Amount Needed to Cure Default

Check all that are applicable:

- ❑ The amount required to cure any prepetition arrearage has been paid in full.
- ❑ The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: $ ____________.
- ❑ The amount required to cure any postpetition arrearage has been paid in full.
- ❑ The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: $ ____________.

Part 3: Postpetition Contractual Payment

- ❑ Debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

  Date last payment was received on the mortgage: ____/_____/______

Date next postpetition payment from the debtor is due: ____/_____/______

Amount of the next postpetition payment that is due: $____________

Unpaid principal balance of the loan: $____________

Additional amounts due for any deferred or accrued interest: $____________

Balance of the escrow account: $____________

Balance of unapplied funds or funds held in a suspense account: $____________

❑ Debtor is not current on all postpetition contractual payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/______.

❑ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is $_____________________.

Part 4 Itemized Payment History

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the claim holder contends remain unpaid.

Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

❑ I am the claim holder.

❑ I am the claim holder's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

✘ ____ Date ____/_____/________
Signature

____
First Name Middle Name Last Name

____
Number Street

____
City State ZIP Code

Contact phone (_______) _____– __________ Email ___________________________

Official Form 410C13-M2 (12/25)

United States Bankruptcy Court

_______________ District of _______________

In re ______________________________, Debtor   Case No. ________
Chapter 13

Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:________________ **Court claim no**. (if known):____________

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: ____

____
City   State   ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: $ ___________________

b. Total amount of the prepetition arrearage paid, if known: $ ___________________

c. Allowed amount of postpetition arrearage, if any: $ ___________________

d. Total amount of postpetition arrearage paid, if known: $ ___________________

e. Total amount of arrearages paid: $ ___________________

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c): $ ___________________

b. Amount of postpetition fees, expenses, and charges paid: $ ___________________

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition contractual obligations: $ ___________________

5. I ask the court for an order under Rule 3002.1(g)(4) determining whether the debtor has cured all arrearages, if any, and paid all postpetition amounts required by the plan to be made as of the date of this motion.

Signed: _________________________________
(Trustee/Debtor)

Date: ____/____/________

Official Form 410C13-M2R (12/25)

United States Bankruptcy Court
_______________ District of _______________

In re ______________________________, Debtor   Case No. ________
Chapter 13

Response to [Trustee's/Debtor's] Motion to Determine Final Cure and Payment of the Mortgage Claim

_____________________________ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

Name of Claim Holder:________________ **Court claim no**. (if known):____________

Last 4 digits of any number used to identify the debtor's account: ___ ____ ____ ____

Property address: ____

____
City   State   ZIP Code

2. Arrearage Provided for by the Plan

Check one:

- ❑ As of the date of this response, Debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ❑ As of the date of this response, Debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The total arrearage amount remaining unpaid as of the date of this response is:

  $ ____________________.

3. Postpetition Contractual Payments

Check all that apply:

- ❑ Debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

  Date last payment was received on the mortgage: ___/___/____

  Date next postpetition payment from the debtor is due: ___/___/____

Amount of the next postpetition payment that is due: $____________

Unpaid principal balance of the loan: $____________

Additional amounts due for any deferred or accrued interest: $____________

Balance of the escrow account: $____________

Balance of unapplied funds or funds held in a suspense account: $____________

❑ Debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: ____/_____/______.

❑ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is $_____________________.

4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the arrearages have been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

____ Date ____/_____/______
Signature

Print ____ Title ____________________
Name

Company ____

If different from the notice address listed on the proof of claim to which this response applies:

Address ____
Number Street

____
City State ZIP Code

Contact phone (______) _____– _________ Email ________________________

The person completing this response must sign it. Check the appropriate box:

- ❑ I am the claim holder.
- ❑ I am the claim holder's authorized agent.

Committee Note

Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R are new. They are adopted to implement new and revised provisions of Rule 3002.1 that prescribe procedures for determining the status of a home mortgage claim in a chapter 13 case.

Official Forms 410C13-M1 and 410C13-M1R implement Rule 3002.1(f). Form 410C13-M1 is used if either the trustee or the debtor moves to determine the status of a home mortgage at any time during a chapter 13 case prior to the trustee's Final Notice of Payments Made. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim so far in the case. If the debtor, rather than the trustee, has been making the postpetition contractual payments, the trustee should state in part 4 that she has paid $0. If the debtor files the motion, he should provide information about any payments he has made and any payments made by the trustee of which the debtor has knowledge.

Within 21 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M1R, if it disputes any facts set forth in the motion. *See* Rule 3002.1(f)(2). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, or, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period, using the format of Official Form 410A, Part 5.

Official Form 410C13-N is to be used by a trustee to provide the notice required by Rule 3002.1(g)(1) to be filed at the end of the case. This notice must be filed within 45 days after the debtor completes all payments due to the trustee, and it requires the trustee to report on the amounts the trustee paid to cure any arrearage, for postpetition mortgage obligations, and for postpetition fees, expenses, and charges. The trustee must also provide her disbursement ledger for all payments she made to the claim holder.

Within 28 days after service of the trustee's notice, the holder of the mortgage claim must file a response using Official Form 410C13-NR. *See* Rule 3002.1(g)(3). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. If the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period, using the format of Official Form 410A, Part 5. The response, which is not subject to Rule 3001(f), must be filed as a supplement to the claim holder's proof of claim.

Official Forms 410C13-M2 and 410C13-M2R implement Rule 3002.1(g)(4). Form 410C13-M2 is used if either the trustee or the debtor moves at the end of the case to determine whether the debtor has cured all arrearages and paid all required postpetition amounts. If the trustee files the motion, she must disclose the payments she has made to the holder of the mortgage claim. If the debtor, rather than the trustee, has been making the postpetition contractual payments, the trustee should state in part 4 that she has paid $0. If the debtor files the motion, he should provide information about any payments he has made and any

payments made by the trustee of which the debtor has knowledge.

Within 21 days after service of the trustee's or debtor's motion, the holder of the mortgage claim must file a response, using Official Form 410C13-M2R, if it disputes any facts set forth in the motion. *See* Rule 3002.1(g)(4)(B). The claim holder must indicate whether the debtor has paid the full amount required to cure any arrearage and whether the debtor is current on all postpetition payments. The claim holder must provide a payoff statement, or, if the claim holder says that the debtor is not current on all payments, it must attach an itemized payment history for the postpetition period, using the format of Official Form 410A, Part 5.

TAB 4B

Draft – May 15, 2023

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 30, 2023
Washington, D.C. and on Microsoft Teams

The following members attended the meeting in person:

Circuit Judge Daniel A. Bress
Bankruptcy Judge Rebecca Buehler Connelly
Jenny Doling, Esq.
Bankruptcy Judge Michelle M. Harner
District Judge Jeffery P. Hopkins
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Marcia Krieger
Bankruptcy Judge Catherine Peek McEwen
Debra L. Miller, Esq.
Professor Scott F. Norberg
Damian S. Schaible, Esq.
District Judge George H. Wu

The following persons also attended the meeting in person:

Professor S. Elizabeth Gibson, Reporter
Professor Laura B. Bartell, Associate Reporter
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Bankruptcy Judge Laurel M. Isicoff, Liaison to the Committee on the Administration of the Bankruptcy System
H. Thomas Byron III, Administrative Office
S. Scott Myers, Esq., Administrative Office
Christopher Pryby, Rules Law Clerk
Andrew Ballentine, Shumaker
Kyle Cutts, Baker Hostelter
Alex Dahl, Lawyers for Civil Justice
Gilbert Keteltas, Baker Hostelter
Gary Rudolph, Sullivan Hill
Nancy Whaley, National Association of Chapter 13 Trustees

The following persons attended the meeting remotely:

Draft

Professor Catherine T. Struve, reporter to the Standing Committee
Professor Daniel R. Coquillette, consultant to the Standing Committee
Circuit Judge William J. Kayatta, liaison from the Standing Committee
Circuit Judge Bernice Donald, former Committee member
Tara Twomey, former Committee member
Carly E. Giffin, Federal Judicial Center
Tim Reagan, Federal Judicial Center
Brittany Bunting-Eminoglu, Administrative Office
Shelly Cox, Administrative Office
Bridget M. Healy, Esq., Administrative Office
Dana Yankowitz Elliott, Administrative Office
Shari Barak, LOGS Legal Group
Pam Bassel, Chapter 13 trustee
Michael Bates, USAA Counsel
Edward Boll, Dismore & Shohl
Hilary Bonial, Bonial & Associates, P.C.
Margaret Burks, Chapter 13 trustee, Cincinnati
Katherine Cacho, Valon
Andrea Celli, no affiliation
Andrea L. Cobery, U.S. Bank
Jeffrey Collier, Attorney for Locke D. Barkley, Trustee
Jeffrey Cozad, USBC, California
Ana DeVilliers, Office of Laurie K. Weatherford, Chapter 13 Trustee
Abbey Dreher, BDF Law Group
Marcy Ford, Trott Law
Mark Francisco, USBC, California
John Hawkinson, Journalist
James Nani, Bloomberg
Brian Nicolas, KMP Law Group
Nicole Noel, Kass Shuler Law Firm
Lauren O'Neil Funseth, Wells Fargo
Lance E. Olsen, McCarthy Holthus, LLP
Pam Quincy, Black Knight
Henry Sally, Texas Tech Law School
Andrew Spivack, Brock & Scott PLLC
Linda St. Pierre, McCalla Raymer Leibert Pierce, LLC
Joy Vanish, Black Knight
Benjamin Varela, USBC, California
Vicki Vidal, Black Knight
Mary Viegelahn, Chapter 13 Trustee
Mary Vitartas, Padgett Law Group
Alice Whitten, Wells Fargo Legal
Kristin Zilberstein, Padgett Law Group

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Discussion Agenda

1. Greetings and Introductions

Judge Rebecca Connelly, chair of the Advisory Committee, first introduced Xavier Jorge of the Judicial Security Division, who provided a brief security announcement. Judge Connelly then welcomed the group and thanked everyone for joining this meeting, including those attending virtually. She thanked the members of the public attending in person or remotely for their interest. Two members of the Committee have transitioned off the Committee, and Judge Connelly thanked Circuit Judge Bernice Donald and Tara Twomey for their participation on the Committee. Joining the Committee are Circuit Judge Daniel A. Bress, District Judge Jeffery Hopkins, attorney Jenny Doling, Bankruptcy Judge Michelle Harner, and Professor Scott F. Norberg, and she welcomed them. She also acknowledged the presence of observers both in person and remotely.

Judge Connelly then reviewed the anticipated timing of the meeting and stated that there would be a mid-morning break and another break for lunch. In-person participants were asked to turn on their microphones when they spoke and state their name before speaking for the benefit of those not present. Remote participants were asked to keep their cameras on and mute themselves and use the raise-hand function or physically raise their hands if they wished to speak. She noted that the meeting would be recorded.

2. Approval of Minutes of Meeting Held on September 15, 2022

The minutes were approved.

3. Oral Reports on Meetings of Other Committees

(A) ***January 4, 2023, Standing Committee Meeting***

Judge Connelly gave the report.

(1) **Joint Committee Business**

(a) ***Pro Se Electronic-Filing Project***

Professor Catherine Struve provided the Standing Committee a status report on discussions at the fall Advisory Committee meetings on the suggestions related to electronic filing by self-represented litigants.

(b) ***Presumptive Deadline for Electronic Filing***

Professor Catherine Struve provided the Standing Committee a status report on consideration of a suggestion to change the filing deadline from midnight local time to an earlier time. The Federal Judicial Center conducted a survey of electronic-filing deadlines in state courts

to identify courts that require filings at a time other than midnight, and the survey was shared with the Standing Committee.

(2) **Bankruptcy Rules Committee Business**

The Standing Committee approved one amended Official Form for publication for public comment.

Publication for Public Comment
Official Form 410

The Standing Committee approved for publication for public comment amendments to the proof-of-claim form to eliminate the language that restricts use of a uniform claim identifier ("UCI") to electronic payments in chapter 13. It would allow the UCI to be used in cases filed under all chapters of the Bankruptcy Code and for all payments, whether or not electronic.

Information Items

Judge Connelly, Professor Gibson, and Professor Bartell also reported on three information items.

(a) Report concerning proposed amendment to Rule 8006(g) (Certifying a Direct Appeal to a Court of Appeals), and work with Appellate Rules Committee concerning possible amendment to Appellate Rule 6.

(b) Update concerning work on proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case) and related forms.

(c) Update on bankruptcy consideration of suggestions regarding electronic filing by unrepresented individuals.

(B) ***Oct. 13, 2022, and Mar. 29, 2023, Meetings of the Advisory Committee on Appellate Rules***

Judge Bress provided the report.

(1) **Direct Appeals**

At the October 13, 2022, meeting, the reporter to the committee introduced a possible amendment to Fed. R. App. P. ("FRAP") 6 in conjunction with the Bankruptcy Committee's proposed amendment to Bankruptcy Rule 8006(g) in direct appeals. Judge Bybee appointed California Supreme Court Justice Kruger and Danielle Spinelli as a subcommittee to consider the

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draft amendment. At the March 29, 2023, meeting, amendments to FRAP 6 were approved for publication. The FRAP amendment and the Bankruptcy Rule amendment will both be presented to the Standing Committee for approval of publication at its next meeting.

(2) **Timing for Appeals from Bankruptcy Matters Decided in District Court**

The Appellate Committee also approved for publication an amendment to FRAP 6(a) dealing with the time to appeal in a bankruptcy case. The problem is raised by the different time to appeal in an ordinary civil case—28 days after the judgment—and in a bankruptcy case—14 days after judgment. The issue is which period is applicable when a bankruptcy matter is decided not by a bankruptcy court but by a district court. At the meeting of the Bankruptcy Rules Committee in March 2022, the Committee recommended that the Appellate Committee amend FRAP 6(a) to deal with the issue, suggesting proposed language. The Appellate Committee is still working on appropriate language.

(3) **Pro Se Electronic Filing**

The Appellate Committee also continues to discuss the joint project on pro se electronic filing.

(4) **Costs on Appeal**

The Appellate Committee approved for publication an amendment to FRAP 39 in light of the Supreme Court's decision in *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), which held that Rule 39 does not permit a district court to alter a court of appeals' allocation of the costs listed in subdivision (e) of that Rule and which invited clarification of the procedure for bringing arguments to the court of appeals. The amendment clarifies (1) that the court of appeals decides which parties must bear the costs and, if appropriate, in what percentages, and (2) that the actual calculation and taxation of costs (based on the allocation decided by the court of appeals) may be done by the court of appeals, the district court, or the clerk of either. Additional amendments specify how the court of appeals should decide a motion to allocate costs after the mandate issues. Because the provisions of FRAP 39 that are proposed for amendment are mirrored in Bankruptcy Rule 8021, our Appellate Subcommittee should consider conforming changes.

(5) **Amicus Briefs**

The Appellate Committee continues to discuss whether FRAP 29 should be amended to require additional disclosure by amici curiae. No proposed amendment has yet been proposed, but the working group is considering amendments that would allow filing of amicus briefs without the consent of the parties or leave of court if they "bring to the court's attention relevant matter not already brought to its attention by the parties." There was also discussion about what disclosures the amici should be required to make about their identities and relationships to parties

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in the case. Bankruptcy Rule 8017 contains similar provisions dealing with briefs of amicus curiae in bankruptcy cases, so we are following this discussion.

(6) **Social Security Numbers in Court Filings**

The suggestion of Sen. Ron Wyden of Oregon that was also filed as Suggestion 22-BK-I to remove redacted social security numbers from all filed documents was considered by the Appellate Committee. The Appellate Committee views this as primarily an issue for the Bankruptcy Committee and will be following our discussions on the matter.

The next meeting of the Appellate Rules Advisory Committee will be on Oct. 19, 2023, in Washington, D.C.

(C) ***Oct. 12, 2022, and Mar. 28, 2023, Meetings of the Advisory Committee on Civil Rules***

Judge McEwen provided the report.

(1) **Personnel Update; Bob's Rules for Rules**

The Civil Rules Committee has a new chair, Southern District of Florida District Judge Robin Rosenberg. She takes over for outgoing chair District Judge Bob Dow of the Northern District of Illinois. Judge Dow left to become Counselor to the Chief Justice, replacing long-time counselor Jeff Minear. A mantra invoking Judge Dow's name at the Civil Rules meeting was his three-point analysis for whether rulemaking is desired: First, is there a problem? Second, can rulemaking solve the problem—is there a rules-based solution? Third, does the rulemaking create harm or unintended consequences?

(2) **December 1, 2023, Rules Effective-Date Cycle**

Becoming effective on December 1, 2023, are new Civil Rule 87 and amendments of Civil Rules 6 and 15. Added to Rule 6 is Juneteenth as a federal holiday, and we have a companion Bankruptcy Rule amendment of Rule 9006. A fix to Rule 15 eliminates an unintended gap in the time permitted for filing an amended pleading without leave of court. Bankruptcy Rule 7015 makes Rule 15 applicable to adversary proceedings. Rule 87 is the CARES Act emergency rule, and we have a companion in new Bankruptcy Rule 38.

(3) **Civil Rule 12**

The Civil Rules Committee recommended final approval by the Standing Committee of an amendment to Civil Rule 12 that restructures part (a) of the rule. The restructuring is to clarify that the time specified for serving a responsive pleading under any subsection of Rule 12(a)—not just under (a)(1)—does not override a different deadline set by statute. In other words, the proposed amendment will apply to all of (a); its placement falls after (a) and before

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(a)(1)–(3). Subsections (a)(2) and (3) deal with suits against the United States or its officers or employees. If approved, the amendment would become effective December 1, 2024.

Bankruptcy Rule 7012 makes some of Rule 12 [(b)-(i)] applicable to adversary proceedings, but not subsection (a). We should look at Rule 7012(a) to determine if a parallel amendment is warranted. If so, Rule 7012(a) might be amended accordingly:

(a) *When Presented*. If a complaint is duly served, the defendant must serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court <u>or another time is specified under a federal statute</u>.

According to the Committee's report (in Dec. 2021) to the Standing Committee proposing publication, "statutes setting shorter times than the 60 days provided by paragraph (2) exist. It is not clear whether any statute inconsistent with paragraph (3) [also providing 60 days] exists now."

(4) **Privilege Logs; Rules 16(b)(3)(B)(iv) and 26(f)(3)(D)**

The Civil Rules Committee recommended publication by the Standing Committee of proposed amendments to these two rules regarding the parties' intended "timing and method for complying with Rule 26(b)(5)(A)," the "privilege log" provision added in 1993. The Rule 26 amendment requires the parties to discuss and report the timing and method for compliance with the privilege log provision, and the Rule 16 amendment suggests that the court include the timing and method in its scheduling order. The amendment also adds "Management" to the subtitle of Rule 16(b) so that it would read "Scheduling and Management." Bankruptcy Rules 7016 and 7026 make Rules 16 and 26 applicable to adversary proceedings, so we will continue to monitor the amendments. Bankruptcy Rule 9014 makes Rule 26(b)(5)'s privilege log provision applicable to contested matters, but not Rule 16 or Rule 26(f), so if the amendments are ultimately passed, the timing and method discussion would not be required in a contested matter.

(5) **Civil Rule 41**

The Civil Rules Committee's Rule 41 Subcommittee has been studying Civil Rule 41 and the extent of dismissals under the rule, e.g., part of an action. The subcommittee sought feedback from practitioners to get a better sense of their experiences with the rule. Various proposed amendments have been discussed, and the subcommittee will consider the views expressed and return with a proposal. Bankruptcy Rule 7041 makes Civil Rule 41 applicable in adversary proceedings, so we will monitor the developments.

(6) **Civil Rule 45**

Reporter Rick Marcus reported that the Civil Rules Committee's Discovery Subcommittee still has before it the meaning of "delivery" of a subpoena but that the Committee will probably end up doing "nothing." The subcommittee may survey state rules for service of

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subpoenas and be informed thereby. Bankruptcy Rule 9016 makes Civil Rule 45 applicable in bankruptcy cases, so we will monitor the developments. The Bankruptcy Committee can take up the issue on its own, particularly given that original process in an adversary proceeding may be served by mail.

(7) **Filings under Seal**

The Discovery Subcommittee has also been considering whether the Subcommittee should attempt to devise a set of procedural features applicable to motions to seal. Whatever is proposed would be applicable in bankruptcy, so we will continue to monitor this issue.

(8) **Civil Rule 7.1**

The Civil Rules Committee continues to consider whether any changes to the corporate parent disclosure rule are required to deal with ownership by a parent company of a parent company—the "grandparent problem." Another issue has to do with a suggestion requiring parties to certify that they have checked the assigned judge or judges' publicly available financial disclosures through the newly created database on judges' stock holdings. The Committee will continue to explore how better to require disclosures of parties' affiliates, particularly grandparent relationships. Bankruptcy Rule 7007.1 presents the same issues.

(9) **Pro Se Filing and E-filing**

Reporters for all the committees are deliberating on giving pro se filers authority to file electronically; Professor Struve provided an interim update on the working group's progress, and she is on the agenda to update us.

(10) **IFP Practices and Standards**

The Civil Rules Committee has received various submissions over the past couple of years relating to the great variations in standards employed to qualify for in forma pauperis status among different districts and among judges in the same district. The Committee discussed creating a joint subcommittee or other joint study of in forma pauperis standards, which could craft a civil rule or provide uniform and good practice guidance on IFP standards. The AO has a Working Group on this issue. There is no proposal for present action, and the sentiment is that a nationwide fix is not likely given differences in cost of living.

(11) **Civil Rule 55**

Rule 55 says that court clerks "must," in prescribed circumstances, enter defaults and then default judgments. But practice in many districts does not adhere to this directive. FJC's Emery Lee is studying why many districts require that all default judgments be entered by a judge and why a few seem to require that the initial default also be entered by a judge. Bankruptcy Rule 7055 makes Civil Rule 55 applicable in adversary proceedings.

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(12) **End-of-the-Day Time for E-Filing**

The Civil Rules Committee agreed to drop any proposal to change the time for e-filing from midnight to an earlier time.

(13) **Shall, Must, Should, May**

The Civil Rules Committee had an interesting discussion on the differences between these directives in rules. For instance, "should" indicates that the thing likely ought to be done or is an "information forcing" mechanism.

The next meeting of the Civil Advisory Committee will be on October 17, 2023, in Washington, D.C.

(D) ***Dec. 8–9, 2022, Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

The Bankruptcy Committee met in December in Washington, DC, and will next meet on June 8–9 in Boston. They are always happy to have Judge Connelly attend their meetings as liaison from our committee.

(1) **Legislative Proposal Regarding Chapter 7 Debtors' Attorney Fees**

The Bankruptcy Committee recently considered certain structural concerns about access to justice and access to the bankruptcy system related to the compensation of chapter 7 debtors' attorneys. Current law prohibits post-petition collection of unpaid attorney fees for representing a chapter 7 debtor. Chapter 7 debtors' attorneys have developed several methods to ensure that they are paid for their work, including bifurcation of their fees and services under separate prepetition and post-petition agreements. Bankruptcy courts, in turn, have spent considerable time in otherwise straightforward chapter 7 cases wrestling with the legality of, and appropriate parameters for, these payment structures.

At its June 2022 meeting, the Bankruptcy Committee recommended that the Judicial Conference seek legislation to amend the Bankruptcy Code to (1) make chapter 7 debtors' attorney's fees due under a fee agreement nondischargeable; (2) add an exception to the automatic stay to allow for post-petition payment of chapter 7 debtors' attorney fees; and (3) provide for judicial review of fee agreements at the beginning of a chapter 7 case to ensure reasonable chapter 7 debtors' attorney fees. The Conference adopted this recommendation at its September 2022 session, and the AO transmitted the legislative proposal to Congress in November.

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Congressional staff has started reviewing the proposal. If Congress enacts amendments to the Code based on this position, at a minimum, conforming changes to the Bankruptcy Rules would be required.

(2) **Proposed Rule Amendments Related to Remote Public Access to Witness Testimony**

The Bankruptcy Advisory Committee has as new business a suggestion from the National Bankruptcy Conference proposing rule amendments addressing remote testimony in contested matters. The Bankruptcy Committee is very interested in the future of remote public access to court proceedings and remote witness testimony in certain types of proceedings. The committee will be interested in continuing to monitor the Rules Committee's consideration of this suggestion at future meetings and look forward to any updates Judge Connelly may share at their June meeting.

(3) ***City of Chicago v. Fulton***

Finally, the Bankruptcy Committee has continued to receive updates on the status of proposed amendments to Rule 7001(a), which were just published for public comment and which respond to issues raised by Justice Sotomayor in her concurrence in City of Chicago v. Fulton. The Bankruptcy Committee continues to be willing to provide any input that our Committee requests regarding those public comments.

The Bankruptcy Committee looks forward to continuing to collaborate and work together in the future.

Judge Connelly suggested that the Bankruptcy Rules Committee will have to be ready to act quickly to make rule changes when and if the legislative proposal becomes law.

Subcommittee Reports and Other Action Items

4. **Report by the Consumer Subcommittee**

(A) ***Recommendation to Republish Proposed Amendments to Bankruptcy Rule 3002.1 in Light of Public Comments***

Judge Harner introduced the recommendation, and Professor Gibson provided the report.

At the fall meeting and by email afterwards, the Advisory Committee approved for republication changes to the proposed Rule 3002.1 amendments made in response to comments submitted after the 2001 publication. Since that time, the Subcommittee has considered and approved additional changes to the amendments.

Many of the new changes are stylistic. They were suggested by the style consultants after they reviewed the rule approved in the fall. Form numbers were also filled in. The new substantive changes consist of the following:

- In (f)(1) the cut-off date for filing a motion to determine the status of a mortgage was changed from when the case is closed to when the trustee files the end-of-case notice under (g)(1). This change was made to prevent an overlap with the motion under (g)(4).

- In (g)(1), rather than restricting the applicability of the subdivision to cases in which "the trustee has made any payments on a claim described in (a)," it was changed to apply at the end of any chapter 13 case in which the debtor completes all payments to the trustee. This change was made because one purpose of the trustee's end-of-case notice is to trigger a response from the claim holder that reveals the status of the mortgage on its books. If the trustee or debtor disagrees with that response, either can seek a court determination under (g)(4). This procedure should be available in a non-conduit district even if the trustee made no default payments.

- Subdivision (g)(4) was expanded to refer to the required use of Official Forms and to prescribe requirements for the response to the motion. Also the provision about timing if the trustee does not file the required notice was deleted in order to avoid suggesting that not filing is permissible. If the trustee does not file, the debtor can still seek determination under (f).

- The Committee Note was changed to reflect the changes to the rule.

Judge Harner expressed her view that the revisions clarify the rule. Judge Connelly observed that (g)(1) does not require completion of payments "under the plan" but instead requires completion of payments to the trustee to trigger the obligation to file the end-of-case notice.

Judge Bates pointed out that, in line 129 on p. 94 of the Agenda Book, there is an extra word "based" that should be removed.

With that correction, the Advisory Committee recommended that the revised rule be sent to the Standing Committee for republication.

(B) ***Consider Proposed Amendment to Rule 5009(b) (Suggestion 22-BK-D and 23-BK-K)***

Professor Gibson provided the report.

Last summer the Subcommittee began considering a suggestion submitted by Professor Laura Bartell (22-BK-D) to change the timing of the notice to chapter 7 and 13 debtors under Rule 5009(b), which reminds them of their need to file a statement of completion of a course on personal financial management. Since that time Tim Truman, a chapter 13 trustee, has submitted a related suggestion (22-BK-K) to change the deadline for chapter 13 debtors to file the statement.

Professor Bartell examined all the chapter 7 and chapter 13 cases filed in 2019 on the interactive Federal Judicial Center Integrated Database. She discovered that several thousand cases—primarily chapter 7—were closed without a discharge because of the failure to submit a statement of completion of a course concerning personal financial management.

Professor Bartell suggested that, to reduce the number of cases where this problem occurs, the Rule 5009(b) notice should be earlier than 45 days after the first date set for that meeting when the debtors are still focused on the case and are in touch with counsel and are likely still at the address they had when they filed their petition.

Mr. Truman's suggestion focuses on the deadlines in Rule 1007(c) for filing the statement or certificate of course completion. He suggested that the deadline for chapter 13 debtors be the same as the one for chapter 7 debtors—60 days after the first date set for the meeting of creditors—rather than when the debtor makes the last payment required by the plan. He noted that, if the course is of value, it would have value to debtors as they attempt to complete their chapter 13 plans rather than at the end of the process.

Professor Gibson described the statutory provisions governing the financial management course and the rules adopted to implement those provisions. The Subcommittee shares Professor Bartell's desire to reduce the number of individual debtors who go through bankruptcy but do not receive a discharge because they either fail to take the required course on personal financial management or merely fail to file the needed documentation of their completion of the course.

Recognizing that probably no set of rules can achieve perfect compliance with the personal-financial-management-course requirements, the Subcommittee would like to improve compliance with them to the extent possible. To determine how the rules might best achieve this goal, the Subcommittee considered a series of issues:

- *Should the Rule 5009(b) notice be sent earlier?* Professor Bartell has made some persuasive arguments for why moving up the notice might increase compliance: it is likely to be more effective if it is received around the time of the meeting of creditors because it is more likely to reach the debtor and to be at a time when the debtor is still in touch with her lawyer.

- *Should more than one reminder notice be sent?* The answer to this question requires consideration of the additional burden that would be imposed on the clerk's office and the possible effectiveness of an additional prod to debtors that did not file a certificate of course completion after the first notice.

- *What date or dates should be selected?* The Subcommittee has decided that the timing of the reminder notice should not run from the conclusion of the meeting of creditors, but instead from the petition date or the first date set for the meeting of creditors. In considering the timing of one or two reminder notices, the Subcommittee sought a time period that would allow many debtors to comply on their own without the need for any reminder but would give chapter 7 debtors who needed reminding sufficient time to act.

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- *Should the timing of the 5009(b) notice be the same for chapter 7 and chapter 13 debtors?* The Subcommittee thought yes. Whether or not the filing date for chapter 13 debtors is made the same as for chapter 7 debtors, as Mr. Truman suggests, an early reminder date is probably useful for chapter 13 debtors so that fewer will wait until the end of the case to take the course.

- *Should the deadlines for filing the certificates of course completion be changed?* Mr. Truman has suggested that the deadline for chapter 13 debtors be the same as the one for chapter 7 debtors—60 days after the first date set for the meeting of creditors—rather than when the debtor makes the last payment required by the plan. In the course of the Subcommittee's discussion, however, the idea was raised that the rules should impose no deadline for filing the certificate. The Code only requires that the course be taken before a discharge can be granted, and Subcommittee members were concerned that some debtors might be deprived of a discharge merely because they failed to file their certificates by the times specified in the rules. Many courts will extend the time, as they are permitted to do, but some courts hold the debtors to the current deadlines and close the case without a discharge.

The Subcommittee explored a number of approaches to the problem and coalesced around two proposals.

1) Remove the deadline for filing the certificate of course compliance currently contained in Rule 1007(c)(4) and make the deadline the date discharge would otherwise be issued. This change would be easy to accomplish by eliminating the deadline in Rule 1007(c)(4) and those rules that refer to the deadline. The official form amendments that put the deadlines in them would be changed.

2) Provide for two reminder notices to be send by the clerk under Rule 5009(b). One would be relatively early in the case, and then a follow-up notice.

The Subcommittee was divided on the timing of the two notices. The two alternatives were:

a) One at the time Rule 5009(b) currently provides (45 days after the date first set for the meeting of creditors under § 341) and a second one 75 days after that date.

b) One 45 days after the petition is filed and a second one 60 days after the date first set for the meeting of creditors (the current date).

Professor Gibson provided draft language to reflect both options and encouraged comments by the Advisory Committee.

Judge Harner thanked Professor Bartell for providing academic research to support the need for a change in the rules, something that is often lacking in the rules process. She noted that

the Subcommittee had lengthy and robust discussions on this suggestion because it is so important. There is a strong consensus that the requirement should not be an impediment or barrier to discharge. She thinks eliminating the deadline for filing the certificate the districts that currently close the case immediately after the deadline and require a motion to reopen to file the certificate might not do that. But she noted that we need input from Ken Gardner on behalf of the clerks' offices as to how cases would be closed if there is no deadline for filing.

The Subcommittee also likes the idea of the same dates for both chapter 7 and chapter 13 cases and moving up the dates for the reminders. It just could not reach consensus on what those dates should be, so perhaps feedback from the Advisory Committee could help with that.

Judge Kahn said that he strongly supports the direction the Subcommittee is taking and wants maximum flexibility. He fears that some courts may view the reminder notices as deadlines and will be perhaps stricter than they have in the past about granting additional time to debtors. In chapter 13 cases no one can find the debtors 60 months after confirmation so an earlier date for compliance is certainly better. This is a difficult issue, and we should consider putting language in the rule to make clear that this is not to be interpreted strictly and extensions should be freely granted, as under Rule 4008(a) which allows the court to extend the time to file at any time. He is not opposed to the "no deadline" approach but is concerned about it.

Judge Harner agreed that, if there were no deadline, the notices could indicate that they are not to be interpreted strictly as an impediment to discharge and that the court has discretion to grant additional time or require additional notices.

Judge Isicoff stated that in her district they do not enforce strict guidelines for closing cases. If the certificate is not filed by the deadline, the case is closed without prejudice. With respect to chapter 13 plans, the problem is that many debtors file multiple plans before one is confirmed, so the timing of the notice should turn on plan confirmation rather than the filing or meeting of creditors, or it may impose an unnecessary burden on the clerk's office.

Judge McEwan suggested that the notice state that the case will be closed without discharge within a certain number of days, and emphasize that the debtor will be required to seek to reopen the case and will have to pay a reopening fee to do so. That gives the debtor a financial incentive to file the certificate promptly.

Deb Miller stated that she thinks the date for both notices needs to key off the same event. So if the first notice is so many days after the first date set for the meeting of creditors, the second notice should also be additional days after the same date. She said that those dates are automatically populated, and it would be much easier for the trustees and clerks' offices to use a single starting point for the notices.

Jenny Doling said that she has filed 7000 cases and since 2005 she has required her clients to take the financial management course before the meeting of creditors under § 341. In both chapter 7 and chapter 13 they make it mandatory and her staff calls debtors to ensure they take the course prior to that date. She suggested that the § 341 notice include language telling the

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debtors to take their credit counseling course by that date and that would eliminate having to send two notices.

Judge Harner invited Ken Gardner to provide a perspective from the clerk's office. Mr. Gardner stated that having the same dates for chapter 7 and chapter 13 makes a lot of sense. It is easier to administer and provides clarity to the debtors. The suggestion to put something in the § 341 notice is good, and some courts do that. He thinks the date for the notice should run from the petition date rather than the date set for the § 341 meeting. And he agrees that it should be included in the § 341 notice. The problem is that there is a lot of information in the § 341 notice that nobody reads and he is not sure that it will be effective. But it is probably good and doesn't cost anything to include it. That is what the Advisory Committee approved in the fall for chapter 7 § 341 meeting notices. The rule should make it clear that no additional notice need be filed if the certificate has been filed. Good lawyers make sure their clients file early because they know that is required for the discharge. The second notice has been very effective for most courts in getting those certificates actually filed. So multiple notices are good, but one or two makes sense. As far as closing the case, every court closes cases a little bit differently, and a lot of that is judge-driven. Once the case is closed, the debtor cannot get a discharge without reopening and paying a reopening fee. This is kind of a "gotcha" situation, when the debtor has done everything they were supposed to do, but at the end of the case they don't get the discharge because they didn't file the financial management certificate. Perhaps there should not be a fee to reopen the case if the case is reopened within a certain number of days after closing in order to file the certificate.

Judge Harner suggested that perhaps if the certificate is filed with the motion to reopen the reopen fee should be waived. She thought some courts do that.

Judge Connelly noted that when there is a deadline for filing the certificate in a chapter 13 case it may be prior to the date when the payments are concluded and if the debtor does not meet the deadline the debtor will have no incentive to complete the plan because the debtor will not be able to get a discharge. That supports eliminating any deadline. As for the dates of the notices, sixty days after the first date set for the meeting of creditors is the deadline for objections to discharge, and the court is directed under Rule 4004(c) to issue a discharge in a chapter 7 case if there is no objection, so she does not think the second notice can be later than the date the court is supposed to enter the discharge. We are not trying to create confusion with different deadlines, or lengthen the process to get a chapter 7 discharge, or make it more difficult to get a chapter 13 discharge. We are just trying to encourage completion of the financial management course.

Judge Harner stated that the discussion had been very helpful, and she asked if Ken Gardner agreed that it makes no sense to require chapter 13 notices to be sent out before a plan is confirmed, given that there may be multiple plans submitted. He agreed. She then said that the Subcommittee will have to reflect on that, because if the time for the notice is moved up it may be before the plan is confirmed. It will also be well before plan payments have been made, so perhaps there should be a final reminder that the failure to file the certificate is holding up discharge.

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Deb Miller stated that in her district the trustee objects to the closing of the case without discharge based on failure to file a financial management certificate. And that way the debtor gets one more opportunity to file. She does not know how many trustees do that, because the debtor is in fact not entitled to discharge if they have not filed the certificate, but the motion gives the debtors another last chance.

Judge Harner stated that there is no perfect solution, but the Subcommittee will consider all the discussion at the Advisory Committee. Professor Gibson stated that we should hold the proposed amendment to the § 341 meeting notice until this suggestion is resolved because the amendment was to give notice of the deadline and there may not be a deadline. The Subcommittee will aim at having a proposal by the fall meeting.

There was some final discussion about whether the notice of plan completion in chapter 13 could include a final reminder to file the financial management certificate, or alternatively an additional notice from the clerk's office at the end of a chapter 13.

Judge Isicoff said that in her district if the financial management certificate has not been filed by the end of a chapter 13 case, the judges immediately issue an order to show cause why the case should not be closed without discharge. If they can find the debtor, that procedure works.

Jenny Doling asked whether a final notice could be included in the notice of intent to file a final report, but Deb Miller said that the notice of plan completion is before the final report so that final report is not a good vehicle for that notice. The notice of plan completion would be a better place for the notice and would place the burden on the trustee rather than the clerk's office.

Professor Bartell thanked the Advisory Committee for their attention to her suggestion and noted that in Judge Kahn's district the judges issue show cause orders in chapter 7 cases as well, before closing cases for failure to file the certificate, and that is a very effective technique. Districts that do that have very few cases in which discharge is denied for failure to file the certificate. But we cannot by rule require judges to hold show cause hearings before closing cases without discharge.

Judge Harner suggested that something might be said about that practice in the Committee Note.

(C) ***Consider Proposed Amendment to Rule 1007(h) (Suggestion 22-BK-H)***

Professor Gibson provided the report.

Judge Catherine McEwen has submitted a suggestion to require the reporting of a debtor's acquisition of postpetition property in the chapter 11 case of an individual or in a chapter 12 or 13 case. Judge McEwen noted that Rule 1007(h) (Interests Acquired or Arising After Petition) requires the filing of a supplemental schedule only for property covered by

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§ 541(a)(5)—that is, property acquired within 180 days after the filing of the petition by bequest, devise, or inheritance; as a result of a property settlement with a spouse or a divorce; or as beneficiary of a life insurance policy. Not included within Rule 1007(h) are other postpetition property interests that become property of the estate under § 1115, 1207, or 1306.

Judge McEwen suggested that, for the sake of transparency, the rules should impose a deadline for the disclosure of these other postpetition property acquisitions. She pointed out that a number of bankruptcy courts have imposed such requirements by local rule or administrative order.

Professor Gibson noted that no Code or Bankruptcy Rule currently requires that a debtor has to disclose the acquisition of this additional postpetition property (although § 541(f) does require a chapter 7, 11 or 13 individual debtor to file with the court upon request a copy of his or her federal income tax returns while the case is pending which would give some indication that there had been a change in income). The reason it is not required is that it would be so sweeping. So during a chapter 13 case, every new purchase could trigger a disclosure requirement and every change in income. When there is a disclosure requirement, it has been limited to specific types of property or acquisitions that are sufficiently substantial to affect the debtor's financial circumstances, such as any substantial acquisitions of property or significant changes in monthly income.

The Subcommittee basically followed Judge Robert Dow's rule and questioned whether a problem exists that needs to be solved. There is no indication that courts are being prevented from requiring chapter 12 and 13 debtors and individual debtors in chapter 11 cases to supplement their schedules to report acquisitions of property or income increases while their cases are pending. Indeed, courts have found several ways to impose such a requirement. A change is not necessary to be consistent with the Code, because the Code does not require this disclosure. And when Congress imposed the requirement for the filing of postpetition tax returns in 2005, it did not require disclosure of postpetition property. Therefore, the only reason for a rule would seem to be to create uniformity because some districts require disclosure, and some do not.

But chapter 13 practice is notoriously nonuniform in a number of respects, and our experience with the national chapter 13 plan showed us that courts have well-developed practices and are reluctant to change them. Each thinks its own practice is the best.

The Subcommittee also considered the challenge of drafting an effective amendment to Rule 1007(h) to include property under §§ 1115, 1207, and 1306. It is not feasible to require disclosure of all postpetition property that comes within those provisions. Either specific types of property need to be stated, or the rule needs to describe some degree of impact on the debtor's financial condition, such as substantial or significant. A specification of types of property gives greater guidance, but it runs the risk of being underinclusive. The descriptive route may be too vague.

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In the end, the Subcommittee concluded that bankruptcy courts have developed their own practices for whether and how they require disclosure of postpetition property by debtors in chapter 11, 12, and 13 cases, and it did not see any reason to disturb those practices in the interest of uniformity. Accordingly, the Subcommittee recommended that no further action be taken on this suggestion.

Judge Harner invited Judge McEwan to comment on her suggestion. Judge McEwan said that the Eleventh Circuit has interpreted the Bankruptcy Code to require ongoing disclosure because postpetition interests become part of the bankruptcy estate. She is not suggesting that every can of peas be disclosed, or a new yoga outfit; she thinks the proposed rule should require disclosure of significant assets, and that would go a long way to ensure that debtors and creditors are not harmed.

She noted that in the Eleventh Circuit there is a well-developed body of judicial estoppel law that is driven by non-disclosure in chapter 13 cases. Debtors lose the right to pursue undisclosed claims, and creditors lose the benefit of those claims. She said that she mostly sees nondisclosure of personal injury cases, employment discrimination cases and the like. There was a chapter 13 case in the Eleventh Circuit with a debtor who paid her creditors 100% and after she emerged from bankruptcy she sued Tyson Foods for postpetition employment discrimination and she was prevented from bringing that claim because of judicial estoppel even though her creditors were paid in full. So this is a problem in her circuit.

She noted that courts apply a rule of reasonableness to disclosure, even with respect to the initial statements and schedules in a case. Disclosure applies to meaningful assets. She said that she was asking for guidance not only for uniformity, but to solve the problem and to bring to the attention of debtors' counsel the importance of disclosure because it may end up hurting their own clients. She is making no suggestion on the appropriate drafting, and whether the standard should be "substantial" or "significant" or "meaningful" or "valuable" assets but suggests that there is a problem here that the Advisory Committee should address. She suggests that the Subcommittee look at the various approaches adopted by districts that require disclosure and pick the best one.

Judge Harner emphasized that the Subcommittee took the suggestion seriously, and she knows that these assets can have an impact on both debtor and creditors. From the Subcommittee's perspective it was a design challenge, and the Subcommittee thought it was best to leave the issue to local courts to resolve.

Deb Miller suggested that perhaps Schedule A/B could impose an obligation to amend if the information on it changes during the case. Or in the Statement of Financial Affairs it could say there is an ongoing duty to provide new information. Maybe if the requirement were on a form rather than in a rule, it would not be as objectionable to the local bars.

Judge Connelly asked whether an approach that would focus solely on claims or lawsuits might be a sort of middle ground rather than requiring disclosure of all types of assets? It sounds like that may be the major problem here.

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Judge Kahn described a case in which a debtor failed to disclose receiving substantial insurance proceeds, and the case was dismissed with a bar to refiling for a period of one year. A rule would codify the requirement to make disclosure but wouldn't change what happens when disclosure is not made. Perhaps a materiality standard might be appropriate, and you could put it in Rule 1009 (requiring disclosure if the schedules become materially inaccurate).

Judge Harner suggested that the suggestion be remanded to the Subcommittee for further consideration. Without objection, the suggestion was remanded.

(D) ***Consider Recommendation for Final Approval of Proposed Amendments to Rule 7001 (Types of Adversary Proceedings)***

Professor Gibson provided the report.

In August 2022 the Standing Committee published a proposed amendment to Rule 7001 (Types of Adversary Proceedings) that would allow the turnover of certain estate property to be sought by motion rather than by adversary proceeding. The original suggestion for an amendment was prompted by Justice Sotomayor's concurring opinion in *City of Chicago v. Fulton,* 141 S. Ct. 585, 595 (2021), in which she wrote that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned."

Only one comment on the proposed amendment was submitted in response to publication (BK-2022-0002-0009). Bonial & Associates, P.C., a creditor law firm, wrote that it supported the amendment because it "will streamline the turnover process and should create consistency nationally." The comment noted the inconsistencies in current turnover practices from one district to another and stated that "[c]reditors would benefit from one national and consistent approach to turnovers across all jurisdictions." It was interesting to read this comment because the Subcommittee was focused on debtors and benefitting them, and the comment said that the change would be helpful to creditors as well.

The Subcommittee recommended final approval of the amendments and submission to the Standing Committee as published.

The Advisory Committee approved the proposed amendment to Rule 7001 as published and agreed to submit it to the Standing Committee for final approval.

(E) ***Consider Recommendation for Final Approval of Amended Rule 1007(b)(7) (Lists, Schedules, Statements, and Other Documents; Time Limits), Eliminating the Need for Official Form 423, and Conforming Amendments to Rules***

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1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2) (Suggestion 19-BK-G)

Professor Bartell provided the report.

In August 2022 the Standing Committee published a proposed amendment to Rule 1007(b)(7) to make the rule inapplicable to debtors who are not required to complete an instructional course concerning personal financial management as a condition to discharge and to require an individual debtor who has completed the course to file a certificate of course completion issued by the provider rather than a statement on Official Form 423.

Also published were conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2) to replace the word "statement" in each of those rules with the word "certificate."

There were no comments on the proposed amendments. The Subcommittee recommended final approval of the amendments and submission to the Standing Committee as published.

The Advisory Committee approved the proposed amendment to Rule 1007(b) and the conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2) as published and agreed to submit them to the Standing Committee for final approval.

5. **Report by the Forms Subcommittee**

(A) ***Consider Recommendation for Publication of New Official Forms Related to Proposed Rule 3002.1 (Official Forms 410C13-M1, 410C13-M1R, 410C13-M2, 410C13-M2R, 410C13-N, and 410C13-NR)***

Judge Kahn introduced the recommendation, and Professor Gibson provided the report.

In 2021 the Standing Committee published five forms drafted to implement proposed amendments to Rule 3002.1 (Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, 410C13-10R). Because of the substantial number of comments that were submitted about the rule amendments, the Subcommittee deferred considering the comments submitted on the forms until after the Consumer Subcommittee completed its recommendations on changes to be made to the rule in response to comments. At last fall's Advisory Committee meeting, the Consumer Subcommittee presented its recommendations, which were approved. Since then, the Consumer Subcommittee has made some additional changes to the Rule 3002.1 draft, for which it is seeking approval at this meeting.

The Forms Subcommittee has now considered changes to the forms in response to the comments submitted after their publication and reflecting the proposed changes to the Rule 3002.1 amendments. The new forms no longer include a mandatory midcase-trustee notice of the

status of the mortgage. Instead, either the trustee or the debtor may choose to file a motion to determine the status of the mortgage claim at any point during the case prior to the trustee's Final Notice of Payments Made. Official Form 410C13-M1 was drafted for that purpose. No distinction is made between conduit and non-conduit cases. The moving party—either the trustee or debtor—must only provide the information that she has knowledge of. Official Form 410C13-M1R is the form for the claim holder's response to that motion if it disputes anything in the motion to determine status.

At the end of a successful chapter 13 case, the trustee is required to file a notice of payments made on the mortgage. Official Form 410C13-N was drafted for that purpose. The trustee must also provide the disbursement ledger for all payments made to the claim holder or show how it can be accessed online. The claim holder then must file a response, using Official Form 410C13-NR. The claim holder must indicate whether the debtor has paid the full amount required to cover any arrearage and whether the debtor is current on all postpetition payments. If the claim holder says the debtor is not current, it must attach the itemized payment history. The response must be filed as a supplement to the claim holder's proof of claim, and they should be able to do this without hiring a lawyer.

If either the trustee or debtor wants a final determination of the mortgage's status at the end of the case, he can file a Motion to Determine Final Cure and Payment, using Official Form 410C13-M2. If the trustee files the motion, the trustee must again disclose the payments the trustee made to the holder of the mortgage claim. The claim holder, if it disputes any facts in the motion, must then file a response, using Official Form 410C13-M2R.

The only mandatory forms would be Official Form 410C13-N, the end-of-case notice of payments made by the trustee, and any response to that notice by the claim holder. All other motions would be discretionary. The Subcommittee hopes that this approach responds to some of the concerns that were raised in the comments, particularly about non-conduit cases and how the trustee would be able to provide information in those districts.

The Subcommittee recommended that the revised forms be submitted to the Standing Committee for republication.

Judge Kahn stated that the Subcommittee tried to word the language in the six forms, not only to match the revisions to Rule 3002.1, but also to be flexible considering not only the conduit/non-conduit practices among different courts in the country, but also the different holdings of different courts regarding what are payments "under the plan" by ensuring there was no language in the forms that indicated a substantive conclusion on that issue. The Subcommittee also made the (f) process permissive rather than mandatory on the trustees and the trustees need not respond unless they disagree. That leaves it to the debtors who have been paying directly in non-conduit cases to file this notice to get a status. Then (g) is a mandatory process on both sides. So even in a non-conduit case where the trustee cannot provide information about the mortgage status at end of the case and files the information at zero, the claim holder must still respond with the mortgage status according its records.

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Deb Miller said that an (f) or (g) motion is actually a RESPA request for information, and she suggested adding language to the forms that would make that clear to prevent claim holders from charging debtors for completing and filing the response. Creditors are not allowed to charge for payoff statements under RESPA.

Professor Bartell asked whether there was language Ms. Miller was suggesting, and Ms. Miller said she would supply it after the meeting. Professor Bartell then noted that, although the entire Subcommittee worked very hard on these amendments, everyone appreciated what Ms. Miller did on this project and that she went above and beyond what anyone could have expected of a subcommittee member. Others echoed that sentiment. Ms. Miller thanked all those chapter 13 trustees and others who provided input on the rule and forms, and she thinks they are better for it.

Judge Harner commended the Subcommittee for its work and said she sees a lot of Rule 3002.1 issues in her district. But she expressed concern about including language with respect to RESPA on the forms because she fears that may be taking a view on a substantive issue. She suggested that the Subcommittee discuss that.

Judge Connelly emphasized that the forms were intended to be usable in all districts with different practices.

Judge Kahn asked whether the RESPA issue could be addressed in the Advisory Committee Notes, but then reflected that it would not be appropriate.

Professor Gibson suggested getting the proposed language from Ms. Miller and circulating it to the Subcommittee by email and then to the Advisory Committee for a vote if we wanted to get the forms before the Advisory Committee in June along with the rule for republication. Alternatively, the forms could wait for another meeting, because forms take one year less than rules for promulgation, so they could still go into effect at the same time as the amended rule even if we waited.

Judge Kahn suggested approving the forms as presented and considering the RESPA point when comments after publication are considered so the rule and forms would be published at the same time. If the Subcommittee and the Advisory Committee approve a change by email before we present these forms to the Standing Committee, we can still publish them together with the rule.

Jenny Doling commented that she often sees the lenders try to shift the cost of responding onto the debtors and that is a cost that debtors outside of bankruptcy would never bear, so she thinks language labeling these motions as RESPA requests is important. She suggested changing the title of the forms to include “Request for Information” in the title along with the description of the motion.

Judge McEwan noted that the form already requires the claim holder to itemize all fees and costs assessed to the date of the statement, and they would have to disclose this fee. Ms.

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Miller said that the claim holders take the position that the fee was incurred after the date of the statement, so it does not have to be disclosed.

Scott Myers stated that the RESPA issue could be raised as a comment in response to publication. Professor Gibson expressed concern that a post-publication change to add language referring to RESPA might itself be significant enough to require republication. Scott Myers said that republication of the forms would not delay the effective date of the amended rule and forms because the forms take a year less.

Deb Miller suggested adding "Request for Information" in the caption of the (f) and (g) motions forms, so they would be titled "Request for Information and Motion . . . ." Then we could get comments on the RESPA issue with publication. But Professor Struve questioned whether the motions are really "requests for information" under RESPA. It is her impression that requests for information must actually set forth the information that is requested, and she asked whether these motions forms do that. Professor Gibson agreed that this is a valid point, because the forms reveal information rather than asking for it.

Tom Byron asked about whether something would have to be added to the Committee Note as well. Professor Gibson said that she would be reluctant to do so, because such a note would be taking a substantive position on whether the form was subject to RESPA.

Judge Kahn again suggested approving the forms as presented but also sending them back to the Subcommittee for consideration on whether additional language regarding RESPA should be proposed. If no further changes are agreed upon, the forms will be published in their current form with the amended rule. If further changes are recommended, we can vote by email. Professor Gibson suggested that the Subcommittee meet within the next two weeks. Judge Bates stated that the worst outcome would be for the forms to be changed after publication next year in a way that required republication.

The Advisory Committee recommended that the revised forms be sent to the Standing Committee for republication in their current form, subject to any changes the Advisory Committee may approve upon recommendation of the Subcommittee before they are presented to the Standing Committee.

(B) ***Consider Recommendation for Final Approval of Amendment to Official Form 410A, Part 3 (Suggestion 22-BK-A)***

Professor Bartell provided the report.

In August 2022 the Standing Committee published a proposed amendment to Official Form 410A Proof of Claim Attachment A, Part 3 (Arrearage as of Date of the Petition) to replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest."

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We received one comment on the proposed amendment from William M.E. Powers III of Powers Kirn in Moorestown, NJ (BK-2022-0002-0011). Mr. Powers suggested that the change is unnecessary because the Bankruptcy Reform Act of 1994 abrogated *Rake v. Wade*, 508 U.S. 464 (1993). He also suggests that mortgage servicers do not routinely separate interest and principal components for delinquent installments and that this amendment will require them to upgrade their systems to accommodate the form change or make manual calculations. Such a change is also "likely to confuse many people, including pro se debtors" because the amounts may differ from those set out in the promissory note. He suggested that Official Form 410A already has so much information in it that it is "already difficult and confusing to individuals who do not work with it on a regular basis."

The proposed amendment is intended to further the requirements of § 1322(e). To the extent that the underlying agreement (which governs the amount of interest that must be paid to cure a default under a chapter 13 plan) provides for interest only on principal amounts that are in arrears, but not on interest or other amounts payable under the agreement, the court must be able to determine how much of the arrearages is principal. The amended form will facilitate that determination.

It is true that the change imposes an additional burden on the mortgage servicers, but it gives the debtor and the chapter 13 trustee the information necessary to determine whether the plan is treating the creditor's claim correctly.

The Subcommittee decided not to make any change in response to this comment and recommended that the Advisory Committee give final approval to the amended form and Advisory Committee Note and change in the Instructions and submit them to the Standing Committee for final approval.

Judge Isicoff stated that creditors often object to rules changes by saying "this is not the way we do it," so she did not put much credence in that comment. She has had lenders on the stand who could not testify as to what was principal and what was interest. She thinks this is an important change and supports it.

Ms. Doling also supported the change and said that her district is seeing a significant increase in "zombie" mortgages that went dormant for years and now there is equity in the property and the trustees cannot currently get this information from servicers.

The Advisory Committee gave final approval to the amended Official Form 410A with the accompanying Advisory Committee Note and change in the Instructions as published and agreed to submit them to the Standing Committee for final approval.

6. **Report of the Privacy, Public Access, and Appeals Subcommittee**

(A) ***Consider Suggestion 22-BK-I to Require Redaction of the Entire Social Security Number from Public Court Filings, Including the Last Four Digits of***

the Number, and Recommendation of No Action Regarding Suggestion 23-BK-A to Stop Sending the Debtor's SSN to Creditors

Professor Bartell provided the report.

Senator Ron Wyden of Oregon sent a letter to the Chief Justice of the United States in August 2022, in which he suggested that federal court filings should be "scrubbed of personal information before they are publicly available." Portions of this letter, suggesting that the Rules Committees reconsider a proposal to redact the entire social security number ("SSN") from court filings, have been filed as a suggestion with each of the Rules Committees. The Bankruptcy Rules suggestion has been given the label of 22-BK-I.

Michael Gieseke, an employee of a chapter 12 and chapter 13 trustee, goes further, suggesting in 23-BK-A that Rule 2002(a)(1) be amended to remove the requirement that creditors receive the full SSN of a debtor and instead receive only the last four digits of the SSN or taxpayer-identification number (with only the trustee receiving the full SSN).

There have been many amendments to the rules over the past twenty years intended to safeguard personal information. Extensive amendments were made to rules and forms in 2003 to limit disclosure of a party's SSN or other identifiers.

A new Rule 9037 was adopted in 2007 pursuant section 205(c)(3) of the E-Government Act of 2002, Pub. L. No. 107-347. That section required the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of the documents and the public availability . . . of documents filed electronically." The Rule precludes inclusion in any electronic or paper filing with the court (among other identifying information) an individual's SSN, and allows only the last four digits of the SSN to be included unless the court orders otherwise. All versions of Official Form 309, Meeting of Creditors Notices, were amended to provide to the public only the last four digits of any individual debtor's SSN or taxpayer-identification number, though the full version of such number is provided to creditors in the case.

Suggestions have been made since then proposing that the full SSN not be included on the version of Official Form 309 sent to creditors, or that only the last four digits of the SSN be included on that notice. The Subcommittee has rejected those suggestions because creditors and other participants in the bankruptcy case need that information.

The Subcommittee sees no reason to revisit Mr. Gieseke's suggestion that creditors be denied the full SSN of a debtor. As for Senator Wyden's suggestion, the Subcommittee believes that there are two alternative approaches to the suggestion.

First, the Advisory Committee could decide not to act on the suggestion. That approach might be adopted if the Advisory Committee takes the view (as does the Subcommittee) that there does not seem to be any demonstrated problem of SSN fraud stemming from the disclosure of the truncated SSN in bankruptcy filings. In addition, the Subcommittee has been informed that the Committee on Court Administration and Case Management of the Judicial Conference of the

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United States (CACM) has requested the Federal Judicial Center to design and conduct studies regarding the inclusion of sensitive personal information in court filings and in social security and immigration opinions that would update the 2015 FJC privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings. The Advisory Committee might choose to defer consideration of the suggestion until that study is completed.

Moreover, § 342(c)(1) statutorily requires that the truncated SSN be included on all notices "required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court." The Subcommittee is unsure how broadly § 342(c)(1) should be interpreted. What constitutes a "notice"? If the debtor sends a form, is that a "notice"? In many cases, courts order debtors to send documents to creditors that in other jurisdictions are sent by the clerk or its designee. Although rule changes could be made to eliminate truncated SSNs on notices sent by the clerk, if those same notices are sent by the debtor the truncated SSN would be required under § 342(c)(1). This would create a lack of uniformity between districts and within districts, depending on who was given the responsibility for sending the notice, and might require separate Official Forms to be used when the debtor sends them as opposed to someone else, a complication that—while not insurmountable—is undesirable.

An alternative approach would be for the Advisory Committee to respond to the suggestion by making changes to Bankruptcy Rules and forms eliminating the truncated SSN whenever possible on the grounds that the inclusion of the redacted SSN in bankruptcy court filings (except where required by the Bankruptcy Code) is not necessary. However, the Subcommittee is not confident that it has sufficient information to reach the conclusion that there is no benefit to including the truncated SSN in bankruptcy filings. For example, it was suggested that including the truncated SSN on the notice of discharge (Official Form 318 and others) would benefit debtors by providing them a document that could be used to obtain new credit after the bankruptcy case is concluded. It is also possible that there may be some technological method for eliminating truncated SSNs from filed documents in CM/ECF. The Subcommittee would want to gather additional information, from the Advisory Committee, clerks' offices, bankruptcy judges, and perhaps the Federal Trade Commission, as to whether eliminating the truncated SSN would be problematic.

If the suggestion were adopted, it would require amending those rules that currently contemplate filing redacted SSNs.

Professor Bartell said that the Subcommittee invites comments from the Advisory Committee.

Judge Krieger suggested following Judge Robert Dow's three-part analysis for determining whether a rule change should be made and first ask whether there is a problem. At this point, we do not know whether there is a problem, nor do we know what remedy would be appropriate. She moved to defer consideration of this suggestion until the FJC study is completed and we can analyze then what the scope of the problem is and what action should be taken.

Tom Byron said that CACM and the FJC are still in the development stage about the project, and that we don't know the parameters or scope of what the FJC will be studying. One possibility will be the extent to which the current rules are being complied with. That information might not be relevant to the issue of full redaction raised by the suggestion. He would suggest that, until we know the scope of the FJC project, it might be hard to predict whether that study will be informative to the question presented by the suggestion. Judge Krieger said that is exactly why she supports deferring consideration of the suggestion until we know more.

Judge Harner supported Judge Krieger's motion as the only prudent course of action. But we do need to be responsive to Sen. Wyden and let him know what we are doing. She thinks it would be desirable if we could have input on the scope of the FJC study. Perhaps it could include an investigation of the extent to which disclosure of the last four digits of a social security number exposes individuals to potential identify theft. She doesn't think that occurs, but perhaps a study could be designed to test that. On the other hand, we have to consider the benefits to a debtor of having a document evidencing discharge that has the last four digits of the social security number on it. If we could have input on the study, we would want to know the rate at which the last four digits exposed individuals to identity theft or other harms, because that is what we want to protect against. Judge Krieger accepted the comment as a friendly amendment to her motion to request those designing the study to include that sort of information to the extent they can.

Carly Giffin said that Mr. Byron was correct that the project is still in its early stages, but right now they are looking at an update and an expansion of the earlier FJC studies. So they are going to be looking at more kinds of personally identifying information and also at types of forms and cases that weren't considered some at the last studies. Most importantly for bankruptcy, they are looking at the proof of claim, which was not looked at the last time. They will also be looking at whether the disclosure was by the person themselves just disclosing their own personal information, or whether it was a third party and what kind of documents and cases this is most likely to happen in. Right now the scope of this study would not include questions of how has this information been used or not been used. They do not contemplate a risk/benefit analysis of disclosing truncated social security numbers. She said she would relay this conversation to her colleagues who are designing the study.

Mr. Byron stated that the current proposal for study is quite extensive and he urged caution before adding anything to the broad, burdensome study they contemplate. Ms. Griffin agreed. She said that a risk/benefit analysis would be a separate study in itself.

Judge McEwan noted that use of truncated social security numbers for identification is pervasive in society and that if it really were an issue there would have been studies undertaken by now by the financial services, medical industries, and others who use those as a means of identification.

Judge Hopkins asked whether the DOJ has any insight on the risks of disclosure. Dave Hubbert said that although the Department can respond to specific requests for information and

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decide what they would choose to share, they have the same issues we are discussing (about how to gather information and its validity). The Department may not need the same information that we need for rulemaking in deciding where to put resources and how to attack certain problems, but they are happy to make inquiries and try to respond with any information that is useful to the Committee.

In light of the discussion, Judge Harner suggested that it is wise to get further information. As a Subcommittee member, she does not feel she has adequate information to make a decision. So she supports waiting for the CACM/FJC study and determining what other avenues of information are available to inform the Subcommittee's decision, such as other agencies or organizations.

Ken Gardner stated that identity theft has not been an issue for the clerk's office, which illustrates the question of whether there is a problem here that needs to be addressed. It isn't an issue in his court.

Judge Kahn emphasized that one of the other issues discussed by the Subcommittee was the importance of this information to creditors to connect the filing with the right person. Banks and especially the IRS and other governmental entities feel strongly that they need this information to identify the debtor. He would hate for the clerk's office to get inundated with questions about the identity of a debtor, because that would be the worst thing that could happen.

Judge Wu said that the problem is not with the court system, but actually a lot of people make filings with the court that have this type of sensitive information. Attorneys should have redacted the social security number and they haven't. Should someone have to look at every single filing to make sure that the things that should have been done by the attorneys and other people were done? He doesn't know how to solve that problem.

There was some discussion about whether full social security numbers are being included on forms, as opposed to or as well as on attachments filed with forms and motions. The debtor can of course choose to disclose his or her own social security number, but there are concerns that attorneys are failing to redact when they should. Perhaps it is not a problem with the courts but with the debtors and their attorneys.

Ms. Doling stated that she really needs to see the last four digits of the social security number because in her district many debtors have the same last name and live at the same address and you need to determine the identity of the debtor for the filing.

The Advisory Committee approved the motion to defer consideration of the suggestion until after the CACM/FJC study is released and any additional information needed is acquired.

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7. Report of the Appeals and Cross Border Insolvency Subcommittee

(A) *Consider Recommendation for Final Approval of New Rule 8023.1 (Suggestion 21-BK-O)*

Judge Bress and Professor Bartell provided the report.

In August 2022 the Standing Committee published a proposed new rule on substitution of parties to apply in bankruptcy cases much like FRAP 43 applies in appellate cases. We received no comments on the proposed new rule. The only changes since publication reflect comments of the style consultants. The Subcommittee recommended final approval of the new rule and submission to the Standing Committee.

The Advisory Committee gave final approval to the rule and agreed to submit it to the Standing Committee for final approval.

8. Report of the Restyling Subcommittee

(A) *Recommendation for Final Approval of the Restyled Bankruptcy Rules*

Judge Krieger noted that we are now at the end of the restyling process, and she praised the efforts of the Subcommittee members, the reporters, the style consultants, and the Administrative Office personnel who worked on this project. She noted that the number of bankruptcy rules restyled exceeded all of the civil, appellate, criminal and a good part of the evidence rules. We also used a methodology for our meetings that pre-pandemic was innovative with everyone looking at the rules on screens from their disparate locations and making comments and changes in real time. Now that is commonplace, but then it was novel. It took the coordination of the FJC and AO to make that happen and she thanked them.

She singled out Judges Ben Kahn and Ben Goldgar for their work on the Subcommittee, noting that Judge Goldgar continued even after he was no longer a member of the Advisory Committee. She also thanked Deb Miller, Ramona Elliott, Ken Gardner and Carly Griffin for their perspectives. She made a presentation to the reporters of copies of Dreyer's English signed by all the members of the Advisory Committee with thanks for their work.

Professor Bartell then presented the report. She noted that there are two parts to the Subcommittee report.

First, the Subcommittee is presenting to the Advisory Committee the last group of rules that were published for comments. Parts VII-IX of the Restyled Federal Rules of Bankruptcy Procedure (the "Restyled Rules") were published for comments as USC-RULES-BK-2022-0002 in August 2022. There were five sets of comments. Professor Bartell apologized to career law clerk Jeffrey Cozard for not mentioning his comments in the cover memo to the Advisory Committee. Although his comments on Parts I–VI were untimely and not considered, all of his comments on Parts VII–IX are reflected in the draft rules.

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All comments were carefully considered by the Associate Reporter and the style consultants, and recommendations on changes to the published rules were presented to the Restyling Subcommittee. The reactions of the Subcommittee were then reviewed again with the style consultants, and the drafts presented in the Agenda Book reflect these discussions.

Each rule included in the Agenda Book describes the changes made since publication and all comments received that were specific to that rule. Professor Bartell invited any questions or comments on those restyled rules. There were none.

Second, Parts I and II of the restyled Federal Rules of Bankruptcy Procedure were given final approval after publication by the Advisory Committee in March 2021 and by the Standing Committee in June 2021. Parts III–VI were given final approval after publication by the Advisory Committee in March 2022 and by the Standing Committee in June 2022. (Parts VII–IX are being presenting for final approval by the Advisory Committee at this meeting.)

Since they were approved, Parts I–VI have been modified in minor respects for three reasons.

1) there have been substantive amendments to the existing Federal Rules of Bankruptcy Procedure that needed to be reflected in the restyled versions of those rules;

2) the style consultants did a “top-to-bottom” review of all the rules, and made additional stylistic and conforming changes; and

3) in reviewing the proposed changes of the style consultants, the Subcommittee suggested its own additional corrections and minor changes.

The Subcommittee looked at all these rules and has approved the revisions to the amended restyled rules. It does not believe that any of the amendments require republication.

Professor Bartell again thanked Judge Krieger, Professor Gibson, the Subcommittee and the style consultants for their work on this project.

The Subcommittee asked for the Advisory Committee to give final approval to all the restyled rules and submit them to the Standing Committee for final approval.

The Advisory Committee gave final approval to the Restyled Bankruptcy Rules and agreed to submit them to the Standing Committee for final approval.

Draft

9. Update on the Work of the Pro Se Electronic-Filing Working Group

Professor Struve gave the report.

Professor Struve thanked the Committee for the excellent and really insightful discussion last fall. She said that this report is in the nature of a progress report on the investigations that we are making on questions that arose during the fall and winter discussions in the rules committees. Dr. Giffin, Dr. Tim Reagan, and Dr. Roy Germano conducted a study of many, many districts around the country, both the district courts and the bankruptcy courts, as well as information on the courts of appeals, and that study, which they have published and included within our materials, gave us a great basis for information and further investigation. And that coupled with the discussion in the advisory committees yielded a set of further questions. Those are identified in the memo in the agenda book.

Subsequently Dr. Reagan and Professor Struve spoke with 15 court personnel from 8 different districts to pursue some of these questions further. Professor Struve selected certain districts because she was looking to find out more information on the topic of the exemption from traditional service.

This topic arose because with the advent of CM/ECF, any participant in CM/ECF will receive a notice anytime anything is entered in the case's docket, including by filing not through CM/ECF. And the notice will provide them typically with a link where they can access the underlying filing. If all those who are in CM/ECF themselves are getting access to the filing, then why should a self-represented litigant who makes a filing not through CM/ECF be required to separately serve through some traditional method of service, like the mail, that paper on the other litigants in the case?

That seemed like an intuitively appealing idea to many of the participants in the fall 2022 discussions, but there were a few logistical questions raised. Some participants and other advisory committee meetings had asked might this create some burden on the clerk's office, and how does it actually work? And does every filing actually become accessible via CM/ECF?

Professor Struve said that we're now in a position to answer some of those questions because six of the districts that they spoke with in this subsequent round of discussions do exempt non-CM/ECF filers from separately making traditional service on those who are in CM/ECF themselves and therefore are getting the filing. That exemption extends as well to any other litigants in the case who are getting the filing through an electronic noticing system that's an alternative to CM/ECF. The people they spoke with in those districts reported this did not burden the clerk's office at all. It was viewed as an unproblematic and common-sense measure. Filings made under seal are sometimes treated differently because they are accessible only by a restricted set of participants in the case and not the public in other districts. The participants in the case cannot access that filing through CM/ECF, and indeed would have to be traditionally served. But that's true even if a lawyer makes that sealed filing through CM/ECF.

Draft

The remaining question that some people raised in the fall was that, if this exemption from requiring personal service would extend to anyone else in the case who is on CM/ECF or enrolled in an electronic noticing program provided by the court, how would the self-represented filer know that they had to make that exceptional traditional service on a person who is not? Professor Struve said that issue just hadn't come up as a point of conversation in these offices. One reason may be that in order for the issue to arise, there needs to be more than one self-represented litigant in the case. Generally, everyone else in the case is on CM/ECF by default.

Second, even with multiple self-represented litigants in the same case, which a number of the people interviewed said is rare (though it might be less rare in a bankruptcy proceeding), if the person is enrolled in an electronic noticing program, they too will receive the filings. So again, we're not worrying about traditional service on them. Nonetheless, in some small subset of cases, there are multiple self-represented litigants, and some might not be in an electronic noticing program or on CM/ECF, and how would the filer know that? There was no uniform answer to that question. So that's something to take back to the working group just to talk about in crafting a proposal that might address this exception. One would not want to create a situation in which that other self-represented litigant is not getting service and nobody realizes it.

Professor Struve said that in the court interviews they also discussed the feasibility of obtaining CM/ECF access for self-represented litigants, as well as alternative methods of electronic access. Six of the 8 districts contacted were providing access to CM/ECF for non-incarcerated civil litigants in district court. They were enthusiastic and praised the benefits of this, which is consistent with the reactions of the advisory committees at their fall meetings. There are many benefits, such as the decrease in the volume of paper filings, the avoidance of the need to serve court orders on people who are getting the filings through CM/ECF, and having an electronic record of what was filed when and what went out from the court, all of which helped in avoiding disputes that arise in the paper world.

The question arose of whether it is hard to keep track of self-represented litigants in CM/ECF and whether they improperly share their credentials. The answer to both questions was unequivocally no and no.

They had an interesting discussion on the question of does this burden the clerk's office and how do you handle inappropriate filings. Professor Struve plans to come up with a writing that she can share with the working group, but the responses should not surprise participants in last fall's discussion. Those courts that provide an alternative of electronic noticing for those self-represented litigants not enrolled in CM/ECF are huge fans of it and in many instances actively promote it because it frees the court from sending out paper notices.

Five of the 8 districts also provide some alternative mode of electronic access for filing, whether through an upload to the court's website or via email. The benefits of these alternative modes—avoidance of paper and the creation of an electronic record—were described as similar to those for CM/ECF filings. And almost to a district they seemed to be very positive about such alternatives, though one district was not sure they would maintain the program going forward.

Draft

Professor Struve asked the committee members to look at the memo in the agenda book and if they can think of other question not summarized in that memo that should be asked about, please let her know. She hopes to have further information to share with the Advisory Committee as the process continues.

10. **New Business**

Suggestion 23-BK-C from the National Bankruptcy Conference dealing with remote testimony in contested matters was assigned to the Technology, Privacy, and Public Access Subcommittee.

11. **Future Meetings**

The fall 2023 meeting has been scheduled for Sept. 14, 2023, in Washington, D.C.

12. **Adjournment**

The meeting was adjourned at 1:12 p.m.

Draft

Proposed Consent Agenda

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

1. **Report of the Technology, Privacy and Public Access Subcommittee**

   (A) Recommendation to defer any action regarding Suggestion 22-BK-J to adopt national rules that permit debtors to sign petitions and schedules electronically and without retention by their attorneys of the original documents with wet signatures

Draft

TAB 5

TAB 5A

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Robin L. Rosenberg, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: May 11, 2023

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1 *Introduction*

2 The Civil Rules Advisory Committee met in West Palm Beach, FL, on March 28, 2023.
3 Members of the public attended in person, and public on-line attendance was also provided. Draft
4 Minutes of that meeting are included in this agenda book.

5 Part I of this report presents three items for action at this meeting:

6 (a) Rule 12(a) amendment for final approval: A small amendment to Rule 12(a) was
7 published for public comment in August 2022. Only three comments were received. The
8 Advisory Committee recommends approving this amendment and forwarding it to the
9 Judicial Conference.

10 (b) Rule 16(b)(3) and 26(f)(3) amendments—privilege logs: These small amendments were
11 presented to the Standing Committee at its January 2023 meeting. At that time the Standing
12 Committee had no problems with the rule changes, but questioned the length of the
13 Committee Note. The Note has been shortened, and the Advisory Committee unanimously
14 recommends that this preliminary draft of rule amendments be published for public
15 comment in August 2023.

16 (c) New Rule 16.1 on managing MDL Proceedings: After several years of work by its MDL
17 Subcommittee, the Advisory Committee unanimously recommended that the preliminary
18 draft of a new Rule 16.1 to deal with MDL proceedings be published for public comment
19 in August 2023.

20 Part II provides information regarding ongoing subcommittee projects:

21 (a) Rule 41(a)(1) Subcommittee: The Rule 41(a) Subcommittee, chaired by Judge Bissoon,
22 is addressing concerns (raised by Judge Furman, a former member of this committee,
23 among others) about possible revisions to that rule to resolve seemingly conflicting
24 interpretations in the courts. The work is ongoing on this topic, and outreach to bar groups
25 is in progress to determine whether this interpretive divergence has caused difficulties for
26 the practicing bar. The Subcommittee has not reached consensus on whether an amendment
27 should be proposed, or what one should be if an amendment is pursued.

28 (b) Additional Discovery Subcommittee projects: Besides producing the "privilege log"
29 amendments on the action items list above, the Discovery Subcommittee, chaired by Chief
30 Judge Godbey, is also addressing (i) whether Rule 45(b)(1) should be amended to clarify
31 what methods are required in "delivering a copy [of the subpoena] to the named person,"
32 as the rule directs. Courts have reached different conclusions on whether this rule requires
33 in-hand service. As with the Rule 41(a)(1) issues mentioned above, efforts are under way
34 to ascertain from bar groups whether divergent interpretations have caused actual problems
35 in practice; (ii) whether rules changes are warranted with regard to court authorization of
36 filing under seal or the procedures used to obtain such authorization; (iii) a possible change
37 to Rule 28 very recently proposed by Judge Baylson (E.D. Pa.), and (iv) consideration
38 whether the thorough report prepared by the FJC on the Mandatory Initial Discovery
39 Project indicates that some targeted rule amendments might be pursued.

40 In addition, the Advisory Committee on Civil Rules continues to participate, through its Reporters,
41 in the inter-committee project on pro se E-Filing.

42 Part III describes new or continuing work on a variety of other topics:

43 (a) possible revision of Rule 7.1 regarding disclosure of possible grounds for recusal;

44 (b) Rule 23 issues raised by an Eleventh Circuit panel opinion regarding "incentive awards"
45 for class representatives and a Lawyers for Civil Justice suggestion that Rule 23(b)(3) be
46 amended to permit a court to decline class certification if presented with evidence that a
47 non-adjudicatory solution would provide superior relief to class members.

(c) Promulgation of nationwide standards for determining eligibility for in forma pauperis (ifp) status.

Part IV identifies matters the Advisory Committee has concluded should be removed from its agenda, including

(a) A change to Rule 38 to minimize the risk of inadvertent waiver of the right to jury trial, in light of FJC research that such waiver is a rare thing;

(b) Issues raised by Senators Leahy and Tillis regarding Rule 53 and the practice of at least one district judge of regularly appointing "technical advisers" to handle a large volume of patent infringement cases.

(c) A proposed amendment to Rule 11 to forbid state bar associations from imposing discipline on lawyers for activities in federal-court litigation unless the federal court first imposed sanctions on the attorney.

I. Action Items

A. For final approval: Amendment to Rule 12(a)

In August 2022, a preliminary draft of a proposed amendment to Rule 12(a) was published for public comment. The stimulus was principally that some litigants encountered difficulties obtaining summonses in FOIA cases that called for responsive pleadings within the statutory 30-day deadline because it was not clear that a federal statute prescribing a different time would apply to the United States under Rules 12(a)(2) and 12(a)(3). To avoid unintended preemption of such statutory time directives, the invocation of federal statutes was moved up to apply to the whole of Rule 12(a), as follows:

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading. ~~*(1) In General.*~~ Unless another time is specified by ~~this rule or~~ a federal statute, the time for serving a responsive pleading is as follows:

(1) In General.

(A) A defendant must serve an answer:

* * * * *

Committee Note

Rule 12 is amended to make it clear that a federal statute that specifies another time supersedes the times to serve a responsive pleading set by paragraphs (a)(2) and (3). Paragraph (a)(1) incorporates this provision, but the structure of subdivision (a) does not seem to extend it to paragraphs (2) and (3). There is no reason to supersede an inconsistent statute by any part of

81 Rule 12(a). The amended structure recognizes the priority of any statute for all of paragraphs (1),
82 (2), and (3).

83 * * * * *

84 Only three comments were received, and they are summarized below. One supports the
85 proposed amendment, citing the potential problem in FOIA cases. Another is from Andrew Straw,
86 who also has submitted a proposal to amend Rule 11 (discussed below), seemingly objecting to
87 something that happened in a case between him and the state of Indiana.

88 The third comment is from the Federal Magistrate Judges Association (FMJA). The FMJA
89 recognizes that the amendment clarifies that the response times specified in the rule may be
90 superseded by a federal statute even in cases in which the United States is a party.

91 The FMJA suggested, however, that there should be some recognition that other federal
92 rules, including various Supplemental Rules, may have response provisions inconsistent with Rule
93 12(a). It therefore proposes that the amendment "restore" language stricken in the published
94 preliminary draft as follows:

95 Unless another time is specified by <u>these rules</u> or a federal statute, the time for
96 serving a responsive pleading is as follows:

97 This addition might do no harm, but does not seem to serve an important purpose. The
98 FMJA submission does not cite any such rule, but instead says some such rules "might also"
99 contain divergent response times, and that they are "potentially conflicting" rules. Yet the only
100 such rule that has been called to our attention is Rule 15, and the current rule did not exclude it, so
101 there does not appear to be a problem on this account. Some little-known federal statutes (in
102 addition to the FOIA) were mentioned when the rule change was under discussion, and the
103 amended rule would deal with them.

104 Moreover, this change would go beyond "restoring" the stricken language, which referred
105 only to a different time specified by "this rule."

106 At its March 2023 meeting, the Advisory Committee voted to seek final approval of this
107 amendment.

108 Summary of Comments on Rule 12(a) Amendment

109 <u>Andrew Straw</u> (CV-2022-0003-0003): "Rule 12 has been disregarded to favor the State of Indiana
110 and its Attorney General. A deputy AG asked for more time to file a motion to dismiss on
111 day 29 after service and the trial judge allowed it even with the lie that 29 days was still
112 timely. When I objected to the 7th Circuit, I was slapped with a $500 fine and a ban on
113 using any federal court for 2 years. This represents a COURT CLOSURE to hide and
114 protect violations of Rule 12(a). Straw v. Indiana Supreme Court, 18-2878 (7th Cir. 2018)."

115 <u>Federal Magistrate Judges Association</u> (CV-2022-0003-0006): The amendment clarifies that the
116 response times fixed by Rule 12 may be superseded by statute even in cases where the

117 United States is a party. The current rule does not recognize that possibility. But other rules
118 may contain response provisions that are inconsistent with Rule 12, so the rule could be
119 amended to read: "Unless another time is specified by these rules or a federal statute, the
120 time for serving a responsive pleading is as follows:"

121 Anonymous (CV-2022-0003-0007): I support the proposed amendment. The FOIA gives federal
122 agencies 30 days to respond, which should supersede the 60 days provided in Rule 12(a)(2).
123 I have had a court clerk issue a 60-day summons even though the statute provides a 30-day
124 time limit. Part of the problem may be the standard A.O. form used by courts to issue a
125 summons. That form says the U.S. has 60 days to respond, but does not note that there may
126 be a different time limit.

127 **B. For publication: Amendments to Rule 26(f) and Rule 16(b) to call for**
128 **development early in the litigation of a method for complying with**
129 **Rule 26(b)(5)(A)**

130 These amendment proposals deal with what is called the "privilege log" problem. During
131 the Standing Committee's January 2023 meeting, the proposed rule amendments elicited no
132 concerns, but the length of the Committee Note was questioned by several members of the
133 Standing Committee. The matter was remanded to the Advisory Committee. The Committee Note
134 was shortened, and the Advisory Committee unanimously approved recommending that the
135 amendment and Note be published, as revised, for public comment in August 2023.

136 After the Standing Committee's action in January 2023, Judge Facciola and Mr. Redgrave
137 submitted 23-CV-A, urging that an amendment to Rule 26(b)(5)(A) be added to the package. This
138 proposal is addressed below. Neither the Discovery Subcommittee nor the Advisory Committee
139 favors making an amendment to Rule 26(b)(5)(A).

140 **Rule 26. Duty to Disclose; General Provisions Governing Discovery**

141 * * * * *

142 **(f) Conference of the Parties; Planning for Discovery.**

143 * * * * *

144 **(3)** ***Discovery Plan.*** A discovery plan must state the parties' views and proposals on:

145 * * * * *

146 **(D)** any issues about claims of privilege or of protection as trial-preparation
147 materials, including the timing and method for complying with
148 Rule 26(b)(5)(A) and—if the parties agree on a procedure to assert these
149 claims after production—whether to ask the court to include their agreement
150 in an order under Federal Rule of Evidence 502;

151 * * * * *

152 DRAFT COMMITTEE NOTE

153 Rule 26(f)(3)(D) is amended to address concerns about application of the requirement in
154 Rule 26(b)(5)(A) that producing parties describe materials withheld on grounds of privilege or as
155 trial-preparation materials. Compliance with Rule 26(b)(5)(A) can involve very large costs, often
156 including a document-by-document "privilege log."

157 Rule 26(b)(5)(A) was adopted in 1993, and from the outset was intended to recognize the
158 need for flexibility. Nevertheless, the rule has not been consistently applied in a flexible manner,
159 sometimes imposing undue burdens.

160 This amendment directs the parties to address the question how they will comply with
161 Rule 26(b)(5)(A) in their discovery plan, and report to the court about this topic. A companion
162 amendment to Rule 16(b)(3)(B)(iv) seeks to prompt the court to include provisions about
163 complying with Rule 26(b)(5)(A) in scheduling or case management orders.

164 This amendment also seeks to grant the parties maximum flexibility in designing an
165 appropriate method for identifying the grounds for withholding materials. Depending on the nature
166 of the litigation, the nature of the materials sought through discovery, and the nature of the
167 privilege or protection involved, what is needed in one case may not be necessary in another. No
168 one-size-fits-all approach would actually be suitable in all cases.

169 In some cases, it may be suitable to have the producing party deliver a document-by-
170 document listing with explanations of the grounds for withholding the listed materials.

171 In some cases, some sort of categorical approach might be effective to relieve the producing
172 party of the need to list many withheld documents. For example, it may be that communications
173 between a party and outside litigation counsel could be excluded from the listing, and in some
174 cases a date range might be a suitable method of excluding some materials from the listing
175 requirement. These or other methods may enable counsel to reduce the burden and increase the
176 effectiveness of complying with Rule 26(b)(5)(A). But the use of categories calls for careful
177 drafting and application keyed to the specifics of the action.

178 Requiring that discussion of this topic begin at the outset of the litigation and that the court
179 be advised of the parties' plans or disagreements in this regard is a key purpose of this amendment.
180 Production of a privilege log near the close of the discovery period can create serious problems.
181 Often it will be valuable to provide for "rolling" production of materials and an appropriate
182 description of the nature of the withheld material. In that way, areas of potential dispute may be
183 identified and, if the parties cannot resolve them, presented to the court for resolution.

184 Early design of methods to comply with Rule 26(b)(5)(A) may also reduce the frequency
185 of claims that producing parties have over-designated responsive materials. Such concerns may
186 arise, in part, due to failure of the parties to communicate meaningfully about the nature of the
187 privileges and materials involved in the given case. It can be difficult to determine whether certain
188 materials are subject to privilege protection, and candid early communication about the difficulties
189 to be encountered in making and evaluating such determinations can avoid later disputes.

Rule 16. Pretrial Conferences; Scheduling; Management

* * * * *

(b) Scheduling and Management.

* * * * *

(3) ***Contents of the Order.***

* * * * *

(B) *Permitted Contents.*

* * * * *

(iv) include the timing and method for complying with Rule 26(b)(5)(A) and any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

* * * * *

DRAFT COMMITTEE NOTE

Rule 16(b) is amended in tandem with an amendment to Rule 26(f)(3)(D). In addition, two words—“and management”—are added to the title of this rule in recognition that it contemplates that the court will in many instances do more than establish a schedule in its Rule 16(b) order; the focus of this amendment is an illustration of such activity.

The amendment to Rule 26(f)(3)(D) directs the parties to discuss and include in their discovery plan a method for complying with the requirements in Rule 26(b)(5)(A). It also directs that the discovery plan address the timing for compliance with this requirement, in order to avoid problems that can arise if issues about compliance emerge only at the end of the discovery period.

Early attention to the particulars on this subject can avoid problems later in the litigation by establishing case-specific procedures up front. It may be desirable for the Rule 16(b) order to provide for “rolling” production that may identify possible disputes about whether certain withheld materials are indeed protected. If the parties are unable to resolve those disputes between themselves, it is often desirable to have them resolved at an early stage by the court, in part so that the parties can apply the court’s resolution of the issues in further discovery in the case.

Because the specific method of complying with Rule 26(b)(5)(A) depends greatly on the specifics of a given case there is no overarching standard for all cases. In the first instance, the parties themselves should discuss these specifics during their Rule 26(f) conference; these amendments to Rule 16(b) recognize that the court can provide direction early in the case. Though

222 the court ordinarily will give much weight to the parties' preferences, the court's order prescribing
223 the method for complying with Rule 26(b)(5)(A) does not depend on party agreement.

224 * * * * *

225 23-CV-A, from Judge Facciola and Mr. Redgrave

226 Possible addition of
227 cross-reference in Rule 26(b)(5)

228 The original proposal the Advisory Committee received was to amend Rule 26(b)(5)(A) to
229 endorse "categorical" listing in the rule. The Discovery Subcommittee studied that idea and
230 concluded it was not promising. Instead, The Subcommittee came to focus on the rules we
231 proposed be amended.

232 At the end of January, Judge Facciola and Mr. Redgrave submitted 23-CV-A. One thing
233 they discuss is addressing "materiality" in the Notes. That was not in the Notes the Standing
234 Committee asked be reconsidered. Adding things to the Notes was not the seeming objective of
235 the Standing Committee in remanding. And it's worth noting that the word "materiality" has
236 produced tensions in related areas before. With regard to Fed. R. Evid. 401, it was studiously
237 avoided. And on occasion, in regard to the approach to relevance in Rule 26(b)(1) it was urged by
238 some that saying "materiality" would tighten up the rule's standards, but that suggestion was not
239 pursued.

240 This submission also urges that there be an amendment to Rule 26(b)(5)(A) itself on p. 3
241 of the submission. Something like that could be added, along the following lines:

242 **(A)** *Information Withheld.* When a party withholds information otherwise discoverable
243 by claiming that the information is privileged or subject to protection as trial-
244 preparation material, the party must:

245 **(i)** expressly make the claim; and

246 **(ii)** describe the nature of the documents, communications, or tangible things
247 not produced or disclosed—and do so in a manner that, without revealing
248 information itself privileged or protected, will enable other parties to assess
249 the claim. Under Rule 26(f)(3)(D), the parties must include the intended
250 method for complying with this rule in their discovery plan.

251 It is not clear what that change would add to what the Subcommittee proposed, which is to
252 be added to Rule 26(f), the pertinent rule. The goal is to get parties to address these issues during
253 their Rule 26(f) conference, and that rule seems the right place to tell them what to do during that
254 conference. Putting the same thing into Rule 26(b)(5)(A) does not seem to add much. And one
255 might also ask why this change was not proposed originally and instead appears now. The Standing
256 Committee "remanded" the matter to shorten the Notes, not to add new amendment proposals.
257 Neither the Advisory Committee nor the Discovery Subcommittee recommends adding this
258 amendment proposal to the package.

259 **C. New Rule 16.1 on MDL proceedings—recommendation to publish for public**
260 **comment**

261 After a great deal of effort, the MDL Subcommittee of the Advisory Committee has
262 developed an amendment proposal set forth below—the addition of a new Rule 16.1 on managing
263 MDL proceedings. The MDL Subcommittee was originally appointed in 2017. It has had three
264 chairs (two of whom went on to become Chairs of the Advisory Committee). After considering
265 many proposed rule amendments, it reached a consensus on the appropriate way to address MDL
266 proceedings in the Civil Rules—adoption of new Rule 16.1, addressed particularly to those
267 proceedings.

268 Because the process of development involved consideration of a wide variety of issues and
269 took a long time, it seems useful to introduce the current proposal with some background on the
270 evolution of the Subcommittee's work. The initial submissions to the Committee raised a wide
271 variety of issues. At the Committee's April 2018, meeting the MDL Subcommittee made its first
272 report to the full Committee, listing ten discussion issues:

273 (1) The scope of any rule;

274 (2) The handling of master complaints and answers;

275 (3) Use of plaintiff fact sheets or requiring particularized pleading or requiring immediate
276 submission of evidence by plaintiffs;

277 (4) Requiring each plaintiff to pay a full filing fee; with possible effect on Rule 20 joinder;

278 (5) Sequencing discovery;

279 (6) Requiring disclosure of third party litigation funding;

280 (7) Handling of bellwether trials, and requiring consent to holding such trials:

281 (8) Expanding interlocutory review of certain decisions in certain MDL proceedings;

282 (9) Coordinating MDL proceedings with parallel proceedings in state courts or other
283 federal courts; and

284 (10) Formation of leadership counsel for plaintiffs and common fund arrangements.

285 A great deal of effort was spent examining the proposal to require disclosure of third party
286 litigation funding. Eventually, the conclusion was that this topic, while perhaps very important,
287 was not particularly salient in MDL proceedings. So TPLF remains on the Committee's agenda,
288 and disclosure of such arrangements has been endorsed in some bills introduced in Congress, but
289 it is no longer a feature of the MDL Subcommittee's work.

290 Even more effort was spent examining the possibility of expanded interlocutory review.
291 As it developed, the proposal was to emulate Rule 23(f) on immediate review of class certification

292 decisions. Very helpful submissions favoring and opposing such a rule change were submitted,
293 and Subcommittee members participated in a large number of conferences and meetings with bar
294 groups about this possibility. Eventually the decision was made that there was not such a need for
295 expanded review in light of existing methods (including certification under 28 U.S.C. § 1292(b)),
296 and that idea was put aside.

297 Attention focused, instead, on adding provisions specifically calibrated to MDL
298 proceedings to Rule 26(f) and Rule 16(b), which were included in the agenda book for the full
299 Committee's March 2022 meeting. By the time that meeting occurred, however, further outreach
300 by the Subcommittee (including a conference involving transferee judges, plaintiff attorneys and
301 defense attorneys organized by the Emory University's Institute for Complex Litigation and Mass
302 Claims) had pointed up some difficulties with relying on Rule 26(f) as a vehicle for managing
303 MDL proceedings. In particular:

304 (1) It might often happen that a Rule 26(f) conference had already occurred in some actions
305 before a Panel transfer order centralizing them in the transferee court, and perhaps that a
306 schedule for activity in those actions had already been adopted in the transferor court. There
307 would ordinarily be no occasion under Rule 26(f) for a second planning conference or
308 report to the court. And after transfer by the Panel, there might not be any Rule 26(f)
309 conferences in actions in which they had not already occurred before transfer.

310 (2) It increasingly seemed valuable to provide the transferee court in MDL proceedings
311 with the opportunity to appoint "coordinating counsel" to oversee the initial organization
312 of the proceedings and assist the court in making its initial management order to guide the
313 future course of the MDL proceedings.

314 These issues prompted the idea of a new Rule 16.1 to address MDL proceedings. Such a
315 rule could assist the transferee court in addressing a variety of matters that often proved important
316 in MDL proceedings. It could also provide a substitute for MDL proceedings for the Rule 26(f)
317 meeting that is to occur in ordinary litigation. Initial sketches of such a rule, including alternative
318 versions, were appended to the agenda book for the Standing Committee's June 2022 meeting.

319 After that Standing Committee meeting, these Rule 16.1 sketches were the focus of several
320 further conferences. Both the American Association for Justice and the Lawyers for Civil Justice
321 arranged for representatives of the Subcommittee to participate in conference with members of
322 their organizations about the Rule 16.1 ideas. Importantly, three judicial representatives of the
323 Subcommittee also attended the transferee judges conference, put on by the Judicial Panel. At that
324 conference there was a special session with the transferee judges to receive feedback about the
325 Rule 16.1 sketches, including the question which alternative approach seemed most suitable.

326 At its January 2023 meeting, the Standing Committee received a thorough report about
327 progress on this front along the lines initially introduced during its June 2022 meeting.

328 With the extensive resulting information base, the Subcommittee went to work refining the
329 Rule 16.1 proposal. This work included multiple meetings via Zoom and many more exchanges
330 of email about evolving drafts. Eventually, the Subcommittee reached consensus on a proposal to

331 recommend for public comment. At its March 2023 meeting, the Advisory Committee
332 unanimously recommended publication of this proposal for public comment in August 2023. The
333 proposal has been revised since the Advisory Committee's March 2023 meeting in accordance
334 with the suggestions of the style consultants.

335 One point discussed during the Advisory Committee meeting deserves mention. Proposed
336 Rule 16.1(a), (c), and (d) all use the verb "should" with regard to the court's management of MDL
337 proceedings. During the Advisory Committee meeting, concerns were raised about whether use of
338 this verb made the proposed rule mere advice and not a genuine rule. One alternative suggested
339 was "must, if appropriate."

340 The MDL Subcommittee caucused during the lunch break in the Advisory Committee
341 meeting and concluded that the rule ought to use "should" in the points where the draft used that
342 word. On the one hand, as the Committee Note recognizes, there may be some MDL proceedings
343 in which no initial management conference is needed, so "must" would be too strong. And "must,
344 if appropriate" would seem not significantly different from "should." The view was that "should"
345 is the correct word to use in 16.1.

346 As also noted during the Advisory Committee meeting, quite a few other rules already use
347 "should." See, e.g., Rule 1 (the rules "*should* be construed * * * to secure the just, speedy, and
348 inexpensive determination"); 15(a)(2) (court "*should* freely give leave [to amend]"); 15(b)(1)
349 (court "*should* freely permit an amendment" if there is an objection at trial that evidence is not
350 within the issues raised in the pleadings): 16(d) (after a pretrial conference "the court *should* issue
351 an order reciting the action taken"); 25(a)(2) (if a party dies, the death "*should* be noted on the
352 record"); 54(c) (final judgment "*should* grant the relief to which each party is entitled"); 56(a) (if
353 the court grants summary judgment it "*should* state on the record the reasons for granting the
354 motion"). At the same time, it might also be noted that the use of "must" in some rules may be
355 questioned. See Rule 55(b)(1) (clerk "must" enter default judgment if a claim "is for a sum certain
356 or that can be made certain by computation"). Though the public comment period may raise
357 questions about this choice of word, "should" has been retained for purposes of publication.

358 **Rule 16.1. Managing Multidistrict Litigation**

359 **(a)** INITIAL MDL MANAGEMENT CONFERENCE. After the Judicial Panel on
360 Multidistrict Litigation orders the transfer of actions, the transferee court should
361 schedule an initial management conference to develop a management plan for
362 orderly pretrial activity in the MDL proceedings.

363 **(b)** DESIGNATING COORDINATING COUNSEL FOR THE CONFERENCE. The
364 transferee court may designate coordinating counsel to:

365 **(1)** assist the court with the conference; and

366 **(2)** work with plaintiffs or with defendants to prepare for the conference and prepare
367 any report ordered under Rule 16.1(c).

368 **(c)** PREPARING A REPORT FOR THE CONFERENCE. The transferee court should
369 order the parties to meet and prepare a report to be submitted to the court before the
370 conference begins. The report must address any matter designated by the court,
371 which may include any matter addressed in the list below or in Rule 16. The report
372 may also address any other matter the parties wish to bring to the court's attention.

373 **(1)** whether leadership counsel should be appointed, and if so:

374 **(A)** the procedure for selecting them and whether the appointment should
375 be reviewed periodically during the MDL proceedings;

376 **(B)** the structure of leadership counsel, including their responsibilities and
377 authority in conducting pretrial activities;

378 **(C)** their role in settlement activities;

379 **(D)** proposed methods for them to regularly communicate with and report
380 to the court and nonleadership counsel;

381 **(E)** any limits on activity by nonleadership counsel; and

382 **(F)** whether and, if so, when to establish a means for compensating
383 leadership counsel;

384 **(2)** identifying any previously entered scheduling or other orders and stating
385 whether they should be vacated or modified;

386 **(3)** identifying the principal factual and legal issues likely to be presented in the
387 MDL proceedings;

388 **(4)** how and when the parties will exchange information about the factual bases for
389 their claims and defenses;

390 **(5)** whether consolidated pleadings should be prepared to account for multiple
391 actions included in the MDL proceedings;

392 **(6)** a proposed plan for discovery, including methods to handle it efficiently;

393 **(7)** any likely pretrial motions and a plan for addressing them;

394 **(8)** a schedule for additional management conferences with the court;

395 **(9)** whether the court should consider measures to facilitate settlement of some or
396 all actions before the court, including measures identified in Rule 16(c)(2)(I);

397 **(10)** how to manage the filing of new actions in the MDL proceedings;

398 **(11)** whether related actions have been filed or are expected to be filed in other
399 courts, and whether to consider possible methods for coordinating with them; and

400 **(12)** whether matters should be referred to a magistrate judge or a master.

401 **(d)** INITIAL MDL MANAGEMENT ORDER. After the conference, the court should
402 enter an initial MDL management order addressing the matters designated under
403 Rule 16.1(c)—and any other matters in the court's discretion. This order controls
404 the MDL proceedings until the court modifies it.

405 DRAFT COMMITTEE NOTE

406 The Multidistrict Litigation Act, 28 U.S.C. § 1407, was adopted in 1968. It empowers the
407 Judicial Panel on Multidistrict Litigation to transfer one or more actions for coordinated or
408 consolidated pretrial proceedings, to promote the just and efficient conduct of such actions. The
409 number of civil actions subject to transfer orders from the Panel has increased significantly since
410 the statute was enacted. In recent years, these actions have accounted for a substantial portion of
411 the federal civil docket. There previously was no reference to multidistrict litigation in the Civil
412 Rules and, thus, the addition of Rule 16.1 is designed to provide a framework for the initial
413 management of MDL proceedings.

414 Not all MDL proceedings present the type of management challenges this rule addresses.
415 On the other hand, other multiparty litigation that did not result from a Judicial Panel transfer order
416 may present similar management challenges. For example, multiple actions in a single district
417 (sometimes called related cases and assigned by local rule to a single judge) may exhibit
418 characteristics similar to MDL proceedings. In such situations, courts may find it useful to employ
419 procedures similar to those Rule 16.1 identifies for MDL proceedings in their handling of those
420 multiparty proceedings. In both MDL proceedings and other multiparty litigation, the Manual for
421 Complex Litigation also may be a source of guidance.

422 **Rule 16.1(a).** Rule 16.1(a) recognizes that the transferee judge regularly schedules an
423 initial MDL management conference soon after the Judicial Panel transfer occurs to develop a
424 management plan for the MDL proceedings. That initial MDL management conference ordinarily
425 would not be the only management conference held during the MDL proceedings. Although
426 holding an initial MDL management conference in MDL proceedings is not mandatory under Rule
427 16.1(a), early attention to the matters identified in Rule 16.1(c) may be of great value to the
428 transferee judge and the parties.

429 **Rule 16.1(b).** Rule 16.1(b) recognizes the court may designate coordinating counsel—
430 perhaps more often on the plaintiff than the defendant side—to ensure effective and coordinated
431 discussion and to provide an informative report for the court to use during the initial MDL
432 management conference.

433 While there is no requirement that the court designate coordinating counsel, the court
434 should consider whether such a designation could facilitate the organization and management of
435 the action at the initial MDL management conference. The court may designate coordinating

436 counsel to assist the court before appointing leadership counsel. In some MDL proceedings,
437 counsel may be able to organize themselves prior to the initial MDL management conference such
438 that the designation of coordinating counsel may not be necessary.

439 **Rule 16.1(c).** The court ordinarily should order the parties to meet to provide a report to
440 the court about the matters designated in the court's Rule 16.1(c) order prior to the initial MDL
441 management conference. This should be a single report, but it may reflect the parties' divergent
442 views on these matters. The court may select which matters listed in Rule 16.1(c) or Rule 16 should
443 be included in the report submitted to the court, and may also include any other matter, whether or
444 not listed in those rules. Rules 16.1(c) and 16 provide a series of prompts for the court and do not
445 constitute a mandatory checklist for the transferee judge to follow. Experience has shown,
446 however, that the matters identified in Rule 16.1(c)(1)-(12) are often important to the management
447 of MDL proceedings. In addition to the matters the court has directed counsel to address, the parties
448 may choose to discuss and report about other matters that they believe the transferee judge should
449 address at the initial MDL management conference.

450 **Rule 16.1(c)(1).** Appointment of leadership counsel is not universally needed in MDL
451 proceedings. But, to manage the MDL proceedings, the court may decide to appoint leadership
452 counsel. This provision calls attention to a number of topics the court might consider if
453 appointment of leadership counsel seems warranted.

454 The first is the procedure for selecting such leadership counsel, addressed in subparagraph
455 (A). There is no single method that is best for all MDL proceedings. The transferee judge has a
456 responsibility in the selection process to ensure that the lawyers appointed to leadership positions
457 are capable and experienced and that they will responsibly and fairly represent all plaintiffs,
458 keeping in mind the benefits of different experiences, skill, knowledge, geographical distributions,
459 and backgrounds. Courts have considered the nature of the actions and parties, the qualifications
460 of each individual applicant, litigation needs, access to resources, the different skills and
461 experience each lawyer will bring to the role, and how the lawyers will complement one another
462 and work collectively.

463 MDL proceedings do not have the same commonality requirements as class actions, so
464 substantially different categories of claims or parties may be included in the same MDL proceeding
465 and leadership may be comprised of attorneys who represent parties asserting a range of claims in
466 the MDL proceeding. For example, in some MDL proceedings there may be claims by individuals
467 who suffered injuries, and also claims by third-party payors who paid for medical treatment. The
468 court may sometimes need to take these differences into account in making leadership
469 appointments.

470 Courts have selected leadership counsel through combinations of formal applications,
471 interviews, and recommendations from other counsel and judges who have experience with MDL
472 proceedings. If the court has appointed coordinating counsel under Rule 16.1(b), experience with
473 coordinating counsel's performance in that role may support consideration of coordinating counsel
474 for a leadership position, but appointment under Rule 16(b) is primarily focused on coordination
475 of the Rule 16.1(c) meeting and preparation of the resulting report to the court for use at the initial
476 MDL management conference under Rule 16.1(a).

477 The rule also calls for a report to the court on whether appointment to leadership should be
478 reviewed periodically. Periodic review can be an important method for the court to manage the
479 MDL proceeding.

480 In some MDL proceedings it may be important that leadership counsel be organized into
481 committees with specific duties and responsibilities. Subparagraph (B) of the rule therefore
482 prompts counsel to provide the court with specifics on the leadership structure that should be
483 employed.

484 Subparagraph (C) recognizes that, in addition to managing pretrial proceedings, another
485 important role for leadership counsel in some MDL proceedings is to facilitate possible settlement.
486 Even in large MDL proceedings, the question whether the parties choose to settle a claim is just
487 that—a decision to be made by those particular parties. Nevertheless, leadership counsel ordinarily
488 play a key role in communicating with opposing counsel and the court about settlement and
489 facilitating discussions about resolution. It is often important that the court be regularly apprised
490 of developments regarding potential settlement of some or all actions in the MDL proceeding. In
491 its supervision of leadership counsel, the court should make every effort to ensure that leadership
492 counsel's participation in any settlement process is appropriate.

493 One of the important tasks of leadership counsel is to communicate with the court and with
494 nonleadership counsel as proceedings unfold. Subparagraph (D) directs the parties to report how
495 leadership counsel will communicate with the court and nonleadership counsel. In some instances,
496 the court or leadership counsel have created websites that permit nonleadership counsel to monitor
497 the MDL proceedings, and sometimes online access to court hearings provides a method for
498 monitoring the proceedings.

499 Another responsibility of leadership counsel is to organize the MDL proceedings in accord
500 with the court's management order under Rule 16.1(d). In some MDLs, there may be tension
501 between the approach that leadership counsel takes in handling pretrial matters and the preferences
502 of individual parties and nonleadership counsel. As subparagraph (E) recognizes, it may be
503 necessary for the court to give priority to leadership counsel's pretrial plans when they conflict
504 with initiatives sought by nonleadership counsel. The court should, however, ensure that
505 nonleadership counsel have suitable opportunities to express their views to the court, and take care
506 not to interfere with the responsibilities non-leadership counsel owe their clients.

507 Finally, subparagraph (F) addresses whether and when to establish a means to compensate
508 leadership counsel for their added responsibilities. Courts have entered orders pursuant to the
509 common benefit doctrine establishing specific protocols for common benefit work and expenses.
510 But it may be best to defer entering a specific order until well into the proceedings, when the court
511 is more familiar with the proceedings.

512 **Rule 16.1(c)(2).** When multiple actions are transferred to a single district pursuant to 28
513 U.S.C. § 1407, those actions may have reached different procedural stages in the district courts
514 from which cases were transferred ("transferor district courts"). In some, Rule 26(f) conferences
515 may have occurred and Rule 16(b) scheduling orders may have been entered. Those scheduling
516 orders are likely to vary. Managing the centralized MDL proceedings in a consistent manner may

517 warrant vacating or modifying scheduling orders or other orders entered in the transferor district
518 courts, as well as any scheduling orders previously entered by the transferee judge.

519 **Rule 16.1(c)(3).** Orderly and efficient pretrial activity in MDL proceedings can be
520 facilitated by early identification of the principal factual and legal issues likely to be presented.
521 Depending on the issues presented, the court may conclude that certain factual issues should be
522 pursued through early discovery, and certain legal issues should be addressed through early motion
523 practice.

524 **Rule 16.1(c)(4).** Experience has shown that in MDL proceedings an exchange of
525 information about the factual bases for claims and defenses can facilitate efficient management.
526 Some courts have utilized "fact sheets" or a "census" as methods to take a survey of the claims
527 and defenses presented, largely as a management method for planning and organizing the
528 proceedings.

529 The level of detail called for by such methods should be carefully considered to meet the
530 purpose to be served and avoid undue burdens. Whether early exchanges should occur may depend
531 on a number of factors, including the types of cases before the court. For example, it is widely
532 agreed that discovery from individual class members is often inappropriate in class actions, but
533 with regard to individual claims in MDL proceedings exchange of individual particulars may be
534 warranted. And the timing of these exchanges may depend on other factors, such as whether
535 motions to dismiss or other early matters might render the effort needed to exchange information
536 unwarranted. Other factors might include whether there are legal issues that should be addressed
537 (e.g., general causation or preemption) and the number of plaintiffs in the MDL proceeding.

538 **Rule 16.1(c)(5).** For case management purposes, some courts have required consolidated
539 pleadings, such as master complaints and answers in addition to short form complaints. Such
540 consolidated pleadings may be useful for determining the scope of discovery and may also be
541 employed in connection with pretrial motions, such as motions under Rule 12 or Rule 56. The
542 relationship between the consolidated pleadings and individual pleadings filed in or transferred to
543 the MDL proceeding depends on the purpose of the consolidated pleadings in the MDL
544 proceedings. Decisions regarding whether to use master pleadings can have significant
545 implications in MDL proceedings, as the Supreme Court noted in *Gelboim v. Bank of America*
546 *Corp.*, 574 U.S. 405, 413 n.3 (2015).

547 **Rule 16.1(c)(6).** A major task for the MDL transferee judge is to supervise discovery in an
548 efficient manner. The principal issues in the MDL proceedings may help guide the discovery plan
549 and avoid inefficiencies and unnecessary duplication.

550 **Rule 16.1(c)(7).** Early attention to likely pretrial motions can be important to facilitate
551 progress and efficiently manage the MDL proceedings. The manner and timing in which certain
552 legal and factual issues are to be addressed by the court can be important in determining the most
553 efficient method for discovery.

554 **Rule 16.1(c)(8).** The Rule 16.1(a) conference is the initial MDL management conference.
555 Although there is no requirement that there be further management conferences, courts generally

556 conduct management conferences throughout the duration of the MDL proceedings to effectively
557 manage the litigation and promote clear, orderly, and open channels of communication between
558 the parties and the court on a regular basis.

559 **Rule 16.1(c)(9).** Even if the court has not appointed leadership counsel, it may be that
560 judicial assistance could facilitate the settlement of some or all actions before the transferee judge.
561 Ultimately, the question whether parties reach a settlement is just that—a decision to be made by
562 the parties. But as recognized in Rule 16(a)(5) and 16(c)(2)(I), the court may assist the parties in
563 settlement efforts. In MDL proceedings, in addition to mediation and other dispute resolution
564 alternatives, the court's use of a magistrate judge or a master, focused discovery orders, timely
565 adjudication of principal legal issues, selection of representative bellwether trials, and coordination
566 with state courts may facilitate settlement.

567 **Rule 16.1(c)(10).** Actions that are filed in or removed to federal court after the Judicial
568 Panel has created the MDL proceedings are treated as "tagalong" actions and transferred from the
569 district where they were filed to the transferee court.

570 When large numbers of tagalong actions are anticipated, some parties have stipulated to
571 "direct filing" orders entered by the court to provide a method to avoid the transferee judge
572 receiving numerous cases through transfer rather than direct filing. If a direct filing order is
573 entered, it is important to address matters that can arise later, such as properly handling any
574 jurisdictional or venue issues that might be presented, identifying the appropriate transferor district
575 court for transfer at the end of the pretrial phase, how time limits such as statutes of limitations
576 should be handled, and how choice of law issues should be addressed.

577 **Rule 16.1(c)(11).** On occasion there are actions in other courts that are related to the MDL
578 proceedings. Indeed, a number of state court systems (e.g., California and New Jersey) have
579 mechanisms like § 1407 to aggregate separate actions in their courts. In addition, it may sometimes
580 happen that a party to an MDL proceeding may become a party to another action that presents
581 issues related to or bearing on issues in the MDL proceeding.

582 The existence of such actions can have important consequences for the management of the
583 MDL proceedings. For example, avoiding overlapping discovery is often important. If the court is
584 considering adopting a common benefit fund order, consideration of the relative importance of the
585 various proceedings may be important to ensure a fair arrangement. It is important that the MDL
586 transferee judge be aware of whether such proceedings in other courts have been filed or are
587 anticipated.

588 **Rule 16.1(c)(12).** MDL transferee judges may refer matters to a magistrate judge or a
589 master to expedite the pretrial process or to play a part in settlement negotiations. It can be valuable
590 for the court to know the parties' positions about the possible appointment of a master before
591 considering whether such an appointment should be made. Rule 53 prescribes procedures for
592 appointment of a master.

593 **Rule 16.1(d).** Effective and efficient management of MDL proceedings benefits from a
594 comprehensive management order. A management order need not address all matters designated

595 under Rule 16.1(c) if the court determines the matters are not significant to the MDL proceedings
596 or would better be addressed at a subsequent conference. There is no requirement under Rule 16.1
597 that the court set specific time limits or other scheduling provisions as in ordinary litigation under
598 Rule 16(b)(3)(A). Because active judicial management of MDL proceedings must be flexible, the
599 court should be open to modifying its initial management order in light of subsequent
600 developments in the MDL proceedings. Such modification may be particularly appropriate if
601 leadership counsel were appointed after the initial management conference under Rule 16.1(a).

602 **II. SUBCOMMITTEE REPORTS**

603 **A. Rule 41(a) Subcommittee**

604 The Rule 41 Subcommittee, chaired by Judge Cathy Bissoon, continues to address whether
605 Rule 41(a)(1)(A) should be revised. The rule provides, in pertinent part, that "the plaintiff may
606 dismiss an action without a court order by filing a notice of dismissal before the opposing party
607 serves either an answer or a motion for summary judgment." Per Rule 41(a)(1)(B), such dismissals
608 are without prejudice unless the plaintiff has previously dismissed a federal or state court action
609 including the same claim, in which case the dismissal "operates as an adjudication on the merits."

610 As noted in submissions from Judges Furman and Halpern (S.D.N.Y.) (21-CV-O) and
611 Messrs. Wenthold and Reynolds (former W.D. Ky. Law clerks) (22-CV-J), courts are divided in
612 their interpretation of the rule. The circuits are split with regard to whether the rule requires a
613 plaintiff seeking to dismiss without a court order to dismiss the entire case, all claims against all
614 defendants, or whether the rule allows for additional flexibility. Some circuits, for instance, allow
615 a voluntary dismissal without a court order when a plaintiff dismisses all claims against a single
616 defendant. Some district courts have gone even further, sanctioning dismissals of only single
617 claims under the rule. In essence, then, it is fair to say that the rule's application is disuniform and
618 varied throughout the country.

619 Nevertheless, one issue the subcommittee is considering is whether, despite the apparent
620 lack of clarity or agreement on the rule's requirements, there is a need for an amendment. Although
621 courts interpret the rule differently, it is not clear whether there is a serious "real-world problem"
622 to solve, or whether a rule amendment, with its attendant risks of unanticipated consequences, is
623 prudent. The original purpose of the rule was to shorten the time frame in which a plaintiff could
624 dismiss unilaterally and without prejudice. Prior to the adoption of the Federal Rules-and
625 apparently presently in some states-a plaintiff could voluntarily dismiss without a court order when
626 the litigation was well advanced, including at trial, and start from scratch in another court. The
627 federal rule therefore served to restrict the time period in which a plaintiff could unilaterally
628 dismiss without prejudice to prior to the filing of an answer or motion for summary judgment.

629 There does not appear to be any suggestion that the original drafters of the rule considered
630 the question that causes confusion today-perhaps understandably given the increase in complex
631 multiparty and multiclaim litigation since 1938. To the extent the purpose of the rule is to
632 streamline cases as they move toward trial, there are other available mechanisms in the rules, such
633 as amending the pleadings under Rule 15 or dropping a party under Rule 21. A plaintiff seeking
634 dismissal without prejudice may also do so after an answer or motion for summary judgment is

635 filed by seeking a court order. Based on conversations with some judges and lawyers, courts
636 sometimes employ more homespun ways to narrowing a case. As part of the subcommittee's work,
637 it has recently met with representatives from Lawyers for Civil Justice and the American
638 Association for Justice, and further outreach is likely.

639 Should the Advisory Committee decide to propose an amendment to the rule, there are
640 numerous paths it could take. Perhaps the simplest would be to endorse a "plain meaning" reading
641 of the rule as currently drafted by making clear only an "entire action," and nothing less, may be
642 voluntarily dismissed by the plaintiff without prejudice. But, perhaps as demonstrated by many
643 courts' unwillingness to read the rule this way currently, this may be too inflexible an approach in
644 a system where complex litigation proliferates. Alternatively, the rule could be drafted to permit
645 voluntary dismissal of something less than the entire action, such as all of the claims against a
646 single defendant, or even individual claims. While the flexibility of this approach may aid in
647 efficiently streamlining cases as they wend their way through pretrial proceedings, too much
648 flexibility on this score may prejudice defendants who invest time and resources into responding
649 to claims only to see them dropped from the litigation. Moreover, amendments to the rule could
650 also include tweaking other aspects of it, such as reducing the amount of time a plaintiff has to
651 voluntarily dismiss prior to a Rule 12 motion. An even more ambitious project would be to address
652 the panoply of rules that permit modification of the case after it is filed, including amendments
653 under Rule 15.

654 Thus far, the Subcommittee has taken the approach that any amendment ought to be a
655 narrow one, focused on simply clarifying a rule that has come to be interpreted in various ways
656 across the circuits. But both a narrow amendment and a more ambitious project would require that
657 the committee address the deeper policy question about how much flexibility the plaintiff (and
658 perhaps defendants asserting counter- or cross-claims) ought to have to modify a case, and at what
659 points throughout the litigation.

660 At its March 2022 meeting, the Advisory Committee considered the question and left these
661 questions open while the subcommittee continues its work. Although the Subcommittee continues
662 to recognize the disuniform application of the rule, there is not yet consensus on what policy should
663 underlie any amendment, and whether such a policy warrants only a narrow change, or a more
664 ambitious package. If courts are muddling through reasonably well with the tools they have, and
665 parties do not find themselves prejudiced by the varying interpretations, it may be best to leave
666 well enough alone. The committee will continue its work to address these questions and consider
667 the way forward.

668 **B. Discovery Subcommittee**

669 In addition to shortening the Committee Note to the recommended amendments to address
670 the "privilege log" issues included in the action items section of this agenda book, the Discovery
671 Subcommittee (chaired by Chief Judge David Godbey) has additional issues before it. This report
672 summarizes these issues, on which it has made no recommendation.

673 Method of serving a subpoena

674 The Advisory Committee has discussed the concern that Rule 45(b)(1) is ambiguous about
675 exactly how one should go about "delivering" a subpoena to a witness (probably most importantly
676 to a nonparty witness). The issue was first raised by a bar group in 2005, and was discussed during
677 the Rule 45 project about five years later. It was addressed at the last Advisory Committee meeting,
678 and also presented to the Standing Committee.

679 Thus far, it has not seemed that there are strong concerns within the bar about what the rule
680 currently says. It is unnerving that courts seem to interpret it differently. A similar sort of issue has
681 arisen in relation to Rule 41(a)(1), on whether unilateral dismissal by a plaintiff must drop the
682 whole "action" or may be limited to one claim or one defendant or one plaintiff, etc. There have
683 been divergent judicial approaches to Rule 41(a)(1) also, and similar uncertainty about whether
684 those divergent interpretations have created real problems in cases.

685 Members of the Subcommittee regard it as important to examine this issue further. Recent
686 events point up the sort of issues that may emerge. For example, during February 2023, Judge
687 Rakoff (S.D.N.Y.) entered an order authorizing service of a subpoena by certified mail on a witness
688 sought in regard to a suit against JPMorgan Chase Bank alleging it had facilitated Jeffrey Epstein's
689 sexual abuse. In a suit by the Virgin Islands against the bank, the plaintiff had made seven
690 unsuccessful efforts to serve the subpoena on a billionaire former associate of Epstein. Among
691 other things, process servers were twice turned away by security guards at the Ohio home of the
692 witness and a lawyer for him refused to accept service. See Ava Benny-Morrison, Leslie Wexner
693 Can Be Mailed Subpoena in Epstein Suit, Bloomberg Law News, Feb. 21, 2023.

694 *In re Three Arrows Capital, Ltd.*, 647 B.R. 440 (S.D.N.Y., Dec. 29, 2022), involved service
695 of subpoenas on persons who could not be served inside the United States. The court did not focus
696 primarily on the issue of "delivering" the subpoena under Rule 45(b)(1), but instead the application
697 of Rule 45(b)(3) on serving a United States national in a foreign country, which it found to be
698 governed by 28 U.S.C. § 1783. Regarding manner of service, the court said Rule 45(b)(1) "only
699 expressly endorses personal service," but that district courts in the Second Circuit "routinely
700 authorize service via other means" so long as it is reasonably calculated to give actual notice.

701 With regard to Rule 45, if amendment is in order one important question is what the rule
702 should say instead. One possibility is "delivering <u>in hand</u>" or "delivering <u>personally</u>." That might
703 be important with nonparties subpoenaed to testify in court or in a deposition scheduled on short
704 notice; during the Rule 45 project there was some concern about making it absolutely clear to the
705 nonparty witness what was required. And since the rule requires not only "delivering" a copy of
706 the subpoena to the witness, but also "tendering the fees for 1 day's attendance and the mileage
707 allowed by law," that might seem to depend on a face-to-face interaction (though fees could
708 presumably be tendered in other ways, given the variety of methods of payment now available for
709 many things—Venmo, etc.).

710 The specific proposal made by Judge McEwen, our liaison from the Bankruptcy Rules
711 Committee, is to say delivery by "overnight courier" be allowed. On that score, one might note
712 that Rule 29.1(3) of the Supreme Court rules says that anything those rules require be served be

713 served "personally, by mail, or by <u>third-party commercial carrier</u> for delivery within 3 calendar
714 days on each party to the proceeding." But the setting for that rule is surely very different from the
715 service of a subpoena on a nonparty witness.

716 So a clearly desirable solution does not seem yet to have emerged, but within the rules
717 committees it seems that there is no strong feeling how to proceed either. Instead, two ideas for
718 making progress have been suggested:

719 1. Rules Law Clerk research on state rules for service of subpoenas might either show that
720 they are all are pretty much the same as Rule 45, or that some states have identified
721 simplified methods, which could permit the Subcommittee to try to gather information
722 about how those are working. It is hoped that this research could call attention to state court
723 innovations on methods of service.

724 2. Outreach to bar groups might provide insight on whether the uncertainty about
725 interpretation of the rule is a real problem, and whether there are solutions these bar groups
726 favor. As noted above, a bar group sent us a 17-page memo more than 15 years ago urging
727 that this rule be changed. And at least one additional bar group has urged a rule change
728 more recently. The Rule 41(a) Subcommittee is also trying to gauge whether in practice
729 that rule produces problems that warrant taking on a rule change. Perhaps something along
730 that line would be useful on this front as well. It is hoped that these efforts to get input from
731 the practicing bar can proceed in tandem. Some consultation has already occurred.

732 Filing under seal

733 This topic was raised originally in 2021 by Prof. Volokh, who submitted a very elaborate
734 proposal for a rule seemingly calling for distinctive requirements for motions to seal that would
735 not apply to other motions, such as posting outside the case file for the given case, forbidding
736 decision on such a motion in fewer than seven days after it was posted, and requiring somebody
737 (the Clerk's Office) to unseal after the "final decision" in the case, which presumably might be on
738 appeal, something the Clerk's Office might not even hear about.

739 There have been quite a few additional submissions. At least one (from LCJ) opposed
740 adopting any rule change. Others provided a large amount of information about sealing practices
741 in many district courts, and urged national controls. There is also a 54-page Sedona Conference
742 "Commentary on the Need for Guidance and Uniformity in Filing ESI and Records Under Seal."
743 In addition, section 12 of H.R. 7706, the Judicial Ethics and Anti-Corruption Act of 2022, would
744 add a new section 1660 to Title 28 entitled "Restrictions on Protective Orders and Sealing of Cases
745 and Settlements." In addition, a submission of about 100 pages detailed the local rules on
746 procedures for handling filing under seal from all or most districts.

747 In short, there is a lot of attention directed toward at least the general topic. But in 2021,
748 the A.O. embarked on a larger project on sealed court filings. Having learned of that project, the
749 Discovery Subcommittee decided to await the results of that project. Sealing issues did not seem
750 to deal solely with civil cases; criminal cases, bankruptcy cases, and even appellate cases might

751 involve such issues. It has recently emerged, however, that this A.O. effort seems to be focusing
752 on other sealed filings topics, so this project is being revived.

753 Recent discussions have also identified an additional wrinkle. To date, the Subcommittee
754 has focused (as invited by the original submission) on "sealed" filings. But it appears that, in at
755 least some districts, there may be another category called "restricted" filings that are not accessible
756 to the public, but only to the court and the parties. Whether this wrinkle calls for attention is not
757 presently certain.

758 To re-introduce the prior discussion, below is the agenda book report on this topic for the
759 October 2021 Advisory Committee meeting. There remain some questions about whether any of
760 the many proposals made to the Advisory Committee overlap with the ongoing work of the A.O.
761 project. Since no further action has been taken since the October 2021 meeting, the report for that
762 meeting can serve to introduce, or re-introduce, the issues.

763 * * * * *

764 [From agenda book for
765 October 2021 Advisory Committee meeting]

766 Several parties—Prof. Volokh, the Reporters' Committee for Freedom of the Press, and
767 the Electronic Frontier Foundation—submitted a proposal to adopt a new Rule 5.3, setting forth a
768 fairly elaborate set of requirements for motions seeking permission to seal materials filed in court.

769 The submission asserted that it is universally, or almost universally, recognized that the
770 showing required to justify filing under seal is very different from the standard that supports
771 issuing a Rule 26(c) protective order regarding materials exchanged through discovery. Research
772 done by the Rules Law Clerk confirms that report. Filings may be made under seal (unless that is
773 required by statute or court rule) only on a showing that sufficiently addresses the common law
774 and First Amendment rights of public access to court files.

775 Proposed Rule 5.3 also had a number of features that do not apply to most, or any other,
776 motion practice. It seemed to propose that motions to seal be posted on the court's web site or
777 perhaps on a shared website for many courts, rather than only in the file for the case in which the
778 motion was filed. It provided that, unlike other motions, motions to seal could not be decided until
779 at least seven days had passed since such posting had occurred.

780 The proposal also asserted that local practices on motions to seal diverged from district to
781 district. That led to research about a "sample" of local rules—the ones applying in the nine districts
782 "represented" on the Advisory Committee. There is no claim that these local rules are
783 "representative" of local rules on sealing in other districts. But it is clear that the local rules in
784 these nine districts differ from one another. It is also clear that many features of proposed Rule 5.3
785 differ from provisions in the local rules of at least some of these districts, and that if the proposed
786 rule were adopted portions of the local rules in each of those districts would become invalid under
787 Rule 83(a)(1).

788 As with the privilege log issues, a recent development suggests that this report can only
789 introduce pending issues rather than presenting the Subcommittee's views. The Subcommittee has
790 learned that the Administrative Office has begun a study of sealed filings, but it does not have
791 details on that study. It is hoped that by the time the Advisory Committee meets on Oct. 5 there
792 will be more information available.

793 There may be reason to defer thought of adopting a new Civil Rule if the A.O. is addressing
794 sealing issues more broadly. Considering that one of the proponents of a new rule is the Reporters'
795 Committee, one might suggest that media interest in filings in criminal cases might be stronger
796 than the interest in civil cases. And sealing of matters related to criminal cases may be more
797 pervasive. For example, an FJC study of "sealed cases" about 15 years ago showed that a great
798 many of those were miscellaneous matters opened for search warrant applications that did not lead
799 to a prosecution. Though technically they should not have remained sealed after the warrant was
800 executed, they were not unsealed.

801 In addition—particularly to the extent sealing issues depend on the internal operations of
802 clerks' offices—it may be more appropriate for some body other than the rules committees to take
803 the lead on those issues. The Court Administration and Case Management (CACM) Committee
804 comes to mind.

805 Thus, it seems that the matter now before this Committee might be divided into two
806 somewhat discrete subparts—(a) adopting rule amendments recognizing in the rules the distinctive
807 requirements for sealed filings in civil cases and distinguishing those requirements from the more
808 general protective order practice, and (b) adopting nationally uniform procedures for handling
809 motions for leave to file under seal.

810 Before turning to those two issues, it is useful to add some information provided by Judge
811 Boal, who consulted informally with other members of the Federal Magistrate Judges Association
812 rules committee, of which she is a member (and former co-chair), and from Susan Soong (our clerk
813 liaison) based on some inquiry among court clerks. Both these reports were based on informal
814 inquiries, but they may shed light on the issues presented here.

815 Judge Boal reported that the magistrate judges she consulted saw frequent motions to seal,
816 but did not think they had seen notable increases in the frequency of such motions, though they
817 also thought that there are too many of these motions. It appears that the various circuits have
818 developed their own bodies of case law applying the common law and First Amendment standards
819 in different sealing contexts. So circuit law is the source of guidance on the standards for deciding
820 whether to grant a motion to seal. Though these circuit standards are not identical, they all differ
821 from the "good cause" standard for a Rule 26(c) protective order. But there seemed no reason for
822 rules to address these distinctive circuit approaches to the standards for sealing under the common
823 law and First Amendment rights of public access. There was, however, some support for
824 considering a uniform set of procedures for handling motions to seal. Those procedures vary
825 widely under the local rules of different courts. The most productive rulemaking goal might be to
826 focus on procedures for presenting sealing requests, notifying parties and non-parties, and
827 providing a mechanism for objection to proposed filing under seal and for unsealing previously

828 sealed materials. Though these reactions were informal (compared to the formal comments about
829 privilege issues submitted by the FMJA), they were instructive for the Subcommittee.

830 Susan Soong made informal inquiries of other court clerks, and found that the general view
831 seemed to be that there is nothing about motions to seal that calls for any distinctive treatment of
832 those motions. Indeed, it might be that singling out such motions for additional handling in the
833 clerk's office would potentially burden court clerks. For example, these motions—like all
834 motions—can be made available on PACER. That would not require any distinctive treatment in
835 the clerk's office. Her inquiries also confirmed what others have said—that practices on motions
836 to seal (and probably on other motions) vary among districts. It is not easy to say for certain why
837 these differences exist; they may be a result of judge preferences, historical practices, the fact that
838 different courts have caseloads of different types, and the different approaches of various courts to
839 managing discovery. As with the informal reactions from magistrate judges, these views were
840 instructive for the Subcommittee in regard to possible rulemaking addressing the procedures for
841 motions to seal.

842 (a) Recognizing the different standards

843 A relatively simple pair of rule changes could confirm in the rules what we have been told
844 about actual practice:

845 **Rule 26. Duty to Disclose; General Provisions Governing Discovery**

846 * * * * *

847 **(c) Protective Orders.**

848 * * * * *

849 **(4)** ***Filing Under Seal.*** Filings may be made under seal only under Rule 5(d)(5).

850 The Committee Note to such a rule could simply state that the standard for sealing materials
851 filed in court is different from the standard for issuing protective orders under Rule 26(c)(1).

852 **Rule 5. Serving and Filing Pleadings and Other Papers**

853 **(d) Filing.**

854 * * * * *

855 **(5)** ***Filing Under Seal.*** Unless filing under seal is directed by a federal statute or by
856 these rules, no paper [or other material] may be filed under seal unless [the court
857 determines that] filing under seal is justified despite the common law and First
858 Amendment right of public access to court filings.

859 The idea is to use a generalized statement that encompasses the stated standards for filing
860 under seal that prevail in all the circuits. The Committee Note could say that the goal is not to

861 displace any circuit's standard nor to express an opinion about whether they really differ from one
862 another. Instead, the goal is to reinforce the point in proposed Rule 26(c)(4) that the standard is
863 different from the standard for granting a protective order. On that, it seems, all agree.

864 There are statutes (the False Claims Act, for example) that direct filing under seal, so the
865 introductory phrase recognizes such directives. The additional phrase "or these rules" might seem
866 to create a potential problem—it might seem to be circular—if a protective order entered in
867 accordance with these rules were sufficient to fit within the exception. But that would seem to
868 violate proposed Rule 26(c)(4). And there are other rules that do explicitly authorize or direct
869 filing under seal. See Rules 5.2(d) (filing under seal to protect privacy); 26(b)(5)(B) (party that
870 received information through discovery the other side belatedly claims to be privileged may
871 "promptly present the information to the court under seal for a determination of the claim").

872 Making changes such as these likely would not conflict with whatever the A.O. is doing or
873 may be doing about filing under seal more generally. To the extent that filing under seal is limited
874 by the common law or the First Amendment, it may be difficult for an A.O. policy to make it
875 easier. Perhaps for policy reasons, an A.O. policy might make filing under seal more difficult to
876 justify. But if it could do that presently, it likely could do so if the Civil Rules were so amended.

877 Another consideration here might be to proclaim by rule a nationally uniform standard for
878 applying the common law and First amendment rights of public access to court filings. A rule
879 could, for example, declare that the party seeking sealing bear the burden of justifying it in the
880 face of common law and First Amendment limitations. (That would be somewhat consistent with
881 the approach to deciding motions for a protective order—the moving party bears the burden of
882 establishing good cause with a fairly specific showing.) Under Rule 26(c), there is no specific rule
883 provision about burdens of proof, and it is likely that if this seemed a suitable topic to address it
884 could be addressed in a Committee Note. This is not to say that sealing must always be granted if
885 not forbidden on common law or First Amendment grounds. Those preclude the entry of a sealing
886 order; a court may well decide that even if sealing is not forbidden in a given case, it is not
887 warranted.

888 But there may be a distinct limitation on the extent to which a rule can, or should attempt
889 to, regulate these matters. The First Amendment, for example, applies as it applies without regard
890 to what the rules say.

891 The basic question on this point is whether there is any real value in this sort of rule change.
892 If it adopts what the courts are already doing, it might be regarded as somewhat "cosmetic."

893 (b) Uniform procedures on motions to seal

894 The FMJA suggestions were that the standard for sealing remain as directed by the various
895 circuits but that rulemaking attention should focus on adopting more uniform procedures for doing
896 deciding motions to seal. It is relatively apparent that the procedures are not uniform now. Indeed,
897 the N.D. Cal. has had an entirely new local rule changing its procedures out for comment during
898 August.

More generally, it's likely that there are differences among districts on how to handle other sorts of motions. In the N.D. Cal., for example, 35 days' notice is required to make a pretrial motion in a civil case, absent an order shortening time. The local rules also limit motion papers to 25 pages in length, and provide specifics on what motion papers should include. Oppositions are due 14 days after motions are filed and also subject to length limitations. There is also a local rule about seeking orders regarding "miscellaneous administrative matters," perhaps including filing under seal, which have briefer time limitations and stricter page limits.

In all likelihood, most or all districts have local rules of this sort. In all likelihood, they are not identical to the ones in the N.D. Cal. An initial question might be whether motions to seal should be handled uniformly nationwide if other sorts of motions are not.

One reason for singling those motions out is that common law and constitutional protections of public access to court files bear on those motions in ways they do not normally bear on other motions. Indeed, in our adversary litigation system it is likely that if one party files a motion for something the other side will oppose it. But it may sometimes happen not only that neither side cares much about the public right of access to court files, but that both sides would rather defeat or elude that right. So there may be reason to single out these motions, though it may be more difficult to see why notice periods, page limits, etc. should be of special interest in regard to these motions as compared with other motions.

A different set of considerations flows from the reality at present that local rules diverge on the handling of motions to seal. At least sometimes, districts chafe at "directives from Washington." There have been times when rule changes insisting on uniformity provoked that reaction. Though this committee might favor one method of processing motions over another, it is not clear that this preference is strong enough to justify making all districts conform to the same procedure for this sort of motion.

Without meaning to be exhaustive, below are some examples of issues that might be included in a national rule designed to establish a uniform procedure:

> Procedures for motion to seal: The submission proposes that all such motions be posted on the court's website, or perhaps on a "central" website for all district courts. Ordinarily, motions are filed in the case file for the case, not otherwise on the court's website. The proposal also says that no ruling on such a motion may be made for seven days after this posting of the motion. A waiting period could impede prompt action by the court. Such a waiting period may also become a constraint on counsel seeking to file a motion or to file opposing memoranda that rely on confidential materials. The local rules surveyed for this report are not uniform on such matters.

> Joint or unopposed motions: Some local rules appear to view such motions with approval, while others do not. The question of stipulated protective orders has been nettlesome in the past. Would this new rule invalidate a protective order that directed that "confidential" materials be filed under seal? In at least some instances, such orders may be entered early in a case and before much discovery has occurred, permitting parties to designated materials they produce "confidential" and subject to the terms of the protective order. It is

939 frequently asserted that stipulated protective orders facilitate speedier discovery and
940 forestall wasteful individualized motion practice.

941 Provisional filing under seal: Some local rules permit filing under seal pending a ruling on
942 the motion to seal. Others do not. Forbidding provisional filing under seal might present
943 logistical difficulties for parties uncertain what they want to file in support of or opposition
944 to motions, particularly if they must first consult with the other parties about sealing before
945 moving to seal. This could connect up with the question whether there is a required waiting
946 period between the filing of the motion to seal and a ruling on it.

947 Duration of seal: There appears to be considerable variety in local rules on this subject. A
948 related question might be whether the party that filed the sealed items may retrieve them
949 after the conclusion of the case. A rule might also provide that the clerk is to destroy the
950 sealed materials at the expiration of a stated period. The submission we received called for
951 mandatory unsealing

952 Procedures for a motion to unseal: The method by which a nonparty may challenge a
953 sealing order may relate to the question whether there is a waiting period between the filing
954 of the motion and the court's ruling on it. A possibly related question is whether there must
955 be a separate motion for each such document. Perhaps there could be an "omnibus" motion
956 to unseal all sealed filings in a given case.

957 Requirement that redacted document be available for public inspection: The procedure
958 might require such filing of a redacted document unless doing so was not feasible due to
959 the nature of the document.

960 Nonparty interests: The rule proposal authorizes any "member of the public" to oppose a
961 sealing motion or seek an order unsealing without intervening. Some local rules appear to
962 have similar provisions. But the proposal does not appear to afford nonparties any route to
963 protect their own confidentiality interests. Perhaps a procedure would be necessary for a
964 nonparty to seek sealing for something filed by a party without the seal, or at least a
965 procedure for notifying nonparties of the pendency of a motion to seal or to unseal.

966 Findings requirement: The rules do not normally require findings for disposition of
967 motions. See Rule 52(a)(3) (excusing findings with regard to motions under Rule 12 or
968 Rule 56). There are some examples of rules that include something like a findings
969 requirement. See Rule 52(a)(2) (grant or denial of a motion for a preliminary injunction).
970 The rule proposal calls for "particularized findings supporting its decision [to authorize
971 filing under seal]." Adding a findings requirement might mean that filing under seal
972 pursuant to court order is later held to be invalid because of the lack of required findings.

973 Treating "non-merits" motions differently: The circuits seem to say different things about
974 whether the stringent limitations on sealing filings apply to material filed in connection
975 with all motions, or only some of them. (This issue might bear more directly on the standard
976 for sealing.) The Eleventh Circuit refers to "pretrial motions of a nondiscovery nature."
977 The Ninth Circuit seems to attempt a similar distinction regarding non-dispositive motions.

978 The Seventh Circuit refers to information "that affects the disposition of the litigation."
979 The Fourth Circuit seems to view the right of access to apply to "all judicial documents
980 and records." And another question is how to treat matters "lodged" with the court.

981 No doubt there are others. For the present, the basic question is whether the Subcommittee
982 should attempt to devise a set of procedural features applicable to motions to seal. One thing to be
983 kept in mind on this subject is that doing these things could require more aggressive surgery on
984 the current rules than the simple changes noted in section (a) above. Depending on what they are,
985 these sorts of procedures might have to be housed in a new rule on "Motions to Seal." Perhaps that
986 could be added to Rule 7(b). There might also be some difficulty defining motions to seal in a rule.

987 As should be apparent, the Subcommittee remains near the beginning of its process of
988 examining these proposals. But it has already made considerable progress in clarifying issues and
989 working through them. It looks forward to hearing the views of the full Committee on the matters
990 before it.

991 * * * * *

992 Rule 28

993 Rule 28 is not a rule that most lawyers or judges use very often. Judge Michael Baylson
994 (E.D.Pa.) (a former member of the Advisory Committee) submitted 23-CV-B on Feb. 3, 2023.

995 The appropriate method of addressing privacy concerns and other concerns about
996 American discovery with regard to information located outside this country can be delicate. The
997 Sedona Conference some time ago undertook a major project on this topic.

998 FJC Report on Mandatory Initial Discovery Project

999 During the Advisory Committee's March 2023 meeting, there was a presentation regarding
1000 the FJC's 100-page analysis of the results of the Mandatory Initial Discovery Project conducted in
1001 the District of Arizona and the Northern District of Illinois. Though the report did not show that
1002 aggressive rule changes should now be pursued, it was suggested that the Discovery Subcommittee
1003 review the report to determine whether it indicates that some targeted changes to the national rules
1004 should be considered seriously. That review has not occurred, but ought to be under way by the
1005 time the Advisory Committee meets in October 2023.

1006 **III. INFORMATION ITEMS**

1007 **A. Rule 7.1—Recusal Disclosure**

1008 Recusal issues involving judicial ownership of stock in companies that are involved in
1009 litigation have recently received a great deal of attention, including from Congress. For example,
1010 the Courthouse Ethics and Transparency Act (Pub. L. 117-125, May 13, 2022), amends the Ethics
1011 in Government Act of 1978 and provides for establishment of "a searchable internet database to
1012 enable public access to any report required to be filed under this title by a judicial officer,
1013 bankruptcy judge, or magistrate judge," which became available on Nov. 9, 2022.

1014 Another proposed bill, sponsored by Senator Warren and introduced on December 20,
1015 2022, the Anti-Corruption and Public Integrity Act (S. 5315) also contains various provisions
1016 dealing with judicial conflicts of interest. Section 404(a) of the bill would amend 28 U.S.C. § 455
1017 to require judges to "maintain and submit to the Judicial Conference a list of each association or
1018 interest that would require such justice, judge, or magistrate to recuse under subsection (b)(4),"
1019 and for the Judicial Conference to set up and maintain a searchable database of such lists. The bill
1020 has been referred to the Committee on Finance, and no other action has yet been taken. Whether
1021 the bill will advance is uncertain, but ongoing legislative attention to the general issues seems
1022 likely.

1023 Meanwhile, the Judicial Ethics and Anti-Corruption Act of 2022 has been introduced in
1024 both the Senate and the House (S. 4177 and H.R. 7706). Section 2 would place limits on judicial
1025 ownership of securities. Section 4 would place limits on judicial participation in privately-funded
1026 educational events. Section 6 of this bill would add a new subsection (g) to 28 U.S.C. § 455 to
1027 require an online listing of speeches by federal judges. Section 7 would provide an "oversight
1028 process" for judicial disqualification and permits any litigant to request disqualification of a judge.
1029 The bill has been referred to the Committee on Finance, and whether it will advance is uncertain,
1030 but ongoing attention to the general issues seem likely.

1031 Two submissions to the Advisory Committee have addressed related concerns. 22-CV-H,
1032 from Judge Ralph Erickson (8th Cir.), addresses concerns raised by a number of judges about their
1033 holdings in companies such as Berkshire Hathaway. The illustrative example given involves
1034 Orange Julius. If it is a party to a suit before a judge, under current Rule 7.1 Orange Julius would
1035 have to disclose that it is wholly owned by International Dairy Queen. But that disclosure would
1036 not go farther, even though Dairy Queen is wholly owned by Berkshire Hathaway, so the
1037 disclosure would not alert the judge to the problem if the judge had Berkshire Hathaway holdings.
1038 Berkshire Hathaway is an example of a possibly more general problem. As Judge Erickson notes
1039 in his submission, CitiGroup has a controlling interest in some 300 companies, so a judge who
1040 owns CitiGroup shares face similar problems if a CitiGroup-owned company owns an entity that
1041 is a party to a suit. Judge Erickson therefore suggests amending Rule 7.1 to require disclosure of
1042 companies that hold the parent companies of parties to a case.

1043 This might be informally called the "corporate grandparent problem." Because Rule 7.1
1044 requires nongovernmental corporate parties to identify "any parent corporation and any publicly
1045 held corporation owning 10% or more of its stock," a "grandparent" might never be disclosed.

1046 Some courts have interpreted the current rule as calling for disclosure of a "grandparent," but it is
1047 not clear how far that interpretation might go or if it will be broadly adopted. Given the endless
1048 permutations of corporate relationships, there may be many examples of such interests that go
1049 undisclosed.

1050 Whether there is a suitable way to describe additional entities that must be disclosed and
1051 solve the notice problem Judge Erickson identifies is not certain. Phrases like "grandparent
1052 corporation" may be suitable. Perhaps it would suffice to say something like " . . . and any parent
1053 corporation of any such parent corporation and any publicly held corporation owning 10% or more
1054 of the stock of any such parent corporation." But even that might not reach "great-grandparent
1055 corporations."

1056 Separately, Magistrate Judge Barksdale (M.D. Fla.) proposed that Rule 7.1 be amended to
1057 add a certification requirement that appears to build on the soon-to-be-available database on
1058 judges' stock holdings. (22-CV-F) This proposal would be to require a disclosure statement that:

1059 certifies that the party has checked the assigned judge or judges' publicly available
1060 financial disclosures and, if a conflict or possible conflict exists, will file a motion
1061 to recuse or a notice of a possible conflict within 14 days of filing the disclosure.

1062 This proposal does not appear to address the corporate "grandparent" issue identified by Judge
1063 Erickson.

1064 It may be that somewhat similar issues could be raised for the Appellate Rules Committee
1065 and the Bankruptcy Rules Committee, but this advisory committee may be a suitable venue for
1066 initial consideration of these questions. Whether the disclosure requirements of Rule 12.4 of the
1067 Criminal Rules raise similar issues is less clear. But it does seem clear that difficult and delicate
1068 issues are presented, so considerable careful study seems necessary.

1069 During its March 2023 meeting, the Advisory Committee discussed the issues raised by
1070 these submissions, and it may be taking something of a leadership role on this set of issues. It
1071 seems clear that this set of issues can be both difficult and delicate, and that a considerable amount
1072 of attention is presently being focused on such issues. One suggestion that was proposed was to
1073 look at local rules dealing with these issues. And it was suggested that the forms of doing business
1074 are "changing by the minute." There is concern that any more general term like "all affiliated
1075 entities" might be impossibly elastic—what exactly is an "entity," and how does one know with
1076 what other "entity" it is "affiliated"?

1077 At the outset, it may be possible to identify certain issues that likely will arise. A starting
1078 point is 28 U.S.C. § 455(b)(4), which requires recusal when the judge "individually or as a
1079 fiduciary, or his spouse or minor child residing in his household, has a financial interest in the
1080 subject matter in controversy or in a party to the proceeding." Section 455(c) adds that a judge
1081 "should inform himself about his personal and fiduciary financial interests." It does not appear that
1082 party disclosures modify these judicial recusal obligations, but an expanded disclosure rule could
1083 assist a judge in monitoring holdings for possible recusal requirements in a way current Rule 7.1
1084 may not provide. Given the statutory mandate, it is likely that a rule change would not attempt to

1085 modify the statutory recusal mandate even if a party made an incomplete disclosure or failed to
1086 check the judge's financial disclosures or did not give notice of a possible conflict within a certain
1087 period of time.

1088 But perhaps some ideas are not promising. Failure of a party to check the judge's financial
1089 disclosures or to file a motion to recuse within 14 days (Magistrate Judge Barksdale's proposal)
1090 likely would not affect the statutory requirement to recuse, but that does not mean that amending
1091 the rule is unwise. The fact that the database required by the Courthouse Ethics and Transparency
1092 Act has only begun to operate may be a reason for awaiting some experience with that database,
1093 at least before considering a rule that requires parties to consult it. It might also be relevant that
1094 those who request information from this database reportedly may have to provide information
1095 about themselves that is shared with the judge whose disclosure report is requested.

1096 There might also be concern about a rule requiring parties to certify that they have checked
1097 the judge's disclosures. At least some parties—self-represented litigants, for example—might
1098 experience difficulty in complying. And the likelihood that failure to check the judge's disclosures,
1099 or to file a recusal motion, would have no bearing on whether the statute required recusal has been
1100 noted. Another possibility that has been raised was whether these issues are well suited to
1101 resolution through the Rules Enabling Act process, or whether another Judicial Conference
1102 committee might more suitably address these problems. And it may be that some circuits are
1103 engaged in improving their systems for financial disclosures by judges.

1104 The Advisory Committee continues to work on these issues. A Subcommittee chaired by
1105 Justice Jane Bland of the Texas Supreme Court (a newly-appointed Advisory Committee member)
1106 has been appointed. Suggestions and reactions from Standing Committee members are welcome.

1107 **B. Rule 23**

1108 Two issues have arisen with regard to Rule 23. No current action is occurring, but as an
1109 information item it seems useful to introduce the issues. In the past, there has been intense
1110 controversy about amendments to Rule 23. The rule remained unamended for 30 years after the
1111 major changes in 1966, which introduced the "modern class action." Then, in 1998 Rule 23(f) was
1112 added to permit a court of appeals to accept an appeal from a district court's grant or denial of
1113 class certification. But several proposed changes to the certification standards of Rule 23(b) were
1114 not pursued after public comment. In 2003, the procedures for handling class actions were revised,
1115 with new provisions in Rule 23(e) (on settlement approval in class actions), and new Rules 23(g)
1116 and (h) added to the rule. Then in 2018, Rule 23(e) was expanded to give additional guidance on
1117 judicial approval of class settlements. If the current Rule 23 issues are pursued, they may generate
1118 similar interest.

1119 *Incentive awards to class representatives*

1120 During the Advisory Committee's October 2022 meeting attention was drawn to the 2-1
1121 decision of a panel of the Eleventh Circuit in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244
1122 (11th Cir. 2020). The Eleventh Circuit declined to rehear the case en banc, 43 F.4th 1138 (11th
1123 Cir. 2022), and it appears that there are two petitions for certiorari (No. 22-389 and No. 22-517).

1124 At the Advisory Committee's March 2023 meeting, the discussion included observations about it
1125 being unrealistic to expect class representatives to invest substantial effort in superintending a class
1126 action without the prospect of some compensation for that effort. But the principal question was
1127 whether the Supreme Court would address the issue. On April 17, 2023, the Supreme Court denied
1128 the petition for certiorari. *Dickenson v. Johnson*, ___ S.Ct. ___, 2023 WL 2959370 (S.Ct. April
1129 17, 2023). It thus seems that the Court is not presently taking it up.

1130 The Eleventh Circuit majority relied on two 19th century Supreme Court cases—*Internal*
1131 *Imp. Fund Trustees v. Greenough*, 105 U.S. 527 (1881), and *Central R.R. & Banking Co. v. Pettus*,
1132 113 U.S. 116 (1885).

1133 Other courts of appeals have not followed the Eleventh Circuit decision. A recent
1134 illustration is provided by *Murray v. Grocery Delivery E-Services USA, Inc.*, 55 F.4th 340 (1st Cir.
1135 2022), in an opinion by Judge Kayatta. Presented with a challenge to incentive awards for class
1136 representatives, the court said (id. at 352-53):

> 1137 Courts have blessed incentive payments for named plaintiffs in class actions for
> 1138 nearly a half century, despite *Greenough* and *Pettus*. Two of our sister circuits have
> 1139 distinguished *Greenough* and declined to categorically prohibit incentive
> 1140 payments. *Melito v. Experian Mktg. Sols, Inc*., 923 F.3d 85, 96 (2d Cir. 2019); *In*
> 1141 *re Cont'l Ill Sec. Litig.*, 962 F.2d 566, 571-72 (7th Cir. 1992).
>
> 1142 The Eleventh Circuit (in somewhat of an about-face) did recently bite on the
> 1143 *Greenough* argument in *Johnson v. NPAS Sols, LLC*, 975 F.3d 1244, 1257 (11th
> 1144 Cir. 2020). It stated the class-action incentive awards were "roughly analogous" to
> 1145 the payments for personal services in *Greenough*.
>
> 1146 * * *
>
> 1147 Rule 23 class actions still require named plaintiffs to bear the brunt of
> 1148 litigation (document collection, depositions, trial testimony, etc.), which is a burden
> 1149 that could guarantee a net loss for the named plaintiff unless somehow fairly shifted
> 1150 to those whose interests they advance. See *Continental Illinois*, 962 F.2d at 571. In
> 1151 this important respect, incentive payments remove an impediment to bringing
> 1152 meritorious class actions and fit snugly into the requirement of Rule 23(e)(2)(D)
> 1153 that the settlement "treats class members equitably relative to each other."
>
> 1154 Accordingly, we choose to follow the collective wisdom of courts over the
> 1155 past several decades that have permitted these sorts of incentive payments, rather
> 1156 than create a categorical rule that refuses to consider the facts of each case.

1157 Other courts have agreed. *E.g., Somogyi v. Freedom Mortg. Corp.*, 485 F.Supp.3d 337, 354
1158 (D.N.J. 2020) ("Until and unless the Supreme Court or the Third Circuit bans incentive awards or
1159 payments to class plaintiffs, they will be approved by this Court if appropriate under the
1160 circumstances."). Compare *Fikes Wholesale, Inc. v. HSBC Bank USA, Inc.*, 62 F.4th 704 (2d Cir.
1161 2023), in which the three-judge panel, speaking through Judge Jacobs, unanimously upheld the

authority to make incentive awards. The majority opinion suggested that "practice and usage" under Rule 23 may have "superseded" *Pettus* and *Greenough*, but expressed doubt about whether lower court decisions could actually do such a thing. Relying on 21st century Second Circuit decisions that "are precedents we must follow," however, the court upheld the authority, though it questioned the amount of the awards (some $900,000). In a separate concurring opinion, however Judge Jacobs (the author of the majority opinion) said he was "in accord with" the Eleventh Circuit panel majority in *NPAS*.

For the present, then, this is a reporting item. It is interesting to see that the First Circuit opinion by Judge Kayatta relies in part on the 2018 amendment to Rule 23(e)(2)(D), suggesting that perhaps a rule provision already addresses the issues, at least in part. In light of the Supreme Court's denial of cert., it may be that the Advisory Committee will take up this issue. But it is likely that doing so would involve substantial efforts. The Advisory Committee would benefit from any reactions or suggestions from Standing Committee members.

Expanding "superiority" under Rule 23(b)(3) to include non-adjudicatory responses

The Lawyers for Civil Justice have submitted a proposal to amend Rule 23(b)(3), 22-CV-L. The proposal is to amend the rule as follows regarding criteria for certifying 23(b)(3) class actions:

> **(3)** The court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy or otherwise providing redress or remedy. The matters pertinent to these findings include:
>
> > **(A)** the class members' interests in individually controlling the prosecution or defense of separate actions, including the potential for higher value remedies through individual litigation or arbitration and the potential risk to putative class members of waiver of claims through class proceedings;
> >
> > **(B)** the extent and nature of any (i) litigation concerning the controversy already begun by or against the class members, (ii) government action, or (iii) remedies otherwise available to putative class members;
> >
> > **(C)** the desirability or undesirability of concentrated the litigation of the claims in the particular forum; ~~and~~
> >
> > **(D)** the likely difficulties in managing a class action~~.~~;
> >
> > **(E)** the relative ease or burden on claimants, including timeliness, of obtaining redress or remedy pursuant to the other available methods; and
> >
> > **(F)** the efficiency or inefficiency of the other available methods.

No action is presently proposed on this submission, but it seems worthwhile to provide some background on prior Advisory Committee experience with Rule 23 amendment proposals.

1198 The class-action rule was extensively amended in 1966, introducing what has been called
1199 the "modern class action." As the Supreme Court has said, Rule 23(b)(3) was the major addition
1200 to the federal-court class action, and it has proved something of a workhorse since adoption. See
1201 *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 842-43 (1999) ("the [Advisory] Committee was
1202 consciously retrospective with intent to codify pre-Rule categories under Rule 23(b)(1), not
1203 forward-looking as it was in anticipating innovations under Rule 23(b)(3)"). And during its first
1204 years in operation, Rule 23(b)(3) generated substantial controversy. For discussion, see Arthur
1205 Miller, Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the "Class Action
1206 Problem," 92 Harv. L. Rev. 664 (1979).

1207 For three decades after 1966, the Advisory Committee proposed no amendments to Rule
1208 23. Then in 1996, it produced a preliminary draft of proposed changes to Rule 23(b)(3), along with
1209 the addition of Rule 23(f) on interlocutory review of class certification decisions. The Rule
1210 23(b)(3) proposals drew very extensive commentary, and eventually all the 23(b)(3) proposals
1211 were withdrawn, though Rule 23(f) went forward.

1212 At the time, the Advisory Committee's focus shifted from certification standards to class
1213 action procedure. After considerable additional work, that effort produced the 2003 amendments
1214 to the rule, revising the timing of certification decisions under Rule 23(c) and 23(e) and adding
1215 Rule 23(g) (on appointment of class counsel) and Rule 23(h) (on attorney fee awards to class
1216 counsel).

1217 In 2018, further amendments to Rule 23(e) on settlement approval procedures were added.
1218 As noted above, Judge Kayatta invoked one of those when discussing the incentive award issues.

1219 So returning the focus to certification criteria may present challenges. Much of the
1220 litigation about 23(b)(3) has focused on predominance, and superiority (the focus of this proposal)
1221 has received less attention. At its simplest, superiority might be a way of recognizing that mass
1222 tort personal injury claimants might have a greater interest in controlling their own claims, as Rule
1223 23(b)(3)(A) suggests, than consumer claimants who may have spent modest amounts of money for
1224 products they have found unsatisfactory.

1225 It seems, however, that this submission is largely focused on consumer type class actions.
1226 To take a leading example cited in the submission, *In the Matter of Aqua Dots Products Liability*
1227 *Litigation*, 654 F.3d 748 (7th Cir. 2011), involved a toy consisting of small, brightly colored beads.
1228 Unfortunately, when ingested these beads metabolized into an acid that can induce nausea,
1229 dizziness, unconsciousness, and death. As Judge Easterbrook noted for the Seventh Circuit, "it was
1230 inevitable given the age of the intended audience and the beads' resemblance to candy that some
1231 would be eaten."

1232 On learning of the problem, defendant recalled all of the Aqua Dots products, and honored
1233 requests for refunds. More than one million Aqua Dots kits had been sold, and consumers returned
1234 roughly 600,000 of them.

1235 Some purchasers did not ask for refunds and instead filed a class action relying on state
1236 consumer-protection statutes and seeking punitive damages under state law. The district court

1237 denied class certification under Rule 23(b)(3), however, concluding that the recall program
1238 adopted by defendant meant that "the substantial costs of the legal process make a suit inferior to
1239 a recall as a means to set things right." Id. at 751.

1240 Judge Easterbrook observed that "[i]t is hard to quarrel with the district court's objective,"
1241 emphasizing the costs that proceeding with the class action could entail. Id. But the rule does not
1242 permit individual district judges to "prefer their own policies" over what the rule says. And the
1243 alternative to a class action the rule says should be considered is "adjudication" in another format.
1244 "[T]he subsection poses the question whether a single suit would handle the dispute better than
1245 multiple suits. A recall campaign is not a form of 'adjudication.'" Id. at 752.

1246 Though holding that the district court could not decline certification on superiority grounds,
1247 Judge Easterbrook noted as well that "Rule 23 gives a district judge ample authority to decide
1248 whether a class action is the best way to resolve a given dispute." Id. For example, the court should
1249 have relied on Rule 23(a)(4), because plaintiffs sought "relief that duplicates a remedy that most
1250 buyers already have received, and that remains available to all members of the putative class." Id.
1251 In addition, plaintiffs' request for punitive damages under state law could pose considerable
1252 manageability challenges. Id. Moreover, it seemed that individual notice would be impossible.
1253 "The per-buyer costs of identifying the class members and giving notice would exceed the price
1254 of the toys (or any reasonable multiple of that price) leaving nothing to be distributed." Id. at 752-
1255 53. In short:

> 1256 The principal effect of class certification, as the district court recognized, would be
> 1257 to induce the defendants to pay the class's lawyers enough to make them go away;
> 1258 effectual relief for consumers is unlikely. (Id. at 753.)

1259 On these grounds, the court affirmed denial of certification, while also rejecting the district court's
1260 reliance on superiority.

1261 The submission urges that the current rule's focus only on the alternative of adjudication
1262 "stifles courts' discretion" (submission at 4) and prevents judges from fulfilling their duty to
1263 protect the class. (Submission at 5) "Courts should be allowed to consider whether a company's
1264 policy of curing a customer's complaints is superior to what can be achieved with the proposed
1265 class action." (Submission at 8) It also rejects the Rule 23(a)(4) "work-around" employed by Judge
1266 Easterbrook. (Submission at 10-11)

1267 It may be that the time has come to return the Committee's attention to certification criteria.
1268 But pursuing this idea may raise considerable difficulties as well. It may be that the situation in
1269 *Aqua Dots* was particularly clear—more than half the items sold had already been returned. One
1270 might speculate that the prospect of a class action might have been one stimulus behind defendant's
1271 aggressive efforts to satisfy potential class members by alternative means.

1272 The amendment proposal would ask a judge to compare what the defendant offered with
1273 what the class action might produce. Since most class actions result in settlements, that might seem
1274 to ask the judge to engage in the sort of careful analysis of the proposed alternative non-litigation
1275 "solution" that would be needed under Rule 23(e) to approve a settlement offering the same thing.

Yet settlement approval is often timely only after considerable litigation activity has occurred. (True, class certification activity also often follows much litigation activity.)

Under Rule 23(e), class members are entitled to notice of the proposed settlement and an opportunity to object or to opt out. Presumably, accepting the defendant's non-litigation solution could be viewed as a form of opt out. But when called upon to make a determination about whether a proposed settlement is fair, reasonable, and adequate a judge is likely to have significantly more information than would be available to a judge making a decision early in the litigation that the defendant's proposed solution is "fair, reasonable, and adequate." Should the judge decline to endorse the non-litigation route only after a significant proportion of the potential class members (50%, perhaps) had opted for what the defendant was offering?

Another feature of the amendment is that it also asks the judge to consider the alternative of "government action." There is considerable academic literature showing that action by government (for example, the SEC) often produces much smaller remedies, measured in dollars, than private class actions. Trying to guess whether government action would be a suitable substitute for a class action could pose another major challenge for the judge. Suppose, for example, that the governmental enforcement agency potentially involved told the court "We favor allowing the class action go forward." Is the judge to disregard that governmental view?

The general question of courts deferring to private resolutions is sometimes controversial. Consider, for example, the controversy surrounding "class action waivers" in arbitration agreements. Should arbitration be considered one of the alternatives a judge might find superior to a Rule 23(b)(3) class action? The submission does say: "Outside of Rule 23, courts have recognized at least one method of out-of-court resolution—arbitration—as 'adjudication.'" (Submission at 4 n.14) Perhaps, then, a court could decline to certify under Rule 23(b)(3) based on a finding that arbitration would be superior to in-court resolution. Perhaps a court could do so even though there was no right to proceed on a class-wide basis in the arbitral proceeding. That idea seems to be picked up by addition to Rule 23(b)(3)(A) of arbitration as an alternative that the court should take into account in deciding whether to certify under Rule 23(b)(3).

For the present, these issues are not ripe for immediate action, and this report is purely informational. Reactions from Committee members would be useful and welcome.

C. Standards and procedures for deciding ifp status

During the Advisory Committee's March 2022 meeting, there was an update about ongoing attention to in forma pauperis practice. One example is Professor Hammond's article Pleading Poverty in Federal Court, 128 Yale L.J. 1478 (2019). Professor Hammond (Indiana U.) and Professor Clopton (Northwestern) have submitted 21-CV-C, raising various concerns about divergent treatment of ifp petitions in different district courts.

There is strong evidence of divergent practices regarding ifp applications that seem difficult to justify. But it is far from clear this is a rules problem, or that there is a ready solution to this problem. For example, the stark disparities in cost of living in different parts of the country make articulating a national standard (at least in dollar terms) a major challenge. And in terms of

1315 court operations, there may be significant inter-district differences that bear on how ifp petitions
1316 are handled. But one might have difficulty explaining significant divergences between judges in
1317 the same district in resolving such applications.

1318 At least some districts have recently paid substantial attention to their handling of ifp
1319 petitions, sometimes involving court personnel with particular skills in resolving such applications.
1320 Those efforts may yield guidance for other districts.

1321 Though the case can be made for action on this front, the content of the action and the
1322 source for directions are not clear. The Administrative Office has reportedly convened a working
1323 group examining these issues. It may well emerge that the Court Administration and Case
1324 Management Committee is the appropriate vehicle for addressing these issues rather than the
1325 somewhat cumbersome Rules Enabling Act process. Presently, for example, there is some concern
1326 about the varying application of different Administrative Office forms that are used in different
1327 districts to review ifp applications. Those forms do not emerge from the Enabling Act process.

1328 For the present, the topic has remained on the agenda pending further developments. There
1329 was no significant discussion of this topic during the October 2022 Committee meeting. It is not
1330 clear that the submission from Professors Hammond and Clopton can be suitably dealt with in the
1331 Civil Rules. The basic starting point is likely the pertinent statute. See 28 U.S.C. § 1915.

1332 At the Advisory Committee's March 2023 meeting, it was noted that various districts may
1333 differ in the staffing levels needed to adopt certain practices used in other districts for handling ifp
1334 applications; large metropolitan districts might have staffing better equipped to handle new
1335 procedures than other districts. Though it was agreed that this is an important one, it may be
1336 unsuited to revision through the Enabling Act process, which takes several years to complete.
1337 Moreover, there is an A.O. Pro Se Working Group; the resolution was that the topic be retained
1338 on the committee's agenda and that Judge Rosenberg would reach out to that A.O. Working Group.

1339 **IV. MATTERS TO BE REMOVED FROM AGENDA**

1340 **A. Rules 38, 39, and 81(c)—jury trial demand**

1341 These matters originally arose after a Standing Committee meeting in 2016, at which there
1342 was a presentation about a concern that Rule 81(c) might lead to loss of a right to jury trial in
1343 removed cases. That Rule 81(c) submission (15-CV-A) remains pending before the Advisory
1344 Committee.

1345 After that meeting, two members of the Standing Committee (then-Judge Neal Gorsuch
1346 and Judge Susan Graber) submitted 16-CV-F, suggesting that Rule 38 be amended to parallel
1347 Criminal Rule 23(a), which directs that there be a jury trial unless the defendant and Government
1348 waive jury trial and the judge agrees to hold a court trial. There was a concern that the demand
1349 requirements of Rule 38 might sometimes deprive parties—perhaps particularly in removed
1350 cases—of the right to jury trial.

1351 The question whether the Rule 38 demand requirements actually did deprive parties of jury
1352 trials has been addressed by FJC research. At the Advisory Committee's March 2022 meeting,

1353 there was a report about consideration of proposals to change the current rule provisions on
1354 demanding a jury trial. A concern was that one possible explanation for the declining frequency of
1355 civil jury trials has been failure to make a timely jury demand.

1356 Meanwhile, a proposal has been made to the Criminal Rules Committee to amend Criminal
1357 Rule 23(a) to authorize the court to proceed to court trial without the government's consent if the
1358 defendant presents reasons in writing for a nonjury trial and, after giving the government an
1359 opportunity to respond, the court finds the reasons presented by the defendant are sufficient to
1360 overcome the presumption in favor of jury trial.

1361 The FJC undertook docket research regarding the frequency of jury trial demands in civil
1362 cases, the frequency of termination after commencement of a civil jury trial, and the frequency of
1363 orders for a jury trial despite failure to make a timely demand. The initial FJC report did not show
1364 that the rule requirements to demand a jury trial are a major factor in whether jury trial occurs.
1365 Type of case seems more prominent. For example, more than 90% of product liability cases show
1366 a jury demand, while only about 1% of prisoner cases show such a demand. And the incidence of
1367 actual jury trials is affected by settlement. An action may settle before the deadline for demanding
1368 a jury. Nor does the study show whether settlement occurs more frequently in cases in which a
1369 timely jury demand was not made, something that may not appear on reviewing docket entries.
1370 And the effect of facing a prospect of jury trial might be ambiguous in terms of affecting
1371 willingness to settle. Though this FJC report might have justified dropping the Rule 38 proposal
1372 from the agenda, it was decided at the October 2022 Advisory Committee meeting to await
1373 completion of a larger study ordered by Congress of the frequency of civil jury trials in different
1374 districts.

1375 That report to Congress was completed in March 2023 and was presented to the Advisory
1376 Committee during its March 2023 meeting. It showed that there is very little variation among
1377 districts in the frequency of jury trials in civil cases. In general, though the absolute number of jury
1378 trials is higher in larger districts, the frequency of civil jury trials is larger in smaller districts. But
1379 the variation among districts is not distinctive. The District of Wyoming has 2.75% jury trials, and
1380 one other district has more than 2% jury trials. Though the declining rate of civil jury trials may
1381 be much lamented, the most recent report does not indicate that Rule 38 contributes to the declining
1382 rate. Under these circumstances, it does not seem that revising Rules 38 and 39 would be likely to
1383 have a significant effect on the rate of jury trials in civil cases.

1384 The March 2023 report to Congress did, however, provide some insights. One is that the
1385 rate of jury trials between civil and criminal cases correlate, which cuts against the notion that jury
1386 trial is more frequent in criminal cases than civil cases.

1387 Another insight was that there seems no correlation between the rate of civil jury trials and
1388 the rate of resolution of actions by summary judgment. Increasing judicial case management,
1389 however, does seem to correlate with declines in the frequency of civil jury trials. For example, in
1390 1962 some 5.5% of civil cases reached jury trial, while in 2019 the rate of civil jury trial was 0.5%.

1391 In light of these findings, the Advisory Committee concluded at its March 2023 meeting
1392 that this item could be dropped from its agenda.

1393 **B. Rule 53—22-CV-Q**

1394 Senators Tillis and Leahy wrote to Chief Justice Roberts concerning "abusive appointment
1395 of special masters which is occurring in a single federal district court." This concern was evidently
1396 raised by a witness at a hearing of the Senate Intellectual Property Subcommittee.

1397 The senators' letter cites Scott Graham, How a Former Law Clerk Earned $700K This Year
1398 as a Court-Appointed Technical Adviser, Nat. L.J. (Aug. 26, 2021). The article reports on "the
1399 exploding number of patent cases" before a judge in the Western District of Texas. The story says
1400 this judge was "an accomplished patent litigator" before appointment to the bench, and that he
1401 "has been a frequent presence at IP bar functions, letting attorneys know that—unlike some judges
1402 who dread patent cases—he welcomes them."

1403 Perhaps as a result, the story suggests, this judge says he can't keep up with the patent
1404 filings in his court without the help of his "technical advisers," who have hard science backgrounds
1405 in addition to law degrees. With that assistance, according to the story, the judge is able to preside
1406 over as many as six or seven *Markman* hearings per week. The story says this court now has "about
1407 25% of the nation's patent cases."

1408 There may be advantages to the method adopted by this judge. Prof. Sapna Kumar, for
1409 example, published an article entitled Judging Patents, 62 Wm. & Mary L. Rev. 871 (2021),
1410 contrasting the American approach to such disputes to the method used in several European patent
1411 courts, which rely on technically qualified judges who work side-by-side with their legally trained
1412 counterparts to decide patent cases. In Prof. Kumar's view, Congress should designate about a
1413 dozen district courts across the country to take on the nation's patent cases.

1414 There may be forceful objections to the American method of adjudicating patent cases.
1415 Holding jury trials in patent cases might well be sub-optimal. But that possibility would not be a
1416 rules matter. *Markman* itself drew a line between the role of the judge and the jury in adjudicating
1417 patent disputes, not something controlled by the Civil Rules.

1418 Rule 53 was extensively revised over several years, leading to the adoption of the current
1419 rule (later restyled) in 2003. As Senators Tillis and Leahy recognize in their letter, Rule
1420 53(a)(1)(B)(i) authorizes appointment of a master only when warranted by "some exceptional
1421 condition." Rule 53(b) prescribes procedures for appointment of a master and other subdivisions
1422 of the rule govern the master's authority (Rule 53(c)) and the procedures for court action on the
1423 master's report (Rule 53(f)).

1424 Rule 53(a)(1)(C) authorizes appointment of a master to "address pretrial and posttrial
1425 matters that cannot be effectively and timely addressed by an available district judge or magistrate
1426 judge of the district." The Committee Note addresses the possible role of a master in patent
1427 litigation:

1428 The court's responsibility to interpret patent claims as a matter of law, for example,
1429 may be greatly assisted by appointing a master who has expert knowledge of the
1430 field in which the patent operates. Review of the master's findings will be de novo

1431 under Rule 53(g)(4), but the advantages of initial determination by a master may
1432 make the process more effective and timely than disposition by the judge acting
1433 alone.

1434 It appears that efficient methods of resolving patent disputes are important to our legal and
1435 economic system. But it is not clear that revising Rule 53 would be a promising way to achieve
1436 that goal. And it is not clear that Senators Tillis and Leahy believe that the provisions of the current
1437 rule are deficient. Instead, it seems that they are concerning about the actions of a single judge or
1438 single district that might not be consistent with what the rule says. Thus, the senators' letter asks
1439 for an investigation of "abuses relating to the appointment of technical advisors" to determine
1440 whether the rules permit "this frequent use of technical advisors."

1441 Considering further revisions to Rule 53 focused on patent infringement cases would likely
1442 require considerable work on the current handling of those cases, and in particular the use of Rule
1443 53 masters in them. An FJC study could probably shed light on current practice. The 2003
1444 amendments were supported by such a report. See Willging, Hooper, Leary, Miletich, Reagan &
1445 Shapard, Special Masters' Independence and Activity (FJC 2000). Whether the instances cited by
1446 the senators in their letter warrant that level of effort could be debated. At the same time, it is likely
1447 that such a rulemaking effort could generate considerable controversy.

1448 Since this problem does not seem to relate to what Rule 53 says, and may concern a single
1449 district judge, a three- to four-year rule-amendment process does not appear warranted.

1450 During the Advisory Committee meeting in March 2023, it was pointed out that the
1451 senators sent a copy of their letter to the Chief Judge of the Western District of Texas, which might
1452 have produced results not obtainable by rule amendment. A recent newspaper report suggests that
1453 a pertinent change has been made. See Abbie VanSickle, Schumer Calls for an End of "Judge-
1454 Shopping," N.Y. Times, April 28, 2023 (referring to "a recent change in Texas courts after
1455 concerns about judge-shopping * * * the chief judge for that district ordered that new patent cases
1456 filed in Judge Albright's court be split among 12 judges in the area").

1457 At the Advisory Committee's meeting, it was concluded that this matter should be dropped
1458 from the agenda.

1459 **C. Rule 11**

1460 Andrew Straw has submitted 22-CV-R, urging that Rule 11 be amended to forbid state bar
1461 authorities to impose discipline on attorneys for conduct in regard to federal cases unless the
1462 federal courts had first imposed a Rule 11 sanction on the attorney.

1463 Mr. Straw introduced his proposal as prompted by his personal experience:

1464 My former employer, the Indiana Supreme Court, has taken mere words of criticism
1465 from several federal lawsuits I filed to vindicate disability rights and imposed
1466 nearly 6 years of suspension on 5 law licenses (4 federal via reciprocal discipline
1467 with NO HEARING), absolutely ruining my legal career.

1468 He objected to Indiana's imposition of sanctions in the absence of Rule 11 sanctions in the
1469 underlying federal actions. He therefore proposes that "Rule 11 must absolutely prohibit any other
1470 court from using 'harsh words' without a Rule 11 sanction as being an ethical violation by the
1471 person who filed the lawsuit and pursued it." In his view, "Indiana took the lack of any sanction
1472 in 4 federal cases and took this to mean that it has free reign [sic] under its own Rule 3.1 alone to
1473 retaliate against those cases after I made an ADA complaint about the Indiana Supreme Court TO
1474 the Indiana Supreme Court."

1475 Research indicates that Mr. Straw has already pursued his objections to his treatment by
1476 the Indiana state courts in federal court. He sued the Indiana Supreme Court in U.S. district court
1477 in Indiana, and appealed to the Seventh Circuit when that case was dismissed. *Straw v. Indiana*
1478 *Supreme Court*, 2018 WL 1309802 (7th Cir., Jan. 29, 2018). He then petitioned for certiorari in
1479 the U.S. Supreme Court, but the Court denied the petition. *Straw v. Supreme Court of Indiana*, 138
1480 S.Ct. 1598 (2018).

1481 In addition, some other online research appears to disclose the following: Mr. Straw sued
1482 the U.S. District Court for the Southern District of Indiana for $5 million, but that suit was
1483 dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). He also sought to have the federal courts reinstate
1484 his right to litigate in federal court. *See In re Andrew Straw*, No. 17-2523 (7th Cir., Dec. 21, 2017).
1485 He also sued the State of Indiana to challenge his discipline, but that suit was dismissed for failure
1486 to state a claim. *Straw v. State of Indiana*, Court of Appeals of Indiana no. 22A-PL-766 (June 22,
1487 2022). In addition, in 2020 the S.D.N.Y. dismissed his suit alleging defamation against the law
1488 firm Dentons and Thomson Reuters, seemingly for blog posts and publishing the official reports
1489 of the Indiana Supreme Court decisions about him), including also a claim against his law school
1490 alma mater, Indiana University School of Law. *Straw v. Dentons US LLP*, S.D.N.Y. 20-CV-3312
1491 (June 11, 2020). In dismissing this case, Judge Stanton noted that other courts had rejected Straw's
1492 efforts to challenge the discipline imposed by the Indiana courts. A Westlaw search suggests there
1493 may be additional actions brought by Mr. Straw.

1494 The main change Mr. Straw proposes to Rule 11 is to add a new subdivision (e), entitled
1495 "Containment of Discipline and Prevention of State Court Abuse." The thrust of his argument
1496 seems to be that no state bar discipline may be imposed for actions taken in regard to federal-court
1497 litigation unless the federal court first imposes sanctions.

1498 Mr. Straw seems to have things backwards. By and large, the federal courts leave bar
1499 discipline to state bar authorities. On occasion, a federal court may impose discipline on a lawyer
1500 for action taken in the federal court (such as suspension from practice before the federal court),
1501 but more often federal courts may refer questions of discipline to state bar authorities.

1502 In the 1990s, there was brief consideration of possible adoption of Federal Rules of
1503 Attorney Discipline (partly due to urging from the Department of Justice), but that idea soon
1504 proved unworkable. So most district courts adopt the professional responsibility rules of the states
1505 in which they sit as applicable in their courts as well.

1506 The notion that a Civil Rule could prevent state bar authorities from imposing discipline
1507 seems to fly in the face of this experience and misunderstand the relationship of state bar discipline

1508 and federal court admission to practice. And even if this idea had some promise, it would be odd
1509 that it should apply only to proceedings governed by the Civil Rules; it surely could happen that
1510 attorney misconduct could occur in criminal cases, bankruptcy cases, or before the appellate
1511 courts. So a rule of this nature would be an odd addition to the Civil Rules only.

1512 At its March 2023 meeting, the Advisory Committee decided to drop this matter from the
1513 agenda.

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

1 **Rule 12. Defenses and Objections: When and How**
2 **Presented; Motion for Judgment on the**
3 **Pleadings; Consolidating Motions;**
4 **Waiving Defenses; Pretrial Hearing**

5 **(a) Time to Serve a Responsive Pleading.**

6 ~~(1) *In General.*~~ Unless another time is specified by

7 ~~this rule or~~ a federal statute, the time for serving a responsive

8 pleading is as follows:

9 ***(1) In General.***

10 **(A)** A defendant must serve an answer:

11 * * * * *

Committee Note

Rule 12 is amended to make it clear that a federal statute that specifies another time supersedes the times to serve a responsive pleading set by paragraphs (a)(2) and (3). Paragraph (a)(1) incorporates this provision, but the structure of subdivision (a) does not seem to extend it to paragraphs (2) and (3). There is no reason to supersede an inconsistent statute by any part of Rule 12(a). The amended

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

structure recognizes the priority of any statute for all of paragraphs (1), (2), and (3).

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

1 **Rule 16. Pretrial Conferences; Scheduling;**
2 **Management**

3 * * * * *

4 **(b) Scheduling and Management.**

5 * * * * *

6 **(3) *Contents of the Order.***

7 * * * * *

8 **(B)** *Permitted Contents.*

9 * * * * *

10 **(iv)** include the timing and
11 method for complying with
12 Rule 26(b)(5)(A) and any
13 agreements the parties reach
14 for asserting claims of
15 privilege or of protection as

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

16 trial-preparation material

17 after information is produced,

18 including agreements reached

19 under Federal Rule of

20 Evidence 502;

21 * * * * *

Committee Note

Rule 16(b) is amended in tandem with an amendment to Rule 26(f)(3)(D). In addition, two words – "and management" – are added to the title of this rule in recognition that it contemplates that the court will in many instances do more than establish a schedule in its Rule 16(b) order; the focus of this amendment is an illustration of such activity.

The amendment to Rule 26(f)(3)(D) directs the parties to discuss and include in their discovery plan a method for complying with the requirements in Rule 26(b)(5)(A). It also directs that the discovery plan address the timing for compliance with this requirement, in order to avoid problems that can arise if issues about compliance emerge only at the end of the discovery period.

Early attention to the particulars on this subject can avoid problems later in the litigation by establishing case-specific procedures up front. It may be desirable for the Rule 16(b) order to provide for "rolling" production that may

identify possible disputes about whether certain withheld materials are indeed protected. If the parties are unable to resolve those disputes between themselves, it is often desirable to have them resolved at an early stage by the court, in part so that the parties can apply the court's resolution of the issues in further discovery in the case.

Because the specific method of complying with Rule 26(b)(5)(A) depends greatly on the specifics of a given case there is no overarching standard for all cases. In the first instance, the parties themselves should discuss these specifics during their Rule 26(f) conference; these amendments to Rule 16(b) recognize that the court can provide direction early in the case. Though the court ordinarily will give much weight to the parties' preferences, the court's order prescribing the method for complying with Rule 26(b)(5)(A) does not depend on party agreement.

1 **Rule 16.1. Managing Multidistrict Litigation**

2 **(a) Initial MDL Management Conference.** After the
3 Judicial Panel on Multidistrict Litigation orders the
4 transfer of actions, the transferee court should
5 schedule an initial management conference to
6 develop a management plan for orderly pretrial
7 activity in the MDL proceedings.

8 **(b) Designating Coordinating Counsel for the**
9 **Conference**. The transferee court may designate
10 coordinating counsel to:

11 **(1)** assist the court with the conference; and

12 **(2)** work with plaintiffs or with defendants to
13 prepare for the conference and prepare any
14 report ordered under Rule 16.1(c).

15 **(c) Preparing a Report for the Conference.** The
16 transferee court should order the parties to meet and
17 prepare a report to be submitted to the court before
18 the conference begins. The report must address any

19 matter designated by the court, which may include
20 any matter addressed in the list below or in Rule 16.
21 The report may also address any other matter the
22 parties wish to bring to the court's attention.
23 **(1)** whether leadership counsel should be
24 appointed, and if so:
25 **(A)** the procedure for selecting them and
26 whether the appointment should be
27 reviewed periodically during the
28 MDL proceedings;
29 **(B)** the structure of leadership counsel,
30 including their responsibilities and
31 authority in conducting pretrial
32 activities;
33 **(C)** their role in settlement activities;
34 **(D)** proposed methods for them to
35 regularly communicate with and

36 report to the court and nonleadership
37 counsel;
38 **(E)** any limits on activity by
39 nonleadership counsel; and
40 **(F)** whether and, if so, when to establish
41 a means for compensating leadership
42 counsel;
43 **(2)** identifying any previously entered
44 scheduling or other orders and stating
45 whether they should be vacated or modified;
46 **(3)** identifying the principal factual and legal
47 issues likely to be presented in the MDL
48 proceedings;
49 **(4)** how and when the parties will exchange
50 information about the factual bases for their
51 claims and defenses;

52 **(5)** whether consolidated pleadings should be
53 prepared to account for multiple actions
54 included in the MDL proceedings;
55 **(6)** a proposed plan for discovery, including
56 methods to handle it efficiently;
57 **(7)** any likely pretrial motions and a plan for
58 addressing them;
59 **(8)** a schedule for additional management
60 conferences with the court;
61 **(9)** whether the court should consider measures
62 to facilitate settlement of some or all actions
63 before the court, including measures
64 identified in Rule 16(c)(2)(I);
65 **(10)** how to manage the filing of new actions in
66 the MDL proceedings;
67 **(11)** whether related actions have been filed or are
68 expected to be filed in other courts, and

69 whether to consider possible methods for
70 coordinating with them; and
71 **(12)** whether matters should be referred to a
72 magistrate judge or a master.
73 **(d) Initial MDL Management Order.** After the
74 conference, the court should enter an initial MDL
75 management order addressing the matters designated
76 under Rule 16.1(c) – and any other matters in the
77 court's discretion. This order controls the MDL
78 proceedings until the court modifies it.

Committee Note

The Multidistrict Litigation Act, 28 U.S.C. § 1407, was adopted in 1968. It empowers the Judicial Panel on Multidistrict Litigation to transfer one or more actions for coordinated or consolidated pretrial proceedings, to promote the just and efficient conduct of such actions. The number of civil actions subject to transfer orders from the Panel has increased significantly since the statute was enacted. In recent years, these actions have accounted for a substantial portion of the federal civil docket. There previously was no reference to multidistrict litigation in the Civil Rules and, thus, the addition of Rule 16.1 is designed to provide a framework for the initial management of MDL proceedings.

Not all MDL proceedings present the type of management challenges this rule addresses. On the other hand, other multiparty litigation that did not result from a Judicial Panel transfer order may present similar management challenges. For example, multiple actions in a single district (sometimes called related cases and assigned by local rule to a single judge) may exhibit characteristics similar to MDL proceedings. In such situations, courts may find it useful to employ procedures similar to those Rule 16.1 identifies for MDL proceedings in their handling of those multiparty proceedings. In both MDL proceedings and other multiparty litigation, the Manual for Complex Litigation also may be a source of guidance.

Rule 16.1(a). Rule 16.1(a) recognizes that the transferee judge regularly schedules an initial MDL management conference soon after the Judicial Panel transfer occurs to develop a management plan for the MDL proceedings. That initial MDL management conference ordinarily would not be the only management conference held during the MDL proceedings. Although holding an initial MDL management conference in MDL proceedings is not mandatory under Rule 16.1(a), early attention to the matters identified in Rule 16.1(c) may be of great value to the transferee judge and the parties.

Rule 16.1(b). Rule 16.1(b) recognizes the court may designate coordinating counsel -- perhaps more often on the plaintiff than the defendant side -- to ensure effective and coordinated discussion and to provide an informative report for the court to use during the initial MDL management conference.

While there is no requirement that the court designate coordinating counsel, the court should consider whether such a designation could facilitate the organization and

management of the action at the initial MDL management conference. The court may designate coordinating counsel to assist the court before appointing leadership counsel. In some MDL proceedings, counsel may be able to organize themselves prior to the initial MDL management conference such that the designation of coordinating counsel may not be necessary.

Rule 16.1(c). The court ordinarily should order the parties to meet to provide a report to the court about the matters designated in the court's Rule 16.1(c) order prior to the initial MDL management conference. This should be a single report, but it may reflect the parties' divergent views on these matters. The court may select which matters listed in Rule 16.1(c) or Rule 16 should be included in the report submitted to the court, and may also include any other matter, whether or not listed in those rules. Rules 16.1(c) and 16 provide a series of prompts for the court and do not constitute a mandatory checklist for the transferee judge to follow. Experience has shown, however, that the matters identified in Rule 16.1(c)(1)-(12) are often important to the management of MDL proceedings. In addition to the matters the court has directed counsel to address, the parties may choose to discuss and report about other matters that they believe the transferee judge should address at the initial MDL management conference.

Rule 16.1(c)(1). Appointment of leadership counsel is not universally needed in MDL proceedings. But, to manage the MDL proceedings, the court may decide to appoint leadership counsel. This provision calls attention to a number of topics the court might consider if appointment of leadership counsel seems warranted.

The first is the procedure for selecting such leadership counsel, addressed in subparagraph (A). There is

no single method that is best for all MDL proceedings. The transferee judge has a responsibility in the selection process to ensure that the lawyers appointed to leadership positions are capable and experienced and that they will responsibly and fairly represent all plaintiffs, keeping in mind the benefits of different experiences, skill, knowledge, geographical distributions, and backgrounds. Courts have considered the nature of the actions and parties, the qualifications of each individual applicant, litigation needs, access to resources, the different skills and experience each lawyer will bring to the role, and how the lawyers will complement one another and work collectively.

MDL proceedings do not have the same commonality requirements as class actions, so substantially different categories of claims or parties may be included in the same MDL proceeding and leadership may be comprised of attorneys who represent parties asserting a range of claims in the MDL proceeding. For example, in some MDL proceedings there may be claims by individuals who suffered injuries, and also claims by third-party payors who paid for medical treatment. The court may sometimes need to take these differences into account in making leadership appointments.

Courts have selected leadership counsel through combinations of formal applications, interviews, and recommendations from other counsel and judges who have experience with MDL proceedings. If the court has appointed coordinating counsel under Rule 16.1(b), experience with coordinating counsel's performance in that role may support consideration of coordinating counsel for a leadership position, but appointment under Rule 16(b) is primarily focused on coordination of the Rule 16.1(c) meeting and preparation of the resulting report to the court

for use at the initial MDL management conference under Rule 16.1(a).

The rule also calls for a report to the court on whether appointment to leadership should be reviewed periodically. Periodic review can be an important method for the court to manage the MDL proceeding.

In some MDL proceedings it may be important that leadership counsel be organized into committees with specific duties and responsibilities. Subparagraph (B) of the rule therefore prompts counsel to provide the court with specifics on the leadership structure that should be employed.

Subparagraph (C) recognizes that, in addition to managing pretrial proceedings, another important role for leadership counsel in some MDL proceedings is to facilitate possible settlement. Even in large MDL proceedings, the question whether the parties choose to settle a claim is just that -- a decision to be made by those particular parties. Nevertheless, leadership counsel ordinarily play a key role in communicating with opposing counsel and the court about settlement and facilitating discussions about resolution. It is often important that the court be regularly apprised of developments regarding potential settlement of some or all actions in the MDL proceeding. In its supervision of leadership counsel, the court should make every effort to ensure that leadership counsel's participation in any settlement process is appropriate.

One of the important tasks of leadership counsel is to communicate with the court and with nonleadership counsel as proceedings unfold. Subparagraph (D) directs the parties to report how leadership counsel will communicate with the court and nonleadership counsel. In some instances, the court or leadership counsel have created websites that permit

nonleadership counsel to monitor the MDL proceedings, and sometimes online access to court hearings provides a method for monitoring the proceedings.

Another responsibility of leadership counsel is to organize the MDL proceedings in accord with the court's management order under Rule 16.1(d). In some MDLs, there may be tension between the approach that leadership counsel takes in handling pretrial matters and the preferences of individual parties and nonleadership counsel. As subparagraph (E) recognizes, it may be necessary for the court to give priority to leadership counsel's pretrial plans when they conflict with initiatives sought by nonleadership counsel. The court should, however, ensure that nonleadership counsel have suitable opportunities to express their views to the court, and take care not to interfere with the responsibilities non-leadership counsel owe their clients.

Finally, subparagraph (F) addresses whether and when to establish a means to compensate leadership counsel for their added responsibilities. Courts have entered orders pursuant to the common benefit doctrine establishing specific protocols for common benefit work and expenses. But it may be best to defer entering a specific order until well into the proceedings, when the court is more familiar with the proceedings.

Rule 16.1(c)(2). When multiple actions are transferred to a single district pursuant to 28 U.S.C. § 1407, those actions may have reached different procedural stages in the district courts from which cases were transferred ("transferor district courts"). In some, Rule 26(f) conferences may have occurred and Rule 16(b) scheduling orders may have been entered. Those scheduling orders are likely to vary. Managing the centralized MDL proceedings in a consistent manner may warrant vacating or modifying

scheduling orders or other orders entered in the transferor district courts, as well as any scheduling orders previously entered by the transferee judge.

Rule 16.1(c)(3). Orderly and efficient pretrial activity in MDL proceedings can be facilitated by early identification of the principal factual and legal issues likely to be presented. Depending on the issues presented, the court may conclude that certain factual issues should be pursued through early discovery, and certain legal issues should be addressed through early motion practice.

Rule 16.1(c)(4). Experience has shown that in MDL proceedings an exchange of information about the factual bases for claims and defenses can facilitate efficient management. Some courts have utilized "fact sheets" or a "census" as methods to take a survey of the claims and defenses presented, largely as a management method for planning and organizing the proceedings.

The level of detail called for by such methods should be carefully considered to meet the purpose to be served and avoid undue burdens. Whether early exchanges should occur may depend on a number of factors, including the types of cases before the court. For example, it is widely agreed that discovery from individual class members is often inappropriate in class actions, but with regard to individual claims in MDL proceedings exchange of individual particulars may be warranted. And the timing of these exchanges may depend on other factors, such as whether motions to dismiss or other early matters might render the effort needed to exchange information unwarranted. Other factors might include whether there are legal issues that should be addressed (e.g., general causation or preemption) and the number of plaintiffs in the MDL proceeding.

Rule 16.1(c)(5). For case management purposes, some courts have required consolidated pleadings, such as master complaints and answers in addition to short form complaints. Such consolidated pleadings may be useful for determining the scope of discovery and may also be employed in connection with pretrial motions, such as motions under Rule 12 or Rule 56. The relationship between the consolidated pleadings and individual pleadings filed in or transferred to the MDL proceeding depends on the purpose of the consolidated pleadings in the MDL proceedings. Decisions regarding whether to use master pleadings can have significant implications in MDL proceedings, as the Supreme Court noted in *Gelboim v. Bank of America Corp.*, 574 U.S. 405, 413 n.3 (2015).

Rule 16.1(c)(6). A major task for the MDL transferee judge is to supervise discovery in an efficient manner. The principal issues in the MDL proceedings may help guide the discovery plan and avoid inefficiencies and unnecessary duplication.

Rule 16.1(c)(7). Early attention to likely pretrial motions can be important to facilitate progress and efficiently manage the MDL proceedings. The manner and timing in which certain legal and factual issues are to be addressed by the court can be important in determining the most efficient method for discovery.

Rule 16.1(c)(8). The Rule 16.1(a) conference is the initial MDL management conference. Although there is no requirement that there be further management conferences, courts generally conduct management conferences throughout the duration of the MDL proceedings to effectively manage the litigation and promote clear, orderly, and open channels of communication between the parties and the court on a regular basis.

Rule 16.1(c)(9). Even if the court has not appointed leadership counsel, it may be that judicial assistance could facilitate the settlement of some or all actions before the transferee judge. Ultimately, the question whether parties reach a settlement is just that -- a decision to be made by the parties. But as recognized in Rule 16(a)(5) and 16(c)(2)(I), the court may assist the parties in settlement efforts. In MDL proceedings, in addition to mediation and other dispute resolution alternatives, the court's use of a magistrate judge or a master, focused discovery orders, timely adjudication of principal legal issues, selection of representative bellwether trials, and coordination with state courts may facilitate settlement.

Rule 16.1(c)(10). Actions that are filed in or removed to federal court after the Judicial Panel has created the MDL proceedings are treated as "tagalong" actions and transferred from the district where they were filed to the transferee court.

When large numbers of tagalong actions are anticipated, some parties have stipulated to "direct filing" orders entered by the court to provide a method to avoid the transferee judge receiving numerous cases through transfer rather than direct filing. If a direct filing order is entered, it is important to address matters that can arise later, such as properly handling any jurisdictional or venue issues that might be presented, identifying the appropriate transferor district court for transfer at the end of the pretrial phase, how time limits such as statutes of limitations should be handled, and how choice of law issues should be addressed.

Rule 16.1(c)(11). On occasion there are actions in other courts that are related to the MDL proceedings. Indeed, a number of state court systems (e.g., California and New Jersey) have mechanisms like § 1407 to aggregate separate

actions in their courts. In addition, it may sometimes happen that a party to an MDL proceeding may become a party to another action that presents issues related to or bearing on issues in the MDL proceeding.

The existence of such actions can have important consequences for the management of the MDL proceedings. For example, avoiding overlapping discovery is often important. If the court is considering adopting a common benefit fund order, consideration of the relative importance of the various proceedings may be important to ensure a fair arrangement. It is important that the MDL transferee judge be aware of whether such proceedings in other courts have been filed or are anticipated.

Rule 16.1(c)(12). MDL transferee judges may refer matters to a magistrate judge or a master to expedite the pretrial process or to play a part in settlement negotiations. It can be valuable for the court to know the parties' positions about the possible appointment of a master before considering whether such an appointment should be made. Rule 53 prescribes procedures for appointment of a master.

Rule 16.1(d). Effective and efficient management of MDL proceedings benefits from a comprehensive management order. A management order need not address all matters designated under Rule 16.1(c) if the court determines the matters are not significant to the MDL proceedings or would better be addressed at a subsequent conference. There is no requirement under Rule 16.1 that the court set specific time limits or other scheduling provisions as in ordinary litigation under Rule 16(b)(3)(A). Because active judicial management of MDL proceedings must be flexible, the court should be open to modifying its initial management order in light of subsequent developments in the MDL proceedings. Such modification may be

particularly appropriate if leadership counsel were appointed after the initial management conference under Rule 16.1(a)

1 **Rule 26. Duty to Disclose; General Provisions**
2 **Governing Discovery**

3 * * * * *

4 **(f) Conference of the Parties; Planning for**
5 **Discovery.**

6 * * * * *

7 **(3)** ***Discovery Plan.*** A discovery plan must state
8 the parties' views and proposals on:

9 * * * * *

10 **(D)** any issues about claims of privilege
11 or of protection as trial-preparation
12 materials, including the timing and
13 method for complying with
14 Rule 26(b)(5)(A) and – if the parties
15 agree on a procedure to assert these
16 claims after production – whether to
17 ask the court to include their
18 agreement in an order under Federal
19 Rule of Evidence 502;

20 * * * * *

Committee Note

Rule 26(f)(3)(D) is amended to address concerns about application of the requirement in Rule 26(b)(5)(A) that producing parties describe materials withheld on grounds of privilege or as trial-preparation materials. Compliance with Rule 26(b)(5)(A) can involve very large costs, often including a document-by-document "privilege log."

Rule 26(b)(5)(A) was adopted in 1993, and from the outset was intended to recognize the need for flexibility. Nevertheless, the rule has not been consistently applied in a flexible manner, sometimes imposing undue burdens.

This amendment directs the parties to address the question how they will comply with Rule 26(b)(5)(A) in their discovery plan, and report to the court about this topic. A companion amendment to Rule 16(b)(3)(B)(iv) seeks to prompt the court to include provisions about complying with Rule 26(b)(5)(A) in scheduling or case management orders.

Requiring this discussion at the outset of litigation is important to avoid problems later on, particularly if objections to a party's compliance with Rule 26(b)(5)(A) might otherwise emerge only at the end of the discovery period.

This amendment also seeks to grant the parties maximum flexibility in designing an appropriate method for identifying the grounds for withholding materials. Depending on the nature of the litigation, the nature of the materials sought through discovery, and the nature of the privilege or protection involved, what is needed in one case may not be necessary in another. No one-size-fits-all approach would actually be suitable in all cases.

In some cases, it may be suitable to have the producing party deliver a document-by-document listing with explanations of the grounds for withholding the listed materials.

In some cases some sort of categorical approach might be effective to relieve the producing party of the need to list many withheld documents. For example, it may be that communications between a party and outside litigation counsel could be excluded from the listing, and in some cases a date range might be a suitable method of excluding some materials from the listing requirement. These or other methods may enable counsel to reduce the burden and increase the effectiveness of complying with Rule 26(b)(5)(A). But the use of categories calls for careful drafting and application keyed to the specifics of the action.

Requiring that discussion of this topic begin at the outset of the litigation and that the court be advised of the parties' plans or disagreements in this regard is a key purpose of this amendment. Production of a privilege log near the close of the discovery period can create serious problems. Often it will be valuable to provide for "rolling" production of materials and an appropriate description of the nature of the withheld material. In that way, areas of potential dispute may be identified and, if the parties cannot resolve them, presented to the court for resolution.

Early design of methods to comply with Rule 26(b)(5)(A) may also reduce the frequency of claims that producing parties have over-designated responsive materials. Such concerns may arise, in part, due to failure of the parties to communicate meaningfully about the nature of the privileges and materials involved in the given case. It can be difficult to determine whether certain materials are subject to privilege protection, and candid early

communication about the difficulties to be encountered in making and evaluating such determinations can avoid later disputes.

TAB 5B

DRAFT MINUTES
CIVIL RULES ADVISORY COMMITTEE
March 28, 2023

The Civil Rules Advisory Committee met on March 28, 2023, in West Palm Beach, Florida. Participants included Judge Robin Rosenberg (Advisory Committee Chair) and Judge John Bates (Standing Committee Chair), Advisory Committee members Justice Jane Bland; Judge Cathy Bissoon; Judge Jennifer Boal; Brian Boynton; David Burman; Chief Judge David Godbey (remotely); Judge Kent Jordan; Judge M. Hannah Lauck; Judge R. David Proctor; Joseph Sellers; Judge Manish Shah; Dean Benjamin Spencer; Ariana Tadler; and Helen Witt. Professor Richard Marcus participated (remotely) as Reporter, Professor Andrew Bradt as Associate Reporter, and Professor Cooper as Consultant. Also representing the Standing Committee were Judge D. Brooks Smith, Liaison to this committee (remotely) Professor Catherine Struve, Reporter to the Standing Committee (remotely); and Professor Daniel Coquillette, Consultant to the Standing Committee (remotely). Representing the Bankruptcy Rules Committee was Judge Catherine McEwen, liaison to this committee. Carmelita Shinn, clerk liaison, also participated. The Department of Justice was also represented by Joshua Gardner. The Administrative Office was represented by H. Thomas Byron III; Allison Bruff; Christopher Pryby; and Scott Myers (remotely). The Federal Judicial Center was represented by Dr. Emery Lee; Jason Cantone (remotely); and Timothy Reagan (remotely); Darcie Thompson, law clerk to Judge Rosenberg, and Supreme Court Fellow Brad Baranowski also attended.

Susan Steinman of the American Association for Justice, Alex Dahl of Lawyers for Civil Justice, and Robert Levy of Exxon Corp. and Kyle Cutts and Gil Keteltas of Baker Hostetler attended in person. Members of the public also joined the meeting remotely. They are identified in the attached attendance list.

Judge Rosenberg opened the meeting by noting that this was her first meeting as Chair. She noted that she aspired to continue the great tradition set most recently by Judges Bates and Dow, the immediate past chairs of this Committee.

New Committee Members and Associate Reporter

Judge Rosenberg introduced two newly-appointed members of the Committee. First, Justice Jane Bland of the Texas Supreme Court has joined the Committee. She has been a Justice of that court since 2019 and was previously on the Texas Court of Appeals, and before that served as a district court judge in the Texas state courts. She has abundant rulemaking experience, having served for 21 years on the Texas Rules Committee.

Judge Manish Shah of the Northern District of Illinois graduated from Stanford and then the University of Chicago Law School. He then worked for a San Francisco law firm before serving as law clerk to Judge James Zagel of the Northern District of Illinois. After his law clerk service, he was an Assistant U.S. Attorney in the N.D. Ill. for 12 years, the last two years as Chief of the Criminal Division.

Judge Rosenberg then introduced Professor Andrew Bradt, the new Associate Reporter of the Committee. He is a Professor of Law at the University of California, Berkeley, where he has won law school and campus-wide teaching awards. He is also co-author of casebooks on Civil Procedure and Complex Litigation. And he is Faculty Director of the Berkeley Law Civil Justice Institute. Before entering full-time teaching, he served as law clerk to Judge Patti Saris (D.Mass.), practiced at Ropes & Gray and at Jones Day, and served as a Climenko Teaching Fellow at Harvard Law School.

Standing Committee January meeting

Judge Rosenberg then reported on the Standing Committee meeting in January 2023. Much of the meeting focused on work done by other advisory committees. For this Committee, there were

three areas of interest:

(1) The Rule 42 Consolidation Subcommittee, a joint subcommittee of the Civil and Appellate Rules Advisory Committees (sometimes call the Hall v. Hall Committee) was disbanded. This committee was formed after the Supreme Court's decision in Hall v. Hall, 138 S.Ct. 1118 (2018), holding that even after separate cases have been consolidated a final judgment in one of them is immediately appealable even though the other case or cases remain pending in the district court. The Court recognized in its decision that a rule change could alter the result it reached, which resolved a circuit conflict. A very substantial research effort by FJC Research, after overcoming considerable obstacles, showed that there had not been significant problems under the rule announced by the Court, and that there was no significant indication that a rule change was needed. Consequently, the subcommittee was disbanded.

(2) The proposed privilege log amendments to Rules 16(b)(3) and 26(f)(3) were presented to the Standing Committee. That committee did not have a problem with the small changes in the rules themselves, but had misgivings about the length of the draft Committee Notes in relation the minor changes in the rules. One concern was that these Notes were verging on being a practice manual rather than explaining how the amendments were to function. The decision was to return the privilege log package to the Advisory Committee to consider shortening the Note, and the Discovery Subcommittee had since January agreed on a shorter Note that is before the full Committee today.

(3) The third topic presented to the Standing Committee in January was the MDL package. That generated substantial discussion at the Standing Committee meeting, and is an important part of today's agenda. So detailed discussion can be deferred until that point in the agenda.

Judicial Conference Meeting, March 2023

Judge Rosenberg also noted that the agenda book contains a report submitted to the Judicial Conference for its March 2023 meeting. It is included for information purposes only. It notes the matters now under study by this Committee.

Minutes for October 2022 Meeting

The agenda book also contains the draft minutes for the Advisory Committee's October 2022 meeting. The draft was approved without dissent, subject to correction of typographical or similar errors.

Rule 12(a) -- Recommending adoption

A small amendment to Rule 12(a) was published for public comment in August 2022. It was introduced as correcting a seeming oversight in the rule that suggested the rule altered statutes that call for the government to respond in fewer than 60 days (the time specified for the government to file its answer under Rules 12(a)(2) and (3)). The prime example is the Freedom of Information Act, and the Committee was informed that the existing rule had caused problems in some FOIA cases. The amendment sought to cure this problem by amending the provision formerly limited to Rule 12(a)(1) so it applies to the entirety of Rule 12(a), including the times that apply to the government, and the Note made clear that this would invoke a statute that provided another time -- whether shorter or longer -- in place of the time provisions of the rule itself.

Only three comments were submitted. One (submitted by Anonymous) supported the amendment, and another objected that the rule had been "disregarded" in favor of the State of Indiana in a prior litigation. The Federal Magistrate Judges Association supported the amendment

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but noted that there might be other rules that might specify a different time. The FMJA did not identify any such rules, but a comment during the meeting noted that Rule 15(a)(3) calls for responding to an amended pleading within 14 days, which might be affected. Rule 15(a) was not exempted by the current rule, however, and no problems under that rule had been identified (as with the FOIA cases). Moreover, this possible change could be said to go beyond the published draft amendment.

On motion, the amendment was approved for recommendation that the Standing Committee forward it to the Judicial Conference for adoption, with one dissent.

Privilege Logs
Rules 16(b)(3) and 26(f)(3)

As already noted, the Standing Committee returned the proposed amendments to the Advisory Committee with a request to consider shortening the Note. No questions were raised about the rule amendments themselves.

Chief Judge David Godbey, Chair of the Discovery Subcommittee, reported that the Subcommittee had met by email on a number of occasions to craft a punchier Note. After considerable wordsmithing, the Subcommittee agreed to a revised and shortened Note, which is included in the agenda book. It urges that the draft rule amendments, along with the shortened Notes, but published for public comment.

In addition, after the Standing Committee meeting, Judge Facciola and Mr. Redgrave submitted a proposal for an amendment to Rule 26(b)(5)(A), where the requirement to specify what has been withheld on grounds of privilege appears. The Subcommittee does not recommend making this additional rule change.

A Subcommittee member commented in support of the amendment, but expressed worries that the parties might often find it difficult to devise a specific method of complying with Rule 26(b)(5)(A) as early in the case as when the Rule 26(f) conference occurs. The idea is that this should be "the beginning of the process" in many instances.

A reaction was that one can "almost always" make later revisions to any early arrangements of this sort in light of developments. And it was repeatedly emphasized as the Subcommittee studied the problem that early attention was critical. Deferring serious consideration of the method of satisfying Rule 26(b)(5)(A) until the end of the discovery period could produce major problems.

A question was raised about the suggestion from Judge Facciola and Mr. Redgrave. Why not make that change? An answer was that the rule amendment calls for discussion during the Rule 26(f) meet-and-confer session, so the best place to put that is in Rule 26(f). Presumably that is where people would look to find out what they should do during the meet-and-confer session. Telling them the same thing in Rule 26(b)(5)(A) seems redundant.

The Committee voted unanimously to recommend that the revised amendment package be published for public comment.

MDL Subcommittee -- Rule 16.1

Judge Rosenberg introduced this matter by noting that this subcommittee may have set a record for longevity for Advisory Committee subcommittees. The task has lasted more than four years and has ranged through a multitude of issues. Much time was spent on whether to move

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129 forward with special rules for interlocutory appellate review in MDL proceedings. Considerable
130 additional time was devoted to study of third party litigation funding. Aggressive "vetting" proposals
131 were also made, sometimes calling for plaintiffs to submit "evidentiary" materials at the outset of
132 litigation to validate their claims.

133 For some time (up until when the Advisory Committee's agenda book for the March 2022
134 meeting was prepared), the focus was on Rules 26(f) and 16(b), the same rules addressed in the
135 Discovery Subcommittee privilege log proposals. But eventually it became clear (a) that Rule 26(f)
136 was not entirely suitable as a vehicle because it is addressed to individual actions, and (b) that a
137 special feature -- appointment of "coordinating counsel" -- might be important to assist in the
138 organization of the meet-and-confer session that could produce a report for the court to assist in the
139 management of MDL proceedings.

140 After the Advisory Committee's March 2022 meeting, an initial sketch of a possible Rule
141 16.1 was prepared, using two alternatives. The first included a list of specifics very much like the
142 one being presented to this committee. The second alternative was more general. This sketch was
143 included in the Standing Committee agenda book for its June 2022 meeting as a purely informational
144 item. It was later the focus of very useful meetings with members of the Lawyers for Civil Justice
145 and the American Association for Justice attended by members of the Subcommittee.

146 In addition, as reported during the October 2022 meeting of this Committee, representatives
147 of the Subcommittee would be attending the transferee judges conference hosted by the Judicial
148 Panel on Multidistrict Litigation at the end of October 2022. The Panel was very helpful to the
149 Subcommittee during that event. There was a session of the entire conference devoted to the Rule
150 16.1 ideas, and at the end of the conference also a special breakout session for in-depth discussion
151 of the 16.1 ideas. During that session in particular, the transferee judges expressed a distinct
152 preference for the Alternative 1 approach -- including more specifics. Such a rule could provide
153 valuable guidance, particularly to judges new to the MDL process, and to lawyers without
154 substantial prior experience. In addition, it could tee up a variety of topics that can beneficially be
155 considered at the outset of MDL proceedings.

156 Judge Proctor continued the introduction of the Rule 16.1 proposal. He noted that he had
157 been Chair of the Subcommittee only since last November -- the third Chair for this Subcommittee
158 (perhaps also a record). He recalled an early presentation during the Judicial Panel's 2018 transferee
159 judges conference about the possibility of amending the Civil Rules to address MDL proceedings.
160 At that time he was a member of the Panel, and was personally skeptical about the rule amendment
161 ideas, particularly given the topics then under discussion, including expanded interlocutory appeals
162 and "vetting" requirements. Many other transferee judges were similarly resistant to these
163 amendment ideas during the 2018 conference.

164 He also attended the sessions at the Panel's 2022 transferee judges conference and found the
165 sessions very helpful in crystallizing what emerged as strong support among the judges for the
166 Alternative 1 approach. Support even came from a number of judges who had been opposed to rule
167 amendments during the 2018 conference. Indeed, one very experienced transferee judge remarked
168 that he had become a "convert" to favoring this new approach to addressing MDL proceedings in
169 the Civil Rules.

170 With this background, the Subcommittee set to work. The Subcommittee members were
171 indefatigable. There may have been as many as ten meetings, and unless they were ill or out of the
172 country all members showed up for and participated in these meetings. There was a collective effort
173 to take account of the comments received from the sources mentioned above, and from other sources
174 that the very experienced members of the Subcommittee have consulted.

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175 The basic concept is to give the transferee judge a set of prompts that can provide a valuable
176 starting point for successful management of an MDL proceeding. In a sense, the rule offers the judge
177 a "cafeteria plan" to direct counsel to provide needed input up front without constricting the judge's
178 flexibility in tailoring the management order to the needs of the specific proceeding.

179 As recognized in the rule and Note, there may be some MDL proceedings that do not need
180 as much detail or management as the larger ones. But a consistent message through the long
181 consideration of these issues is that almost all transferee judges convene an initial management
182 conference to develop a plan.

183 Turning to the structure of the 16.1 draft, Judge Proctor noted that this is about the initial
184 management conference, though it foresees that ordinarily there will be further conferences to
185 monitor the proceedings and adapt to developments. Rule 16.1(b) authorizes appointment of
186 "coordinating counsel" to assist in the preparation and organization of a meet-and-confer session
187 under Rule 16.1(c) and in the preparation of the report to the court before the Rule 16.1(a) initial
188 management conference. Such a designation might be likened to having to "herd cats," but it is
189 something that may provide important value to the court.

190 A concern repeatedly raised during meetings with bar groups and in submissions to the
191 Committee might be called a "chicken/egg" problem -- how can all the topics on which the meet-
192 and-confer session is to focus be addressed meaningfully before leadership is appointed (assuming
193 there is to be an appointment of leadership counsel -- one of the proposed topics of the meet-and-
194 confer session). But the scheme is not to insist that all these matters be immediately set in concrete.
195 Indeed, Rule 16.1(d) says the initial case management order governs only "until" it is modified. A
196 key objective is to maintain flexibility while also providing guidance and identifying issues that
197 might cause great difficulty later unless brought to the surface near the outset.

198 Rule 16.1(c) provides the "cafeteria" menu, and leaves it entirely to the judge to pick the
199 topics that the parties must discuss and address in their report. The rule does not require that they
200 agree on how to handle these matters, but the reporting function at least equips the judge to
201 appreciate the various positions (sometimes, perhaps, involving disagreements among plaintiff
202 counsel or defense counsel and not only between the two "sides").

203 Turning to some of the specifics, (c)(4) introduces the question of what was originally called
204 "vetting." Some say
205 the § 1407 process is not primarily designed to weed out groundless claims, but that is not so. The
206 statute is indeed designed to deal with the "forest" more than individual trees, and in some instances
207 there may be a cross-cutting issues that should be considered first. General causation, preemption,
208 and *Daubert* issues might be examples of that sort of issue. It may often be that individual specifics
209 are best deferred until remand to the transferor district. But in some MDL proceedings, early
210 requirements for disclosure of information about specific claims can be important. Indeed, the
211 frequent use of plaintiff fact sheets or the census methods introduced recently demonstrate that such
212 methods are often important, particularly in MDL proceedings with hundreds or thousands of
213 actions.

214 Another topic that has received much attention is settlement, and particularly the judicial role
215 in connection with possible settlement of some of these individual cases. Settlement issues are
216 different in MDL proceedings from class actions. Rule 23 authorizes the judge to appoint class
217 counsel, and also authorizes the judge to approve a settlement presented by class counsel even over
218 class member objections. In MDL proceedings, most plaintiffs have their own attorneys, and
219 settlement is an individual decision made by individual parties. The Note makes that clear, and that
220 is an important point.

221 Nevertheless, the court has a role to play in regard to settlement. For one thing (as recognized
222 by proposed 16.1(c)(1)(C)), it is common for leadership (if appointed) to have prominent role in
223 regard to settlement, at least when settlement involves resolution of multiple cases. Since the court
224 appoints leadership (and may restrict the activities of nonleadership counsel -- see proposed
225 16.1(c)(1)(E)) there is a potential oversight role for the court.

226 Beyond that, whether or not leadership counsel are appointed, proposed 16.1(c)(9) draws
227 attention to measures the court can take to facilitate settlement. Rule 16(a)(5) already recognizes that
228 "facilitating settlement" is one purpose for pretrial conferences in general, and proposed 16.1 builds
229 on that foundation.

230 Some have called attention to the Manual for Complex Litigation as a valuable source for
231 guidance for transferee judges. And it certainly is a wonderful source of guidance, though by now
232 nearly 20 years old. But it is also about 900 pages long and may not be easily digested by a judge
233 (or lawyer) newly introduced into MDL proceedings. The Panel has been consciously reaching out
234 to involve more judges in this process. And not all judges have an extensive background in complex
235 civil litigation; for example, some may come to the bench with more experience in criminal cases.
236 Transferee judges are also making efforts to involve attorneys in leadership who have not previously
237 had extensive MDL experience. The draft Committee Note recognizes the importance of care in
238 designation of leadership counsel, including a variety of experiences for potential appointees. For
239 those new to the MDL process, the Manual may be daunting to contemplate up front. And the draft
240 Note calls attention to the Manual as a source of guidance.

241 So 16.1 is not designed to supplant the Manual, but instead to provide a valuable starting
242 point for the court and the attorneys. 16.1 is not even for every MDL, though it is probably quite rare
243 for an MDL proceeding to be so simple that an initial management conference is unnecessary. The
244 draft Note recognizes that, and that matters identified in 16.1(c) may be important also in actions
245 concentrated before a single district judge without an MDL assignment, as by a related case
246 provision in local rules.

247 In conclusion, many of the particulars included in proposed 16.1(c) are features of particular
248 importance in MDL proceedings, and particularly in the larger ones that have assumed such
249 prominence in recent years. The "cafeteria" process is designed to equip the judge to be able to
250 manage the action successfully, something that often depends on getting a good start.

251 A Subcommittee member began the discussion by emphasizing that the proposal was the
252 product of great effort and care -- ten meetings and many, many emails. The Subcommittee spent
253 lots if time on many issues and was very careful about wording. Regarding the Manual for Complex
254 Litigation, it might be that completion of a new edition and final adoption of a new Rule 16.1 could
255 be seen as something of a race. The Enabling Act process takes several years, and the completion
256 of a new edition of the Manual would also likely take several years.

257 Turning to the draft rule, this member noted that the goal was to be as flexible as possible.
258 And the messages in the Committee Note are meant to be used to interpret and implement the rule's
259 provisions. As with the 2015 amendments to the discovery rules, the rule and Note work hand in
260 hand.

261 A judge raised several questions:

262 (1) The title is "Multidistrict Litigation Management," but the rule seems almost entirely
263 addressed to the "initial" management conference. In the same vein, in line 291, the term
264 "MDL" should be moved before "management" for consistency. It was agreed that this

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change in line 291 is needed.

(2) It may be that draft 16.1(c)(4) is too strong, as it assumes that this information exchange should occur in every MDL even though the Note says that some MDLs don't call for this process. That seems to be in tension.

(3) In the Note to 16.1(b), in line 364, it seems that the reference should be to the 16.1(a) conference, for that is the conference on which the rule focuses, not the 16.1(c) meet-and-confer. The resolution might best be to make it clear in line 364 that the meet-and-confer session is what's meant.

(4) In regard to 16.1(c)(12), the Note seems to insist that any appointment of a master be done in strict compliance with Rule 53. Yet it seems that creative judges sometimes use masters in other ways in some MDL proceedings. Was it meant to disapprove that activity?

(5) The discussion of settlement in 16.1(c)(1)(C) and 16.1(c)(9) seems not entirely consistent. Moreover, the Note at lines 415-26 seems to authorize the court to pass on the "fairness" of any settlement. Is that suitable to MDL proceedings? In lines 501-05, the Note appears to direct the court to ensure that any proposed settlement process "has integrity." If that is a direction to the court, should it be in the rule? And does the court have that authority in MDL proceedings, where judicial approval of settlements is not required?

(6) In the Note to 16.1(c)(6), about a discovery plan, there is a reference to 16.1(c)(11), which is about related actions in other courts. What does that mean?

An immediate reaction was that these are very important questions. As to the last question, the point was that duplicative or overlapping discovery resulting from the pendency of overlapping proceedings was to be avoided, if possible. That could be a goal of the "coordination" that 16.1(c)(11) addresses.

An additional reaction was that the rule really looks beyond the initial management conference. For one thing, 16.1(c)(8) says that there probably should be a schedule for further such management conferences. And the Note (lines 490-91) says that "courts generally conduct management conferences throughout the duration of MDL proceedings." In addition, 16.1(c)(1)(A) directs attention to whether, if leadership counsel are appointed, "the appointment should be reviewed periodically during the MDL proceedings," again foreseeing recurrent oversight by the court. Though the basic point is to provide the court with the information needed during the initial management conference, that initial conference (and the resulting initial management order under 16.1(d)) would ordinarily be a foundation for further judicial management.

A Subcommittee member addressed the master question. There has been, and to some extent still is, substantial disagreement about the necessity of following the entire Rule 53 procedure every time there is a need for such an appointment. Some might even say such appointments lead to a "quasi master." The Subcommittee did not seek to resolve these divergent attitudes. The reality is that "you won't get far without party buy-in in MDLs" in situations in which special assignments are needed for a master. But the rule provision is directed more to enabling the parties to inform the court of their views before the 16.1(a) initial management conference. The goal was to leave some play in the joints.

Regarding settlement, this member emphasized that "we beat settlement half to death." The lawyer members of the Subcommittee were critical to the process. A starting point is in 16.1(c)(1)(C). If the court appoints leadership counsel it is highly likely that those lawyers will play

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a prominent role in any considerable settlement process. It is appropriate to consider judicial directions regarding this recurrent possibility. Indeed, some say it makes sense on occasion to appoint liaison settlement counsel. That is what Judge Breyer did in the VW Diesel case. Proposed 16.1(c)(9) thus refers to existing Rule 16(c)(2)(I). The Note makes a critical point twice -- in MDL proceedings the decision whether to settle is an individual decision by a claimant and defendant. The variety of settlement arrangements is wide. There may be some "global" settlements. One or more defendants may approach some plaintiffs with settlement proposals for them. When bellwether trials are scheduled, that may also prompt attention to settlement of some cases.

The judge who raised the questions noted above responded that it is not clear whether the purpose is to make the judge responsible to ensure that the settlement is "fair," or that the settlement process has "integrity." In either event, if that is the purpose it is likely it should be in the rule, not just the Note.

Another Subcommittee member addressed the settlement topic, stressing that there is a broader perspective here than under Rule 23. On the one hand, if the court appoints leadership counsel, the rule is intended to give the court an opportunity to consider the appropriate role of those attorneys in the settlement context. Separately, whether or not the court appoints leadership counsel, the court in MDL proceedings, as in all cases, has some authority to address resolution. Regarding the Note at lines 425-26, the point is only to attend to procedural fairness, not to assess the fairness of the underlying settlement itself.

A judge commented that it may not be sufficient that the rule refers to the possibility of further management conferences; perhaps the title should be limited to the initial conference. On the question of "should" v. "must," that deserves discussion. It was clear from the introduction of the rule that the Subcommittee carefully considered which verb to use, but "should" seems to be nothing more than advice. Saying "may" makes it clear that the court has authority to do the things mentioned. It is not clear that there is a doubt about the court having authority under the current rules to do the things this rule proposal calls for the court to explore. Saying "must" is surely a rule, and this rule does use that verb for what the parties have to do if the judge tells them to discuss and report on a given topic. But "should" could be seen as existing in a sort of netherworld doing neither of these two things.

A Subcommittee member responded that this was a key discussion topic at the transferee judges' conference. Initially the judges favored "may," in part to ensure that the rule was clear about the breadth of the court's authority to address the matters listed in the rule. Another member recognized that one might regard "should" as precatory. But the rule is clear that judges have the authority to address the matters listed, and beyond that it provides guidance on how that authority ordinarily can be used.

A judge on the full Committee warned of "mission creep." This is not really a rule; there is only one "must" in it. This proposal seems almost entirely to be a best practices guidance document. And beyond that, it seems that the idea is that the Note is equally as important as the rule. That seems backward; the Note ought only provide commentary, and is not of equal dignity. Courts have to follow rules; they do not have to follow Notes.

Another Committee member agreed. This is really a "best practice" guide. It is not giving new authority or commanding judges to do anything. It is also not clear how this rule operates with current Rule 16. Rule 16(b) commands the judge to adopt a scheduling order limiting the time to do certain things in the case.

A Subcommittee member responded that this is not just a best practices guide. Instead, it

353 might best be regarded (as Professor Bradt has written in an article) as providing the judge with the
354 tools to engage in what can be called "information forcing." And the first sort of information it
355 forces out is guidance for the judge on how to organize and manage the MDL proceedings. This rule
356 does not supplant Rule 16; it operates alongside it. The use of "should" in the rule proposal is
357 intentional and meaningful.

358 A consultant noted that the proper role of the Note raises jurisprudential issues. For one
359 thing, one must be careful about giving advice in a Note, in part because there is a risk of a negative
360 pregnant. In this proposal, we have only one "must," and even it is contingent. It comes into play
361 under 16.1(c) only if the judge directs the counsel to address certain topics in their report to the
362 court.

363 A judge responded that Rule 16 itself has lots of "may" provisions. And the use of "should"
364 reflects the "overwhelming" feedback the Subcommittee received about the need for flexibility. The
365 starting point has been and should be whether this rule is useful.

366 On that point, the judge stressed that it is exceptionally rare for an MDL not to need at least
367 an initial management conference. But that rare possibility is a reason not to command a useless
368 conference; hence the "should" in 16.1(a) and 16.1(c). The "may" in 16.1(b) recognizes that there
369 might be a question about appointing a "coordinating counsel" to organize for the initial
370 management conference, and this rule puts that to rest. The basic bottom line the Subcommittee has
371 heard, particularly from transferee judges, is that "this is needed." At least one judge at the recent
372 transferee judges conference said: "This rule would give me authority that I need." Another example
373 is presented by Judge Chhabria's 2021 opinion about his common benefit fund order, which may
374 have been done too quickly.

375 Another judge on the Subcommittee emphasized that Judge Chhabria's experience was an
376 important stimulus to favor adoption of this rule. For a period of time, this judge was adamant that
377 no rule was needed. But Judge Chhabria's experience played a role in this judge's conversion.
378 Absent a rule, there is a risk that judges new to the process (and perhaps some with MDL
379 experience) will feel they should promptly sign early orders without an adequate appreciation of the
380 implications of those early decisions. This rule is designed in part to protect the judge, and also to
381 provide a method for non-leadership counsel to be heard on important issues.

382 Another judge emphasized that a high percentage of pending actions are subject to MDL
383 transfer orders. This is not a situation that existed 20 years ago, and the Civil Rules presently say
384 nothing about these very important proceedings. Moreover, the Panel is trying to expand the number
385 of judges given MDL responsibilities, and many transferee judges are seeking to expand the circle
386 of attorneys involved in leadership positions. Guidance is presently important, and likely to become
387 more important.

388 A Committee member questioned these points. For example, the use of "should" in lines 287
389 and 295 regarding convening an initial management conference and directing the parties to meet and
390 confer to address specified topics are not really rules. "It's not up to us to say this."

391 A Subcommittee member responded: "We think it is right to say 'should.'" It's more than
392 "may." There almost always is an initial management conference.

393 A judge suggested that an alternative formulation might be "must, unless exceptional
394 circumstances exist," which at least is in form a rule.

395 This suggestion drew a caution that inviting litigation about whether an exception applies

396 could invite distractions. To contrast, Rule 16(b) says the court "must" enter a scheduling order
397 because, when it was adopted in 1983, judicial management was very new in most federal courts and
398 a command seemed necessary. The use of an "exceptional circumstances" exception can breed
399 litigation. An example is provided by the "exceptional circumstances" exception in Rule
400 26(b)(4)(D)(ii) for discovery of facts or opinions developed by a retained expert not testifying at
401 trial. Inviting disputes about whether such an exception applies could distract the early organization
402 of MDL proceedings.

403 Another Subcommittee member emphasized that "may" is not strong enough. But saying
404 "must" with an exceptional circumstances exception would prove problematical. Using "may" has
405 no teeth. There will be a lot of comments during the public comment period, and this question may
406 deserve further discussion after that is completed.

407 The question whether "should" is used in other rules came up. Although a comprehensive
408 review could not be done on the spot, at least some examples came immediately to the surface:

409 Rule 15(a)(2); "The court should freely give leave [to amend] when justice so requires."

410 Rule 16(d): "After any conference under this rule, the court should issue an order reciting
411 the action taken."

412 Rule 25(a)(2): In the event of a party's death, "[t]he death should be noted in the record."

413 Rule 56(a): If it grants summary judgment, "t]he court should state on the record the reasons
414 for granting or denying the motion."

415 A more comprehensive investigation of other rules might well turn up additional examples.

416 A judge observed that this proposed rule could be put out for comment, but continued to
417 believe that was really just a best practices item. Perhaps "must, if appropriate" could be considered.
418 The invitation to comment might include an invitation to comment on the choice of verbs and
419 whether use of "should" will be useful. Perhaps the published proposal could include bracketed
420 alternative versions.

421 The question was raised whether such bracketed alternatives have ever been offered in the
422 past with regard to possible rule changes. Caution was expressed: such an invitation might provide
423 a muddled result during and after the public comment period. The report to the Standing Committee
424 would call attention to this topic, and ordinarily be included in the published invitation for public
425 comment. So those offering comments could see that this topic deserved attention and comment
426 accordingly. There was one time over recent decades when a footnote called attention to an
427 alternative provision, but offering seemingly co-equal alternatives in a published preliminary draft
428 might produce more confusion than light.

429 A judge on the Subcommittee recalled the series of questions Judge Dow used to ask about
430 possible rule changes: (1) Is there actually a problem?; (2) If so, is there a rule solution to that
431 problem?; and (3) Does the rule-based solution create a risk of harm? This is a unique set of
432 circumstances in MDL proceedings, which are not otherwise addressed in the Civil Rules. So on
433 question (1) there seems to be an actual need. On question (2), the Subcommittee has concluded that
434 there is a rule-based solution -- proposed 16.1. And on question (3), it seems that using "must" or
435 "may" would create problems, and that using "should" is the right choice.

436 A Committee member drew attention to proposed 16.1(c)(4), which seems to assume there

should be an exchange of information, perhaps before formal discovery. Shouldn't that instead say something like "Whether the parties must exchange information . . . ."?

A Subcommittee member responded that this is not about formal discovery. FJC research on the "vetting" issue extensively considered earlier in the Subcommittee's work showed that some such exchange occurs extremely often in large MDL proceedings. Another judge suggested that this is more like existing Rule 26(a)(1)(A) initial disclosure. Attention was drawn to lines 458-62 of the draft Note, which provide an explanation of the focus of 16.1(c)(4).

[During the lunch break, the Subcommittee met and considered whether or how to modify the proposed preliminary draft to respond to concerns voiced by Committee members.]

After the lunch break, the MDL Subcommittee presented revisions to its proposed preliminary draft that responded to certain concerns raised during the morning's discussion. By way of introduction, it was noted that some ideas for changing the proposed rule were not adopted. The title was not changed. 16.1(c)(4) was not changed. 16.1(c)(9) was not changed. Finally, the word "should" was retained.

But the Subcommittee proposed making the following revisions, which were displayed to the whole Committee for its review:

Rule 16.1(b) would be revised as follows:

(b) DESIGNATION OF COORDINATING COUNSEL FOR INITIAL MDL MANAGEMENT CONFERENCE. The transferee court may designate coordinating counsel to assist the court with the initial <u>MDL</u> management ~~MDL~~ conference under Rule 16.1(a) and to work with plaintiffs or defendants to prepare for any conference and to prepare any report ordered pursuant to Rule 16.1(c).

Rule 16.1(c) would be revised as follows:

(c) PREPARATION OF REPORT FOR INITIAL MDL MANAGEMENT CONFERENCE. The transferee court should order the parties to meet and confer to prepare and submit a report to the court prior to the initial MDL management conference. The report must address any matter designated by the court, which may include any matter <u>listed below</u> ~~addressed in Rule 16.1(c)(1)-(12)~~ or in Rule 16. The report may also address any other matter the parties desire to bring to the court's attention.

The Committee Note at lines 362-65 would be revised as follows:

Rule 16.1(b). Rule 16.1(b) recognizes the court may designate coordinating counsel -- perhaps more often on the plaintiff than the defendant side -- to ensure effective and coordinated discussion during the Rule 16.1(c) <u>meet and confer</u> ~~conference~~ and to provide an informative report for the court to use during the initial MDL management conference under Rule 16.1(a).

The Committee Note at lines 418-26 would be revised as follows:

Subparagraph (C) recognizes that, in addition to managing pretrial proceedings, another important role for leadership counsel in some MDL proceedings is to facilitate possible settlement. Even in large MDL proceedings, the question whether the parties choose

to settle a claim is just that -- a decision to be made by those particular parties. Nevertheless, leadership counsel ordinarily play a key role in communicating with opposing counsel and the court about settlement and facilitating discussions about resolution. It is often important that the court be regularly apprised of developments regarding potential settlement of some or all actions in the MDL proceeding. In its supervision of leadership counsel, the court should make every effort to ensure that leadership counsel's participation in any settlement process is appropriate ~~fair~~.

The Committee Note at lines 458-62 would be revised as follows:

Rule 16.1(c)(4). Experience has shown that in ~~certain~~ MDL proceedings early exchange of information about the factual bases for claims and defenses can facilitate ~~the~~ efficient management ~~of the MDL proceedings~~. Some courts have utilized "fact sheets" or a "census" as methods to take a survey of the claims and defenses presented, largely as a management method for planning and organizing the proceedings.

The Committee Note at lines 482-84 would be revised as follows:

Rule 16.1(c)(6). A major task for the MDL transferee judge is to supervise discovery in an efficient manner. The principal issues in the MDL proceedings may help guide the discovery plan and avoid inefficiencies and unnecessary duplication~~, addressed in Rule 16.1(c)(11)~~.

The Committee Note at lines 494-505 would be revised as follows:

Rule 16.1(c)(9). Even if the court has not appointed leadership counsel, it may be that judicial assistance could facilitate the settlement of some or all actions before the transferee judge. Ultimately, the question whether parties reach a settlement is just that -- a decision to be made by the parties. But as recognized in Rule 16(a)(5) and 16(c)(2)(I), the court may assist the parties in settlement efforts. In MDL proceedings, in addition to mediation and other dispute resolution alternatives, the court's use of a magistrate judge or a master, focused discovery orders, timely adjudication of principal legal issues, selection of representative bellwether trials, and coordination with state courts may facilitate settlement. ~~Should the court be called upon to approve a settlement, as in any class actions filed within the MDL, or when the court is asked to appoint a settlement administrator, the court should ensure that all parties have reasonable notice of the process that will be used to determine the division of the proceeds, that the process of allocation has integrity, and that monies be held safely and distributed appropriately.~~

After these changes were presented and explained to the Advisory Committee, it voted without dissent to recommend publication of the revised Rule 16.1 proposal for public comment.

Rule 41 Subcommittee

Judge Bissoon introduced the report of the Rule 41 Subcommittee. It had held three online meetings, but had not reached consensus or closure. Accordingly, one could say that it is still at a preliminary point. To take Judge Dow's approach to rule-change ideas, the first question -- whether there is a problem -- may depend on where you are or what kind of case you are talking about. On the "where you are" consideration, the divergence of the circuits on the rule means that judges in some circuits have less latitude than judges in other circuits. On the "kind of cases" consideration, one might focus on civil rights and pro se cases and conclude that there is indeed a problem.

519 Professor Bradt continued the introduction, noting that the core question is that we have a
520 rule that seems straightforward and has remained essentially the same since originally adopted in
521 1938. One could, therefore, say that it only applies when the entire action is dismissed. But that is
522 the minority view, suggesting the courts chafe at such a limited handling of the problem. Often the
523 rule is found satisfied when a plaintiff dismisses as to one of two defendants. District courts may be
524 more flexible yet. In the background lie possibly "unintended consequences," particularly relating
525 to possible preclusion effects -- dismissal without prejudice may not affect preclusion if the
526 remainder of the case is fully adjudicated on the merits.

527 A comment observed that the cases are presently inconsistent, but also that it is not clear
528 what the result of a rule change would be. Instead, the outcome is not simple. To some extent, that
529 is illustrated by a recent 11th Circuit case in which all the parties and the district court thought that
530 when the plaintiff used Rue 41(a) to dismiss the remainder of its claims after the district court had
531 dismissed some but not all of the claims, that would produce a final judgment subject to immediate
532 review on appeal. But the court of appeals concluded that some claims in the very long complaint
533 had not been effectively dismissed, with the result that it could not address the appeal on the merits.

534 Another comment noted that there might be said to be a slippery slope problem to begin
535 sorting out all the inter-related rule provisions that could be affected. It might be likened to pulling
536 one loose thread on a sweater, only to find that the unraveling goes much further than initially
537 appreciated. And it is worth noting that it always seems open to the plaintiff to seek dismissal via
538 court order under Rule 41(a)(2), which has a default setting of without prejudice. So the Rule
539 41(a)(1) problem only exists when the defendant (or a defendant) will not stipulate to dismissal
540 without prejudice. That resistance to stipulating might result from uneasiness that the dismissed
541 claim will come back in another forum, but it may well be that such a "boomerang" claim is quite
542 rare. Nonetheless, a party unwilling to stipulate -- even before an answer is filed -- could make
543 41(a)(1) dismissal of less than the entire action unavailable.

544 A Committee member pointed out the preclusion complications that could result if the court
545 dismissed without prejudice but the remaining claims reached judgment on the merits. Assuming
546 the dismissed claim would be viewed as arising from the same transaction, that might well preclude
547 the assertion of the dismissed claim in another action.

548 Another Committee member noted that this can be a pretty important set of issues,
549 particularly for some unsophisticated litigants. "This is something that affects some people in
550 important ways."

551 A Subcommittee member reiterated the view that Rule 41(a) is not designed to "shape and
552 prune" multi-party or multi-claim actions. Other rules, most notably Rule 15 on amendments without
553 leave of court, address these issues. At the same time, the 11th Circuit decision was wrong.

554 Another comment noted that there may be considerable reason for caution due to the
555 Supreme Court's view in the Semtek case that preclusion is not within the Enabling Act authority.
556 In addition, with regard to self-represented litigants, it might be useful to canvas pro se law clerks
557 to see what their experience has been. A further suggestion was that the Administrative Office has
558 a pro se working group that could be a resource.

559 Against that background, the Subcommittee's work will continue.

560 *Discovery Subcommittee*

561 In addition to its action item on privilege log issues, the Discovery Subcommittee reported

562 on three other items on which it is currently focusing. Chief Judge David Godbey, Chair of the
563 Subcommittee, made the report.

564 *"Delivery" of a subpoena*; Rule 45(b)(1) says a subpoena should be served by "delivering
565 a copy to the named person." There are divergent judicial decisions, even in the same district, on
566 whether that requires delivery by hand or can be accomplished by other means. More than a decade
567 ago, a Rule 45 Subcommittee comprehensively surveyed issues involving the rule and made fairly
568 comprehensive changes to many features of the rule. One of the issues raised then was the question
569 of clarifying what "delivering" means in the rule. But that was put aside, in part because it seemed
570 important -- at least for some nonparty witnesses called upon to respond on short notice -- that in
571 hand service occur.

572 A Committee member expressed concern about the possibility that some substituted method
573 of service might be sanctioned under the rule, particularly when the subpoena called for very prompt
574 action by the witness, often a nonparty. In hand service can be important in such situations.

575 A liaison member of the Committee suggested that overnight courier or email should suffice
576 in most instances.

577 One suggestion going forward would be for research to be done, perhaps by the Rules Law
578 Clerk, on whether state court systems have more flexible provisions for serving subpoenas. A first
579 look at the California provisions suggested that they are nearly the same as in Rule 45.

580 *Filing under seal*: Several years ago, Prof. Volokh and the Reporters' Committee for
581 Freedom of the Press urged a fairly elaborate new Rule 5.3. One feature of this proposal was that
582 it recognize what the submission said was already recognized in the case law -- that the showing
583 needed to support filing under seal is much more exacting than the standard to support a protective
584 order under Rule 26(c). The Subcommittee developed a sketch of changes to Rule 26(c) and existing
585 Rule 5 to make that clear in the rules.

586 But the submission went well beyond the standard to be used for filing under seal and
587 proposed a variety of special procedures to attend motions to seal, seemingly including posting
588 outside the case file for the given case and forbidding any decision sooner than seven days after such
589 posting. Meanwhile, an inquiry to the Federal Magistrate Judges Association gave an indication the
590 magistrate judges (who often handle such motions) did not think there was a problem with the
591 standard for filing under seal, but did think that the diversity of procedures used for deciding
592 motions to seal might be regularized.

593 Around this time, however, the Subcommittee also learned that the Administrative Office
594 had formed a working group to study problems of filing under seal more generally, and the advice
595 to the Subcommittee was to defer acting on the pending proposal until that A.O. project produced
596 results. So, as reported to the full Committee, the Subcommittee put the project on the back burner.

597 Early this year, however, the Subcommittee was informed that it seemed unlikely the A.O.
598 project would address standards for filing under seal. But the A.O. group seems focused on what
599 might be called "inside the clerk's office" features of handling materials filed under seal, and it
600 remains uncertain how that work will bear on the multiple other proposals made in the original
601 submission or the FMJA idea that regularizing procedures would be desirable. So work will continue
602 on these topics.

603 *Rule 28 proposal*: In March, Judge Baylson (E.D. Pa.), a former member of the Advisory
604 Committee, proposed an amendment to Rule 28 to address discovery activity in relation to U.S.

605 litigation occurring outside this country. Because this submission was received so recently, the
606 Subcommittee has not had time to examine it in any detail. It may be that Professor Gensler (another
607 former member of the Advisory Committee mentioned in Judge Baylson's submission) can offer the
608 Subcommittee background on the issues. Work will begin on this proposal in the future.

609 *Rule 7.1*

610 Professor Bradt introduced the issues presented. Two submissions have addressed conflict
611 disclosure. Judge Erickson called attention to what might be called the "grandparent" problem, with
612 the illustration being Berkshire Hathaway, which owns 100% of the stock of a number of
613 corporations that in turn own 100% of the stock of other corporations. So if a judge owns Berkshire
614 Hathaway stock and one of those "grandchild" corporations is a party to a case pending before the
615 judge, the judge may not know of the problem even though under 28 U.S.C. § 455(b)(4) the judge
616 should recuse. And Berkshire Hathaway is not the only corporation that might have such holdings;
617 another example identified by Judge Erickson is CitiGroup.

618 Possibly pertinent to this kind of situation going forward might be the Anti-Corruption and
619 Public Integrity Act of 2022 (S. 5315), introduced by Senator Warren. That bill would require judges
620 to "maintain and submit to the Judicial Conference a list of each association or interest that would
621 require the justice, judge, or magistrate to recuse under subsection (b)(4)." How exactly judges
622 would identify all such interests in the case of very large conglomerates like Berkshire Hathaway
623 is uncertain.

624 Meanwhile, the Courthouse Ethics and Transparency Act (Pub. L. 117-125, May 13, 2022),
625 now requires the creation of a searchable internet database to enable public access to any report
626 required to be filed with regard to securities or similar holdings. That database came online on Nov.
627 9, 2022.

628 Judge Erickson submits that an amendment to Rule 7.1 could facilitate determinations
629 whether a judge has to recuse. Presently, Rule 7.1(a)(1) directs that a nongovernmental corporate
630 party must disclose "any parent corporation and any publicly held corporation owning 10% or more
631 of its stock."

632 Magistrate Judge Barksdale proposes that Rule 7.1 be amended to require every party to
633 certify that they have checked the assigned judge's database disclosures. Then, if there is a possible
634 conflict, the party must file a motion to recuse or a notice of possible conflict within 14 days.

635 It seems clear that this is a difficult and delicate situation for judges. Congress may take
636 further action that is pertinent, as mentioned above, but it is not presently possible to determine
637 whether that will happen. Expanding the disclosure requirement beyond "parent corporations" could
638 make definition of what additional corporations must be disclosed quite difficult. And it may be that
639 other entities present similar difficulties. Recently, for example, Rule 7.1 was amended to call for
640 disclosure of information about all members of LLCs, including all members of any LLC that is a
641 member of an LLC that is a party before the court. That change was designed to reveal whether
642 compete diversity exists, not to address recusal problems. But the stimulus was the proliferation of
643 LLCs, and the intricacy of their organization. It seems that there is a very wide range of entities that
644 engage in business nowadays.

645 Other rules committees have similar issues before them. But for the present it seems sensible
646 that the Civil Rules Advisory Committee take the lead in addressing these challenges.

647 A judge mentioned getting a disclosure statement raising such a difficulty. Without that

648 disclosure, the judge could not have found out about the problem.

649 One suggestion was to look at local rules to see if they add such disclosure requirements. The
650 D.C. Circuit, for example, has its local rule 26.1, which could be a model. Another possibility might
651 be to investigate how the states approach these issues with regard to judges on their state courts. It
652 seems reasonable to suppose that somewhat similar issues bear on recusal of state court judges, even
653 though they obviously are not bound by the federal statute.

654 A Wall Street Journal article identified a significant number of instances in which federal
655 judges decided cases involving parties in which they held interests. It seems that all, or almost all,
656 of these examples were cases in which the judge did not know of the disqualification problem. A
657 Committee member noted that these are important issues, and that passing them by is not the best
658 way to go.

659 But another Committee member noted the thorny problem of identifying such conflicts.
660 Ownership of business entities is changing "by the minute." The range of forms used to do business
661 seems to grow by leaps and bounds. Finding a solution will be a major challenge.

662 Another point was brought up: There is a bill in Congress seeking to require the Federal
663 Judicial Center to use its research capacity to unearth this sort of information. This sort of research
664 effort might absorb a very large portion of the FJC's capacity, and could also create tensions
665 between the Center and the judiciary. That would be very unfortunate.

666 Returning to the local rules possibility, it was noted that all or almost all of the clerks in
667 district courts require some disclosures. There are local rules that have forms for disclosure; those
668 could be investigated.

669 But a serious problem was noted: What are the updating requirements? Judges' holdings may
670 change over time. And it seems clear that corporate and other business arrangements change over
671 time. Not only do companies "go public," some that were public "go private."

672 A judge emphasized that it's essential that we operate within the bounds of what can be done.
673 Could one have a rule that required disclosure of "all affiliated entities"? That would seem to raise
674 questions about what "entity" is and what "affiliated" means.

675 Returning to local rules, it was noted that it is likely some go well beyond the corporate form
676 -- LLCs, partnerships, limited partnerships, joint ventures, etc. And getting into the amount of
677 stockholding could be complicated. Suppose a corporation that owns 50% of the stock of a
678 corporation that owns 10% of a publicly held entity. Is that counted as a 5% holding for these
679 purposes?

680 Another Committee member cautioned that it may not be so difficult. It is likely unwise to
681 try to include "affiliates" in this effort. And moving beyond "parents" -- perhaps to "siblings" and
682 "cousins," etc. -- would likely cause unnecessary problems.

683 A judge questioned whether the problem is really so great. At some point, it may seem that
684 the rules cannot be a cure-all. One might say the central issue is the application of the recusal statute,
685 which itself may be the subject of further change. Given the possibly exceptional difficulty of the
686 task, one might conclude that at some point such directives must be honored but in the breach.

687 Another judge reacted that if the Berkshire Hathaway example is the correct guideline,
688 judges need to know. This judge also mentioned the recurrent issue raised with third party litigation

689 funding that judges might unknowingly hold interests in funders supporting one of the parties in a
690 case before the judge. In the past, it has seemed unlikely that judges would be holding interests in
691 hedge funds allegedly involved in litigation funding, but some reports indicate that funding is going
692 mainstream.

693 A more specific reaction was offered: The proposal that the rule require certification by
694 parties that they checked the judge's holdings on the new database does not look promising. For one
695 thing, it is not clear that the database is designed for that purpose. More significantly, it seems
696 unreasonable to expect pro se litigants (the subject of another agenda item) to be able to make a
697 reliable check. And if the proposed requirement that parties file a motion to recuse or a notice of
698 potential conflict within a specified time is meant to foreclose later recusal, that seems to go against
699 the statute, which simply requires recusal.

700 In conclusion, the Committee would continue to gather information and study this set of
701 issues. It is likely that a subcommittee would be formed to develop information and consider
702 solutions. It is not clear whether such a subcommittee should include members of other advisory
703 committees. The work will continue.

704 *Rule 38*

705 In 2016, a question was raised before the Standing Committee about whether to consider an
706 amendment to Rule 81(c)(3) to protect against waiver of jury trial in removed cases. [That
707 submission -- 15-CV-A -- remains on the Advisory Committee's agenda.]

708 After that Standing Committee discussion of that question, two members of the Standing
709 Committee -- then-Judge Gorsuch and Judge Graber -- proposed that Rule 38 be amended to "flip
710 the default," as is true of the Criminal Rules, which direct that trial will be to a jury unless the
711 government, the defendant and the judge all agree that it will be to the court.

712 Interestingly, it seems that the Criminal Rules Committee is considering whether to change
713 the Criminal Rule on jury trial to provide that if the defendant requests a court trial and the judge
714 thinks the request is meritorious the government not be permitted to veto that election. Whether that
715 Criminal Rules amendment idea is pursued remains uncertain. In a sense, however, such a change
716 would make jury less protected (with the judge's oversight) than under current Rule 38, which
717 permits either party to make a binding request for a jury trial. In addition, under Rule 39(b), the
718 court may order a jury trial even though a Rule 38 jury demand was not made.

719 During the Committee's October 2022 meeting the agenda book included an FJC study of
720 jury demands that found little indication that failure to adhere to Rule 38's requirements had
721 prevented parties who wanted jury trials from getting jury trials. So one possibility at that time
722 would be to remove this matter from the agenda on the ground that it did not satisfy Judge Dow's
723 first inquiry -- there seems not to be a problem. That decision was deferred, however, because the
724 FJC was working on a massive project ordered by Congress about differences among districts in the
725 frequency or number of jury trials. That project was not yet finished, and might shed light on the
726 Rule 38 proposal.

727 The report to Congress has been completed and was included in the agenda book. It does not
728 focus on jury demands in particular, but rather was addressed to the declining frequency of civil jury
729 trials. Discussion as the work was being done frequently prompted judges to say that if a party failed
730 to satisfy Rule 38 "we forgive." But some judges said the rule requires a waiver and we follow the
731 rule.

In terms of what seems to have been the reason why Congress directed that the study be prepared, it does not shed much light on why different districts have different numbers of jury trials. From one perspective it does -- the largest district (C.D.Cal.) has the largest number of jury trials. But if one focuses on frequency of jury trials as a percentage of civil cases, the smallest district -- Wyoming -- has the highest percentage. That percentage is only 2.7%, however, so inter-district comparisons don't tell us much because the figure is very low all around. Sixty years ago, nationwide, it was about ten times as high.

It was suggested, however, that the Gorsuch/Graber proposal might be taken to raise a normative issue more than a question to be answered by empirical work. If the right to jury trial is important, it should not be difficult to enforce. How one assesses Judge Dow's first question -- is there a need -- in normative terms is not entirely certain.

In conclusion, it was decided that this proposal could be removed from the Committee's agenda. The pending Rule 81(c) issue will remain, however.

Pro se E-Filing

Professor Struve (Reporter of the Standing Committee) gave an update on the work of the inter-committee working group on whether to facilitate electronic filing by pro se litigants. The Committee has received several submissions urging the easing of the current rules, which leave the choice whether to permit pro se E-Filing largely up to individual district courts. The pandemic fortified momentum behind this initiative.

With great help from the Federal Judicial Center (particularly Tim Reagan), interviews have been done with 15 court personnel from 8 districts. A particular focus has been on the districts that exempt non-electronic filers from having also to mail hard copies of each filing to each other party even though the clerk's office will upload the documents and the parties will then get the document via CM/ECF. In all the districts that have made such accommodations, the report is that it works fine.

Special issues arise when a document is filed under seal. One solution then is to restrict online access to parties. But that is not an issue at the core of the basic concern.

The biggest pending question is to figure out how pro se litigants know which parties will receive service via CM/ECF and that paper service by mail is therefore not necessary.

Special problems can exist if pro se litigants are in prison.

A sketch of a possible amendment to Rule 5 appears on pp. 256-57 of the agenda book.

One concern that was raised seems not problematical -- the risk that pro se litigants who got credentials to use CM/ECF would then share those credentials with others. There is one instance in which a son used his mother's credentials to make filings on her behalf in a case to which she was a party, but this does not seem like a serious problem.

Another possibility is an alternative to CM/ECF -- some districts allow electronic noticing without formal credentials.

The conclusion was that the work will continue, and that more information is needed.

Rule 23

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771 Purely as information items, this topic is on the agenda to alert Committee members to
772 ongoing matters. No current action is before the Committee.

773 First, during the October 2022 meeting the 11th Circuit decision by a divided panel that two
774 19th century Supreme Court decisions preclude "incentive awards" to class representatives in class
775 actions was raised as a concern. The 11th Circuit declined to grant a rehearing en banc, and a cert.
776 petition is now pending before the Supreme Court. Meanwhile, at least some courts are explicitly
777 not following the 11th Circuit's ruling; the agenda book contained a reference to a recent 1st Circuit
778 case declining to follow that view. But it appears that a panel of the Second Circuit has taken a
779 different view; this ruling may be the subject of a petition for rehearing en banc.

780 A Committee member observed that it is unrealistic to expect class representatives to invest
781 substantial time and energy (and perhaps even money) into doing a good job in that role but deny
782 them any compensation for that effort. Even class member objectors can receive awards if their
783 objections result in improvements to the deal. In class action settlement situations, we want the class
784 reps to take an active interest; why shouldn't they get equal treatment? As for the Second Circuit
785 case, that may be an example of over-compensation; the class reps were awarded something like
786 $900,000. Perhaps a rule could be devised to guide district courts in making such awards, but a total
787 ban based on a 19th century precedent does not make sense.

788 Another member agreed. The 9th Circuit has articulated some factors for determining what
789 amount to award, and there is guidance of that sort in other circuits though not all of them. If this
790 issue goes forward, that would be a place to look; it is possible that case law suffices on this point.
791 The first question, however, is whether the Supreme Court addresses the question on the merits; on
792 that, it is necessary to watch and wait.

793 The other issue is a proposal by Lawyers for Civil Justice to amend Rule 23(b)(3) so that it
794 does not limit the superiority prong to adjudicative alternatives. An example is a 7th Circuit case in
795 which a product recall prompted more than 50% of purchasers of the product in question to obtain
796 the refund offered but a lawyer nevertheless filed a class action seeking more on behalf of the other
797 purchasers. The district court denied certification on the ground the recall program gave the class
798 adequate relief, but the 7th Circuit held that this was not a consideration permitted under the current
799 rule.

800 The agenda book report raises some concerns that might arise if this proposal moves forward
801 -- whether companies would be less likely to make such recall offers if class actions could be
802 defeated by after-the-fact offers, whether courts could, early in the litigation, make the sort of
803 comparison that would need to be made if presented with a settlement embodying similar measures
804 for the non-participating customers. LCJ recently submitted a further paper on the topic of this
805 proposal (23-CV-J), which came in too late to be included in the agenda book.

806 A judge noted that Rule 23 is a perennial. For example, the question of ascertainability has
807 remained uncertain for many years. For the present, on both these issues, it is better to let things
808 percolate.

809 The matters will be carried on the Committee's agenda.

810 *In forma pauperis applications*

811 Professors Hammond and Clopton submitted a proposal that the Committee consider
812 rulemaking regarding the handling of ifp status under 28 U.S.C. § 1915. Professor Hammond's Yale
813 Law Journal article in 2019 showed that there were significant differences in the way such

814 applications were handled -- both in terms of the criteria for receiving a fee waiver and the
815 procedures for requesting a fee waiver -- in districts across the country. Indeed, it seems there are
816 difference between judges in a given court. One concern is reported inconsistency in selecting the
817 A.O. form that should be used.

818 The topic was introduced as principally involving a statute. The Civil Rules do not include
819 specific provisions about ifp applications, and -- at least as to the standards that should be used to
820 decide such applications -- a national rule seems a dubious instrument. For example, it is likely that
821 one could conclude that somebody in San Francisco (where the cost of living is very high) would
822 be a pauper with income or assets that would be more than sufficient in some other parts of the
823 country. And such things change much more rapidly than the Enabling Act process would permit
824 changes to be made.

825 In addition, it may be that various districts diverge considerably in their personnel for
826 making such determinations. Large metropolitan districts may have a considerable platoon of pro
827 se law clerks who can do an initial review, while other districts may not have a similar setup.

828 But this is an important issue, and the A.O. has a pro se working group. It seems that an
829 effort to make contact with that group should be made. It may well be that this topic is not suited
830 to rulemaking, but the topic should remain on the agenda. For the present, the topic will be retained
831 on the agenda pending Judge Rosenberg's discussion with the A.O. Pro Se Working Group.

832 *Rule 53*

833 In July 2022 Senators Tillis and Leahy wrote the Chief Justice relaying press reports that a
834 single federal judge was overusing "technical advisors" to assist in addressing patent infringement
835 cases. According to the article cited by the senators, using that assistance the judge is able to preside
836 over as many as six or seven *Markman* hearings in a week. According to the story, at the time the
837 story was written this judge had "about 25% of the nation's patent cases."

838 The senators observe that this judge's practices "appear to clearly exceed the boundaries of
839 Rule 53," and that "[t]he rules governing the use of special masters seem clear to us." They asked
840 for an investigation into whether the practices described in this article are authorized under Rule 53,
841 and if so whether the rule should be amended.

842 The senators sent a copy of their letter to the Chief Judge of this district court, who may have
843 taken action to change circumstances there by introducing district-wide assignment of patent cases
844 on a random basis.

845 On the rulemaking front, as the senators note, the Rule seems appropriately designed and
846 focused. It was comprehensively rewritten about 15 years ago to take account of recent
847 developments. Further change to rule seems unnecessary. In terms of rule amendment, then, the
848 appropriate measure seems to be to remove the topic from the Committee's agenda.

849 But it is also important to make certain the senators know of the response their inquiry
850 produced -- that the rule seems correct, as they note, and therefore that this situation does not call
851 for a rule amendment. The Rules Committee Staff will ensure that the Administrative Office has
852 responded to the senators' letter.

853 *Rule 11*

854 Andrew Straw urges that Rule 11 be amended. The stimulus seems to be a longstanding

Draft

855 conflict between him and his former employer -- the Indiana Supreme Court. This conflict has
856 included suits he filed in federal court against various entities. In some of those suits, Rule 11
857 sanctions were not imposed, but state bar authorities suspended him from practice partly as a result.
858 Mr. Straw proposes that the rule be amended to forbid state bar authorities from taking such action
859 unless a federal court has first imposed formal Rule 11 sanctions.

860 The interaction of Rule 11 sanctions and state bar discipline is occasionally an important
861 matter. A number of state bars direct attorneys to notify the bar if they are subjected to sanctions by
862 a court, including a federal court acting under Rule 11. The state bars may treat that circumstance
863 as a basis for imposing bar discipline on the attorney. It seems this is what happened to Mr. Straw.
864 (He also submitted a comment regarding the amendment to Rule 12(a) that the Committee approved
865 for formal adoption, raising objections to the handling of some of his litigation with the Supreme
866 Court of Indiana.)

867 The federal courts do not control state bar discipline. Yet Mr. Straw proposes adding a new
868 Rule 11(e) entitled "Containment of Discipline and Prevention of State Court Abuse." Although the
869 district courts can, and sometimes do, impose discipline including something akin to disbarment for
870 conduct in federal court, they do not have authority under that rule to constrain state bar authorities.
871 Attempting by rule to prevent state bar authorities from acting pursuant to their governing statutes
872 would likely raise serious questions about rulemaking power.

873 The matter will be dropped from the agenda.

874 *Mandatory Initial Discovery Project*

875 Initial disclosure was a highly controversial addition to Rule 26 in 1993. Owing the
876 controversy surrounding this addition to Rule 26, it was initially made optional; districts could opt
877 out. There ensued a patchwork of regimes in different districts. The initial disclosure was extended
878 nationwide in 2000, again prompting considerable controversy even though it removed the
879 "heartburn" of having to disclose harmful evidence.

880 Nonetheless, stronger disclosure rules might make litigation less costly and produce faster
881 resolutions. To evaluate such a possibility, a pilot project was approved by the Standing Committee
882 and many judges in the District of Arizona and the Northern District of Illinois agreed to implement
883 the pilot project. In brief, it restored the "heartburn" requirement.

884 A very intensive study of the results of this pilot in approximately 5,000 cases in Arizona
885 (where the state courts have long had a similar disclosure requirement) and 12,000 cases in the N.D.
886 Ill. revealed that cases handled were resolved more rapidly. That difference between these cases and
887 cases not handled under the pilot was statistically significant. This was not a huge difference, but
888 it was good news. In Dr. Lee's words, this was a "modest but real effect on duration." But it may
889 be that some resolved quickly because otherwise the parties would have had to comply with the
890 pilot's requirements.

891 The study also involved attorney surveys on closed cases, and the report (100 pages long)
892 provides much detail about attorney responses. The responses did not show great enthusiasm among
893 attorneys for the pilot. Interestingly, though the expectation was that younger attorneys would be
894 more receptive, in actuality more experienced attorneys were satisfied more often.

895 One way of looking at the study's results is whether they support a "clarion call" for
896 amending Rule 26(a) along these lines. It is difficult to find such a call in the data, despite the
897 heartening finding about duration. It may be that the attitudes that contributed to the controversy in

898 1991-93 about adding initial disclosure to the rules, and again in 1998-2000 about removing the "opt
899 out" for districts and imposing it nationwide persist today.

900 The Committee discussed the ways in which the study could nevertheless be employed to
901 identify promising solutions to existing problems. It was agreed that the Discovery Subcommittee
902 should carefully review the study and see whether it identified specific techniques that could be
903 added to the rules even without the mandatory arrangement employed in the pilot.

904 Several points were made during the discussion of this study. One was that the project was
905 initiated by the past and present chairs of the Standing Committee, rather than by the Advisory
906 Committee. It was also noted that the E.D. Va. has a local process known as the "rocket docket,"
907 adopted by local rule, so that perhaps local rules might be a method of introducing practices found
908 successful in the project. In addition, since courts are always looking for techniques to increase
909 efficiency, it is worth considering whether there are lessons to be drawn from this study.
910
911 The Discovery Subcommittee will review the study with care and consider whether it shows
912 that specific changes should be pursued.

913 Respectfully submitted,

914 Richard Marcus
915 Reporter

Draft

TAB 6

TAB 6A

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. James C. Dever III, Chair
Advisory Committee on Criminal Rules

RE: Report of the Advisory Committee on Criminal Rules

DATE: May 9, 2023

I. Introduction

The Advisory Committee on Criminal Rules met in Washington, D.C., on April 20, 2023. Draft minutes of the meeting are attached.

The Advisory Committee has no action items. This report presents several information items. The Committee heard an interim report from the Rule 17 Subcommittee, and it discussed and provided input on several cross-committee projects. It also had a preliminary discussion of a proposal to allow bench trials under some circumstances without the government's consent. Finally, it removed two items from its study agenda.

II. Information Items

A. Rule 17 and pretrial subpoena authority (22-CR-A)

At the October meeting the Committee heard multiple speakers, both defense attorneys and prosecutors, describe their experiences with efforts to employ Rule 17 to obtain material held by third parties before trial. The defense speakers described the need for subpoena authority in different kinds of cases and for different types of material they felt they needed to be able to access in order to properly research possible defenses and lines of investigation. The speakers described very different experiences in different districts, ranging from narrow readings of Rule 17 under the Nixon case to much more generous readings in other districts.

Judge Nguyen, chair of the Rule 17 Subcommittee, and the reporters provided an update on the Subcommittee's continued information gathering following that meeting. The Subcommittee received valuable assistance from several experts in two virtual meetings. Professor Orin Kerr and Richard Salgado spoke to the Subcommittee about the Stored Communications Act and other issues relating to materials held online, and other experts provided information on issues affecting banks and other financial service entities. Additionally, the reporters interviewed other experts concerning the issues that might be raised by subpoenas for school, medical, and hospital records, and they provided reports from those interviews to the Subcommittee.

Judge Nguyen said the Subcommittee had nearly completed the information-gathering stage, and it would meet to decide whether to move forward with any amendment. She emphasized that if the Subcommittee decided to proceed, its recommendation might differ from the proposal submitted by the New York Bar group. She noted that the reporters had compiled a list of issues for discussion during the drafting process, and she invited members to suggest any other areas of enquiry they wished the Subcommittee to pursue. One member stressed the confusion generated by the current text, advocating that the Subcommittee focus on clarifying Rule 17. The reporters confirmed that the Subcommittee was aware of the need for clarification.

B. Access to Electronic Filing By Self-Represented Litigants

The Committee received and discussed a report from Professor Catherine Struve describing the interviews she and Dr. Timothy Reagan had conducted. The discussion focused first on the potential for eliminating the requirement that a non-CM/ECF user who files a paper with the court must serve that paper on all other parties, including those who already receive the document through a notice of electronic filing. Professor Struve said interviews in districts that had eliminated the separate service requirement revealed that the process was working well.

The interviews also revealed information about the benefits and burdens of allowing self-represented litigants access to CM/ECF, and the experience with alternative means of electronic access, such as filing by email uploads. Committee members expressed particular interest in more information about the potential for additional filings on CM/ECF to clog court dockets or increase the workload of the clerk's office.

The Pro Se Filing Subcommittee, chaired by Judge Burgess, will continue to coordinate with Professor Struve, the reporters, and other members of the working group.

C. Unified National Bar Admission to the District Courts (23-CR-A)

The Committee had an initial discussion of the proposal to create a system of admission to a unified national bar for the federal district courts. Because the proposal was addressed to the Civil and Bankruptcy Committees as well as the Criminal Rules Committee, Judge Bates said he planned to create a joint subcommittee with representation from these committees to consider the proposal. Professor Coquillette provided background information concerning an earlier proposal to create a unified federal bar and unified federal disciplinary rules. That effort was very controversial and was eventually abandoned. As several speakers noted, however, that controversial proposal was advanced many years ago and in a very different context. Accordingly, it should be no bar to consideration of the current proposal.

D. Rule 49.1 and Privacy Protections for Social Security Numbers (22-CR-B)

Portions of a letter from Senator Wyden to the Chief Justice have been logged as suggestions to the Bankruptcy, Civil, and Criminal Rules Committees. Because many provisions of the Bankruptcy Rules require the last four numbers of individual Society Security or taxpayer ID numbers, that Committee has taken the lead. Mr. Byron advised, however, that it was not yet clear whether the Criminal and Civil Rules Committees should wait for the Bankruptcy Rules Committee to complete its consideration of this proposal and related issues. The next steps will be orchestrated by Judge Bates, Professor Struve, and the other reporters and chairs.

E. Jury Trial Waiver Without Government Consent (23-CR-B)

At present, Rule 23(a) allows a bench trial only if the defendant waives trial by jury in writing, the government consents, and the court approves. The Federal Criminal Procedure Committee of the American College of Trial Lawyers (FCPC) proposed an amendment that would allow a bench trial without government consent if the defendant presents reasons in writing and the court, after allowing the government to comment, finds that reasons provided by the defendant are sufficient to overcome the presumption of jury trial. The FCPC suggested two principal reasons for the change: providing a mechanism to respond to trial backlogs arising from the Covid pandemic, and responding to frequent government refusals to consent. Indeed, the proposal presented the result of an informal survey finding that in a significant number of districts the government seldom if ever consents to a bench trial. Additionally, as the FCPC noted, although the majority of states follow the federal practice, approximately one third of the states allow bench trials without the government's consent, and no problems have arisen in these states.

After an extended discussion, the Committee agreed that it would be helpful to gather additional information before making a decision whether to appoint a subcommittee. If there is a Covid trial backlog, members were not persuaded that it could or should be addressed by an amendment that could not take effect for four years or more. Accordingly, discussion focused on two issues: the need for more information about current practices, and the difficulty of formulating a standard for appropriate versus inappropriate reasons for withholding consent.

Although the federal courts publish the number of bench and jury trials held each year, many members thought it would be useful to have more data. They expressed interest in information about the number and kinds of cases in which the government has declined to consent, as well as the frequency and circumstances in which no request is made because the defense believes the government will not consent. The Committee decided to seek information about these questions from the Federal Defenders as well as Criminal Justice Act practitioners regarding their experiences.

Members also wanted more information about government practices and policies. Discussion confirmed that the practices regarding consent vary from district to district, and Mr. Wroblewski agreed to gather information from the U.S. Attorneys and from units within Main Justice about their policies and practices.

The Committee also recognized, however, that the data and information it would receive would not answer the fundamental questions raised by the proposal. Those questions concerned the reasons the defense might seek a bench trial as well as the reasons the government might withhold consent. For example, were there particular kinds of cases in which a defendant might believe a jury could not be fair? What reasons for refusing to consent would be appropriate and which inappropriate? Was it appropriate to refuse consent across the board because of a belief in the importance of the jury? In an adversarial system, was it appropriate for the government or the defense to consider whether a jury would be more favorable to it than the judge would? Assuming Article III reflects a public interest in trial by jury, should the government or the court be the arbiter of that interest?

Discussion also focused on the standard for pursuing any amendment: is there a significant problem, and, if so, could an amendment to a Federal Rule of Criminal Procedure address that problem? After receiving additional data and information, the Committee will focus on those standards in deciding whether to move forward with a subcommittee.

F. Removal of Items from Study Agenda

The Committee voted to remove two items from its study agenda.

1. Conditional pleas

The Committee decided not to pursue a suggestion to clarify Rule 11(a)(2), which governs conditional pleas. There are only a small number of conditional pleas, and the 2016 case that generated the suggestion appeared to be a garden variety disagreement between two members of a Ninth Circuit panel about the interpretation of the rule. There have been no calls for the Committee to address the issue and no additional indications since that decision that there was a sufficient problem to warrant an amendment. Accordingly, the Committee voted unanimously to remove this item from its study agenda.

2. Insanity pleas

The Committee also voted unanimously to remove from its study agenda the suggestion that it amend Rule 11(a)(1) to provide for a plea of not guilty by reason of insanity. Rule 11 and

the Insanity Defense Reform Act of 1984 work together to create the current landscape. The Act calls for a special verdict if the issue of insanity is properly raised by notice to the government under Rule 12.2. The Act provides that the jury shall be instructed to find—or in the event of a non-jury trial, the court shall find—the defendant guilty, not guilty, or not guilty by reason of insanity. This channels the insanity defense through a verdict in either a bench trial or jury trial, and the Act makes no provision for a plea.

The Committee was advised that an informal practice has developed for cases in which the prosecution and defense agree that the proper resolution of a particular case is a verdict of not guilty by reason of insanity. The parties agree to the relevant facts, which are submitted to the court—usually by stipulations—for a bench trial. This process can be a bit cumbersome, and it takes a little longer than a plea proceeding. But it is workable, and the Committee determined that it has been employed by many district courts and acknowledged and accepted by many courts of appeals.

The Committee concluded that the informal practice is working well enough, and it is consistent with the Congressional decision in the Insanity Defense Reform Act to narrow the defense and channel it through certain procedures. Accordingly, the Committee decided that there was no need for an amendment, and it removed the item from the study agenda.

TAB 6B

ADVISORY COMMITTEE ON CRIMINAL RULES
DRAFT MINUTES
April 20, 2023
Washington, D.C.

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Attendance and Preliminary Matters

The Advisory Committee on Criminal Rules ("the Committee") met on April 20, 2023, in Washington, D.C. The following members, liaisons, and reporters were in attendance:

Judge James C. Dever III, Chair
Judge André Birotte Jr.
Judge Jane J. Boyle
Judge Timothy Burgess (via Microsoft Teams)
Judge Robert J. Conrad, Jr.
Dean Roger A. Fairfax, Jr.
Lisa Hay, Esq.
Judge Bruce J. McGiverin
Angela E. Noble, Esq., Clerk of Court Representative
Judge Jacqueline H. Nguyen
Catherine M. Recker, Esq.
Susan M. Robinson, Esq.
Jonathan Wroblewski, Esq.
Judge John D. Bates, Chair, Standing Committee
Judge Paul Barbadoro, Standing Committee Liaison
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter
Professor Catherine Struve, Reporter, Standing Committee
Professor Daniel R. Coquillette, Standing Committee Consultant (via Microsoft Teams)

The following persons participated to support the Committee:

H. Thomas Byron III, Esq., Secretary to the Standing Committee
Allison Bruff, Esq., Counsel, Rules Committee Staff
Christopher Pryby, Esq., Law Clerk, Standing Committee

Opening Business

Judge Dever opened the meeting with administrative announcements. Judge Burgess was attending remotely from Alaska, and Professor Coquillette was attending remotely from Boston. Judge Garcia was not able to attend. He welcomed Judge Paul Barbadoro from the District of New Hampshire as the new liaison from the Standing Committee. Judge Dever noted Judge Barbadoro's exemplary service as a district judge for more than 30 years and his service in many other capacities in the judiciary, including his current service on the Standing Committee and as our new liaison.

Judge Dever also noted that two members would be ending their terms at this meeting. Judge Bruce McGiverin had served for six years, including admirable service on the Subcommittees for Emergency Rule 62 and Rule 49.1. Despite many travel challenges, Judge McGiverin had made it to all of our committee meetings, and Judge Dever expressed gratitude for his many insights. This would also be the last meeting for Lisa Hay, who would be retiring as the Federal Public Defender in the District of Oregon on June 30, 2023. Judge Dever said Ms. Hay had done valuable work on several subcommittees, including Rule 17, Rule 6, and Pro Se Filing. He thanked her for insights and her willingness and ability to call on an incredible network to gather additional information for the committee.

Finally, Judge Dever thanked the public observers for their interest, and recognized Senior Inspector Richardson for a security announcement.

Turning to the first item on the agenda, Judge Dever asked for comments on the draft minutes or a motion to approve them. The minutes were unanimously approved.

Judge Dever asked for reports from the Rules Staff. Ms. Bruff drew the Committee's attention to the chart in the agenda book detailing the amendments and where they are in the Rules Enabling Act process, beginning on page 111. She stated that several Criminal Rules were currently at the Supreme Court. If they are approved by the Court, they will be transmitted to Congress May 1, and absent contrary action, they will go into effect December 1, 2023. Those included amendments adding Juneteenth National Independence Day to the list of legal holidays, new emergency Rule 62, and the technical amendment to Rule 16.

Standing Committee Law Clerk Chris Pryby called attention to the legislation that would affect the Rules, listed in the agenda book beginning on page 117. He noted that House Joint Resolution 7 relating to the National Emergency for COVID has been signed into law by the President. That will terminate the national emergency and the authority under the CARES Act to hold certain criminal proceedings by video conference or teleconference.

Rule 17 and Pretrial Subpoena Authority

The Committee then turned to the proposal to expand pretrial subpoena authority under Rule 17. Judge Dever asked Professor Beale to begin the discussion. She directed the Committee's attention to the memo on page 124 of the agenda book. All members of the Committee had participated in person or virtually in the Committee's October meeting in Phoenix, where numerous speakers described their experiences—in different districts and in different kinds of cases—with efforts to employ Rule 17 to seek material in the hands of third parties. As described in more detail in the minutes, the Committee heard many defense counsel describe the need for subpoena authority in different kinds of cases and for different types of material that they felt they needed to be able to access in order to properly research possible defenses and lines of investigation. The speakers described very different experiences in different districts and actually different experiences in front of different judges in the same district. For example, one speaker said "the rulings are all over the place." In some districts

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judges are reading Rule 17 very narrowly under the Nixon case, but in other districts judges read it much more generously.

Professor Beale said that another issue raised by many speakers in October was the uncertainty about whether defense counsel could seek these materials ex parte, or would have to explain what they were hoping to find and its relevance in a filing available to the prosecution. Again, the speakers in October described uncertainty and inconsistency, with some courts ruling that ex parte filing is not appropriate. In other courts, where counsel could not be certain whether an ex parte application would be approved or not, participants said they were taking a risk in making such an application. And in still other districts, the propriety of ex parte filing was well established. The Northern District of California, for example, has a local rule that makes it very clear you can do this.

Professor Beale noted we also heard different accounts of how broadly or narrowly the Nixon case is applied, and that led to the question whether this issue should be solved by litigation rather than by a rules amendment. As more fully explored in the memo in the agenda book, she explained, the Nixon court was interpreting the current rule, and its decision would not tie the hands of this Committee going forward if it is persuaded that the rule should be broader as a matter of policy.

Turning to the Subcommittee's activities since the October meeting, Professor Beale said that it had held two virtual meetings and had received valuable assistance from several experts who attended these virtual meetings. The Subcommittee spoke to Professor Orin Kerr and Richard Salgado about the Stored Communications Act and other issues relating to materials held online, and to other experts on issues affecting banks and other financial service entities. Additionally, the reporters interviewed other experts concerning the issues that might be raised by subpoenas for school records, medical and hospital records.

Professor Beale noted that no decision had yet been made whether to draft an amendment, but the Subcommittee has been keeping a list of issues (agenda book page 129) that it would need to consider if it were to draft a rule.

Judge Nguyen, the Subcommittee chair, then recapped in a different way, taking what she called a step back. Rule 17 has not been significantly amended since the 1940s. The scope of the initial request that we received was incredibly broad. Rather than delving into the weeds of the proposed language, the Subcommittee began the process with information gathering, an investigative phase, so to speak. That really started in October when we brought in all of the speakers to help us understand what the problem is on the ground. We heard the perspectives of both DOJ and defense counsel. And, as Professor Beale explained, it's very different depending on what district you're in.

At this point, Judge Nguyen said, the Subcommittee was starting to emerge from the information gathering process and would convene again to try to make some initial decisions. Given what it had learned so far—extensive work and very detailed information—the

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Subcommittee would discuss whether it was ready to move forward, and if so, what issues it will be taking up. It would be helpful to the Subcommittee to know if there are additional areas of research that Committee members think the Subcommittee should be looking into as it embarks on this next phase.

Judge Dever thanked Judge Nguyen for her leadership as the Subcommittee chair, and opened the floor for suggestions regarding any other areas of information that members thought the Subcommittee should be gathering or other sources it should be consulting that were not identified in the agenda book.

A member who noted she was on the Subcommittee commented that her number one concern was that Rule 17 is very poorly written and is confusing. She noted there is confusion about the proper use of sections (a), (b) and (c) for subpoenas for documents versus for witnesses, and she stressed the need for clarification.

Professor Beale responded that many of the speakers in October referred to the need for clarification and uncertainty about exactly what Rule 17 does say. She thought the Subcommittee was very aware of that concern, and she agreed that any change would need to be clear (and our style consultants require clarity).

A member commented that this is an important rule, and that the Committee had received a wide range of comments. The prosecutors said it is fine the way it is, and it should not be amended. But the defense overwhelmingly thinks it needs to change because defense attorneys need a means to obtain more evidence not just to get ready for trial, but to investigate the case.

Hearing no additional comments, Judge Dever said that the Subcommittee would continue its work and report at the next meeting. He also encouraged any member who had additional thoughts to share them with the Subcommittee.

Access to Electronic Filing by Self-Represented Litigants

The next item was pro se access to electronic filing and Rule 49. Judge Dever noted that Judge Burgess was chairing the Criminal Rules Committee's Subcommittee on this topic, and a working group was coordinating the efforts of all of the Committees. He asked Professor Struve to provide an update on the working group's efforts.

Professor Struve began by thanking all the members of this committee and especially its clerk of court liaison for providing so much food for thought to help identify the questions that will be useful as the working group moves forward. She said that the fall and the January meetings posed questions that need answers if one is to consider moving forward with various possibilities.

The project had been subdivided. One topic was the potential for eliminating the current requirement that a non CM/ECF user who files a paper with the court must serve that paper on all other parties to the case separately and in a traditional method. That requirement of separate service seems redundant, because everyone else who is on CM/ECF is receiving the document

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through the notice of electronic filing (NEF). So this part of the project is assessing whether the national rules could and should be amended to eliminate that separate service requirement. Professor Struve and Dr. Reagan from the Federal Judicial Center (FJC) had conducted further research, focusing on some districts that have eliminated that requirement and interviewing court personnel from those districts to see how that has been going. They had spoken to 17 different people from nine districts, including people from seven districts that exempt paper filers from separate service on the CM/ECF participants in their case. They all reported that the process was working well.

Professor Struve said that one of the questions that came up in the discussions was whether all paper filings actually end up in CM/ECF and are accessible. She said the answer is yes, they should be, except for ex parte submissions or things that aren't supposed to be accessible to the other side, and those were not. In essence, it works the same way for the paper filer as it would for the CM/ECF participant. In some districts everyone, including self-represented litigants, has to traditionally serve sealed filings on the other parties because they can't get the link through the NEF. In other districts that is not necessary because there's a way to tell CM/ECF that parties in the case can get access to that document in CM/ECF. In those districts, you don't have to separately serve, and that is true for the self-represented litigants as well.

Professor Struve said that the research so far is very positive on the feasibility of eliminating the separate service requirement, but she and Dr. Reagan had encountered an interesting issue that would arise in cases in which there was more than one self-represented party (which their respondents said was rare). If we eliminate the separate service requirement, it would be eliminated only for CM/ECF participants. So if there are two self-represented litigants in the same case and neither is on CM/ECF, each self-represented litigant would be required to serve the other through a traditional means. But how does the paper filer know which other litigants in their case are not on CM/ECF such that they must traditionally serve them? Professor Struve said they had received various answers to this question. Some parties who are not in CM/ECF are enrolled in an electronic noticing program, and that solves the problem. If a self-represented party is enrolled in the electronic noticing program, they are getting the NEF. The NEF solves the problem, because it tells them who they need to serve in a traditional manner. It will say, for example, the following parties did not receive service via CM/ECF, and you must serve them traditionally. Professor Struve thought that was an excellent idea, and she commented that every district that does that agreed. In those districts and with those litigants who are in the electronic notice program, there is no issue. As to other districts or litigants who are not in the electronic notice program, their respondents reported they were aware of no problems. Although no one reported they had not received a filing, Professor Struve thought this was still an issue to consider. She expressed optimism that rulemaking ingenuity could address it. For example, we could have an information forcing provision in the rule that says explain whether you separately served anyone. She thought that might be a topic for discussion in the working group. Professor

Struve commented that she and Dr. Reagan planned to process the fruits of their discussion in a more formal report, but she thought that would be the most actionable and immediate item.

Professor Struve stated that the seven districts that exempt paper filers from separate service on the CM/ECF participants in their cases were the District of Arizona, the Northern District of Illinois, the Western District of Missouri, the Southern District of New York, the Western District of Pennsylvania, and the Districts of South Carolina and Utah. These districts varied in many respects, but all were happy with exempting paper filers from separate service.

Judge Dever recognized the Committee's clerk of court liaison, who said she had spoken at length with Professor Struve. On the service issue, the liaison thought that was something that we could easily work out. In cases with multiple paper filers, she commented that they serve each other in the traditional way now, and she did not think it would be a big deal if everybody else got served electronically. Although she did not see the service side as raising major issues, she did think that the technicalities of actually allowing pro se filers to use CM/ECF would raise logistical issues that we would need to figure out.

Judge Dever thanked the clerk of court liaison, noting that she was the clerk in the Southern District of Florida, and she also had a network of people in other districts that she has consulted about what's going on in different courts. That is very useful because we have 94 different judicial districts.

Judge Dever then invited Professor Struve to report on other aspects of the project. She said they had been pursuing two other topics. First, in the districts that permit a self-represented litigant to access the CM/ECF, how has that been going and what issues have come up? Five of the districts in which she and Dr. Reagan were pursuing their enquiries allow CM/ECF access to self-represented parties without special permission, and in two more districts the court decides whether to allow the access after the litigant has gone through a process. Their respondents went into some detail about the benefits that they saw from permitting e-access, principally no longer having to deal with the processing of the paper filings by these litigants and all the ways in which that saves them time. This of course also eliminates the need to paper serve court orders on them, which some of the respondents also praised. And they also said it results in an electronic record of what was filed, avoiding later arguments about things like whether Page 10 was missing from the filing. You have a record of that.

Professor Struve and Dr. Reagan also asked respondents about burdens on the clerk's office or the court. Responses ranged from no burden at all, to sometimes we have to do a little more quality control, or in some cases, substantially more quality control (meaning things like the party filed in the wrong event). There is also some training time as well as time spent on the phone troubleshooting problems as they arise. So the burden varies, and the respondents differed in their assessment of the resources they would need in order to address access to CM/ECF. They had a particularly interesting discussion with someone who moved from the Southern District of Florida to the Western District of Pennsylvania and expressed surprise that they were able to give access to CM/ECF. But that respondent also said you would need training resources in order

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to accomplish this. That bears on the concern about resources, though it may be shifting court resources from the folks who are opening the paper filings and processing them to the folks who are training. So it seems to be true that a court couldn't just switch immediately from one to the other, but they might find that the resources net out.

From the reports of clerks' offices that are now dealing with this, the question of administrative burden and problems seems to be rather in the eye of the beholder. Each of their respondents basically said it's not a problem, but some of them recalled a few instances when someone had put something in that had to be dealt with. Generally they said someone spotted it and the court restricted access. But if it's a real problem, the court might revoke the privileges.

The interviews did provide answers to some of the questions that had come up in Committee discussion. There were questions whether it is hard to identify a litigant who's not a lawyer but is in CM/ECF, and all of the respondents said no, not at all. They also said they had encountered no problems about self-represented litigants sharing credentials, partly because sharing your credentials in the new system means sharing your PACER account, which is sort of like sharing what you'll have to pay for if someone goes and downloads things. Moreover, most of the districts that they looked at only grant access for a particular case, which reduces the likelihood of a problem with sharing credentials. They were told of one instance where there was a problem with shared credentials, but it was a mother who was a litigant and the son was filing papers. That seemed idiosyncratic and not really a widespread problem.

The respondents said that if one wanted a gating system, CM/ECF has the technical capacity. You can set up a type of event to which only court personnel have access and make that the only kind of event that a self-represented litigant could use. Then the court would have to review the filing and then move it to a non-restricted access status. They said it would be technically feasible, but none of those districts had tried to set up such a restriction. Professor Struve thought that probably reflected their overall viewpoint: they saw no problems with the current situation, and such a restriction would create more work for the clerk's office.

Professor Struve and Dr. Reagan also asked about alternative means of electronic access. You can unbundle the CM/ECF benefits and provide them à la carte, as it were, such as allowing electronic filing by some other means, such as e-mail or upload. Five districts do that and they like it. They say it's very similar in its benefits to allowing access to CM/ECF, and they did not identify many technical problems (though the Southern District of New York was much less strongly favorable about their e-mail filing program). The other thing they found very interesting was that eight of these districts now offer E-noticing. Even if someone is not in the CM/ECF, they can sign up to get electronic notices, which basically is signing up for the NEF. Professor Struve expected the use of E-noticing to spread; four of these districts are actively promoting it to their litigants. The benefits to the clerk's office are obvious: they don't have to send out paper court orders. They praised this to the skies.

Concluding her interim report, Professor Struve reported she was much indebted to Dr. Reagan for his expert guidance as they conducted these interviews. She could attest to the superb

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work done by the FJC, especially when it consists of qualitative information obtained via interview. Understanding the effort that goes into that, she felt even more indebted to the FJC researchers.

Professor Beale asked whether Professor Struve and Dr. Reagan had learned anything about the possibility that electronic service might address problems that arise when people move frequently and may not even have a stable home address. She wondered whether their respondents thought shifting to some kind of system where everyone gets electronic notice of filings would improve access to justice. Or did respondents voice only the advantage of not having to mail things out? Might this improve the receipt of critical information so that people don't default?

Professor Struve responded that some of their respondents did volunteer ensuring access among the listed benefits of the various kind of electronic access, and in one district the clerk led with that point, saying it was their job to serve the people who litigate. But generally—perhaps because of the questions in the interview protocols—the respondents were focused on burdens or advantages for the clerk's office. But she thought some did mention e-mail addresses may be more stable over time than physical addresses. She also noted that their questions did not address incarcerated self-represented litigants. Some districts are doing exciting things for them, but it is very institution specific.

Professor Struve commented that in an electronic noticing system the person needs to keep their e-mail address up to date and have the ability to download the documents and store them electronically in an accessible way. She commented that she knew people who can get emails but could not reliably read court documents on their cell phones. Moreover, she and Dr. Reagan found that courts with noticing programs seemed to be taking the opportunity to say people who have signed up for E-noticing are forgoing receipt of paper copies. It is not a belt and suspender system. She expressed concern about the ability of self-represented litigants to store electronic copies of documents and access them reliably, though she noted that issue was not within the working group's remit. The clerks' offices did mention some of these things. For example, sometimes people will say they did not get their one free look. When you get a NEF, you get one free look at the filing, and after that you have to pay if you are accessing the document through PACER. So litigants who are savvy know they need to download filings on their first look and put them in their Dropbox.

In other words, Professor Struve said, the cost to self-represented litigants of getting the benefit of electronic noticing is no one will send them paper anymore.

In response to the question whether self-represented litigants could come to the courthouse to get free access to the filings, Professor Struve responded that she and Dr. Reagan did not ask about that specifically. But on occasion when she suggested maybe not everyone is good at storing documents on their cell phone, some clerks responded that the litigants can come to the courthouse, and there's a kiosk where they can look at filings. Professor Struve thought that might be courthouse specific.

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The Committee's clerk of court liaison explained that any litigant has access to come to the courthouse and view the documents for free, but they are charged if they want to print the documents.

Judge Burgess thanked Professor Struve for her report, and asked if any members had thoughts or suggestions about what the Subcommittee on Pro Se Filing should be looking at. The clerk of court liaison raised the question whether this issue called for a federal rule. Should we leave it to each court to determine their needs, or make it a rule that all courts must follow? She commented that her court was in a very big district with many high profile cases. She said the idea of letting any pro se party e-file or just file electronically frightened her. The district has a very high profile. Donald Trump lives there. In some cases members of the public file things that are not necessarily related to the case in any way. They just want to be heard. How do we control that? Do we just let everybody have a password and file as long as they say that they have something to say in the case? Or do we allow the judge to say no, these people don't have anything legitimate to add to the case, and not allow them to file? She was concerned about those kinds of cases, not the average everyday litigant that has a case pending. She said she was afraid of big cases where people come out of the woodwork and just want file things. They also get threats against their judges and against the clerk's staff. If they file in paper, the clerk's office can control it. But if self-represented parties are given access to CM/ECF, they would not have much control.

Judge Burgess asked the clerk of court liaison a follow-up question. Were her concerns about the additional work for staff, or about just clogging the docket in particular cases with unrelated filings? She responded she was concerned about both. Since the clerk's office has the quality control for every document filed in any case, unrelated filings do create more work for staff. But they will also clog up the docket. She asked the judges in the room whether they would want 1000 documents in their cases from members of the public who are not related to the case in any way but have something to say.

Professor Struve responded that sounds like an utter nightmare. But the good news is that would never be allowed in any of the seven or eight districts allowing self-represented litigants with access to electronic filing where she and Dr. Reagan had conducted interviews, because to file you must have a PACER account and be a litigant in a particular case. The clerk's office looks for that match, and only allows access to CM/ECF and filing for parties to the particular case. So at least that piece of it seems to have worked itself out.

The clerk liaison replied that they all want to be "interested parties," and file notices of interested parties. She has thousands of individual citizens who want to be interested parties in these cases and want to be heard.

Judge Burgess said he appreciated these comments, and he thought they warranted a closer look at the concerns about the potential for unrelated filings that could clog the docket in a case and increase the workload of the clerk's office.

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Judge Dever thanked Judge Burgess for continuing to chair the Subcommittee, which he said would continue to coordinate with the Professor Struve and the Committee's reporters. He also thanked the clerk of court liaison for raising the question whether there needs to be a rule. He thanked Professor Struve and the FJC, which had provided a great deal of detailed information about what's going on across the districts. Judge Burgess added this thanks to Dr. Reagan.

Unified National District Court Bar Admission

The next agenda item, beginning on page 143 of the agenda book, was Professor Morrison's suggestion of a unified national bar admission. Judge Dever asked Professor Beale to give a summary. She said this was a very lengthy and significant proposal—directed not only to our committee but to other committees—to consider adopting a national rule of bar admission. The submission suggests that that there is now considerable variation district to district, and a significant number of districts impose very high hurdles that individuals have to meet to participate in litigation, including, for example, a high cost for pro hac vice filings. To become a member of the bar in many districts you must pass the state bar exam, which obviously is a significant commitment of time and money.

The proponents note we now have nationwide Federal Rules of Evidence, Civil Procedure, Criminal Procedure, and Bankruptcy Procedure. They contend it is time to eliminate the barriers that affect individual litigants, individual lawyers, and litigation groups. Professor Beale noted that a large number of groups participated in this submission. They have already attempted to get changes in local rules and districts where they would like to participate in litigation and where they felt the barriers were too high. But those efforts on a district by district basis had been unsuccessful. Professor Beale said the question is how to proceed since the proposal was presented to more than one committee.

Judge Bates began by commenting that this was a very interesting and thoughtful proposal spearheaded by Alan Morrison, but joined by several litigation groups and other individuals. He agreed it raised some serious issues, and might warrant serious consideration though it was not without other concerns and problems. He thought it likely there would be some resistance among the courts. It would remove local control over not only bar admission, but also bar discipline. He thought there would be concern about taking the local judges and members of the bar out of the disciplinary process and putting that disciplinary process in a centralized location. The few problem members of the bar may be constrained more if they know that the judges they are appearing before and other lawyers in their community are handling discipline, rather than some centralized location that has no real connection to them.

Judge Bates noted that the proposal would also affect the Civil and Bankruptcy Rules, though it would have less impact on the Appellate Rules because they already to some extent provide for a unified bar. Accordingly, he had decided to form a joint subcommittee with representation from the Criminal, Civil, and Bankruptcy Rules Committees (though he noted Bankruptcy had a lesser interest because it generally adopts the bar provisions of the local

district court). He said the joint subcommittee would gather additional information regarding the current situation and issues, and undertake some data collection, perhaps with the assistance of the FJC. It would take some time, which was appropriate for such a thoughtful submission. Judge Bates commented that Alan Morrison, who spearheaded the proposal, had been a very active participant in the rules process and a very constructive participant in it over the years. Professor Struve had volunteered to work with another reporter to lead the joint subcommittee.

Professor Coquillette provided background information on the Committee's role in disciplining or overseeing attorney admission. When Janet Reno was Attorney General, the Department of Justice proposed a system of federal rules of attorney conduct that would have created a unified federal bar and a unified system of federal disciplinary rules. The Rules Committees held three major conferences on the proposal and drafted a set of federal rules of attorney conduct. At that time, he said, the Department of Justice had some very serious issues with certain State Bar associations. In Oregon, Rule 8.4 blocked Department of Justice supervision of FBI agents and sting operations. The State Bars in several states said that the DOJ could not interview potential witnesses because of Rule 4.2 and the need to have approval of a represented defendant's lawyer. There were, he said, many, many issues. In the end there was a lot of opposition from the State Bars and the ABA. But that was some time ago, and Professor Coquillette said he very strongly agreed with Judge Bates that the time may have come to reexamine this.

A member said if the subcommittee takes this up, she would be interested to learn more about the history and what the ethics rules are in different districts. She was aware of some of the history in Oregon. In the Rigatti case, the Oregon Supreme Court said that undercover operations might violate the state ethics rules depending on whether the lawyers were lying to people as part of those investigations. She thought that was one of the reasons they wanted to make sure lawyers practicing in Oregon followed the Oregon Rules of Ethics. If we had a national admission system, she wondered what state ethics rules might not be applied and what some of those controversies were.

Another member commented that there may be some merit to this proposal, but he questioned how this fell within the proper role of the Criminal Rules Committee. Were the proponents seeking a new Federal Rule of Criminal Procedure that would establish a national bar? Judge Bates responded that those were important questions, and would be part of the new working group's enquiry. He commented that it was not crystal clear that amending the Federal Rules of Civil and Criminal Procedure would be either the proper or the best way to deal with the issues.

Mr. Wroblewski agreed that it would be important to understand the history, and he also agreed with Professor Coquillette that this was a new and different context. He remembered the prior context, and he said the previous DOJ proposal was really about government questioning of represented persons and other related issues. There is now federal law on some of the issues, and

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the McDade amendment—a federal statute—obviously bears on it. He thought it would be an interesting project.

Another member asked whether the Committee was talking about a Bar Association that would supplant the state rules, and do away with the state bars? Judge Bates responded that the proposal is for a uniform bar admission, not for a new set of disciplinary rules to supplant state ethics. The member responded that Texas had an elaborate process, and she could not imagine they would ever want to give that up. Professor Beale drew the Committee's attention to the point that the proposal focused only on the federal courts, seeking uniform national admission to practice in Federal District Court. She noted that the situation regarding practice in the appellate courts, as had been noted, is significantly different.

Judge Dever closed the discussion of the proposal with several comments. He thanked the member who had asked whether the proper response to the problems described in this proposal would be a Rule of Criminal Procedure. Judge Dever said the Committee always begins asking whether it has the authority to respond to the problem or issue, and if a new rule is proposed we ask if there should be a rule. If a rule change is proposed, we ask whether there is a significant problem with the rule as written. He said he looked forward to contributing to the work of the new joint subcommittee.

Rule 23 and Jury Trial Waiver Absent Government Consent

The next topic on the agenda was a proposal to amend Rule 23 from the Federal Criminal Procedure Committee (FCPC) of the American College of Trial Lawyers. Judge Dever commented that the provision in Rule 23 regarding bench trials had been largely unchanged since its drafting about 80 years ago, and had been upheld against a constitutional challenge in 1965. He said that the question for the Committee was again whether there was a significant problem with the rule as written that warrants creating a subcommittee to further study this proposal.

Judge Dever then recognized Professor King to introduce the proposal, which began on page 215 of the agenda book. She noted that the FCPC proposed language for a new subsection of Rule 23(a) that would allow the court to approve the defendant's waiver of the jury trial without the government's consent if it finds that the reasons presented by the defendant—with the opportunity for the government to respond—are sufficient to overcome the presumption in favor of jury trials. The FCPC advanced several reasons for the proposed change. First, in a significant number of cases, the government does not consent and that causes a problem for those defendants that want a bench trial instead of a jury trial. They based this assertion on a survey described on pages 215-16 and 247-48. Second, FCPC asserts that bench trials are more efficient than jury trials, and the proposed amendment could assist in reducing the backlog of cases that had been created by the pandemic. Finally, the FCPC stated that roughly one third of the states do not require the prosecution's consent and allow for the defendant to waive a jury with only the judge's consent.

Professor King described the history of this particular provision. The Committee considered a proposal to permit the waiver of a jury in favor of a bench trial without the prosecutor's consent in 1963, and at that time it divided the Committee. She noted that views were mixed, and drew the members' attention to the discussion of that on page 221. More recently, when drafting the emergency rule the Committee considered a proposal to allow a defendant to waive jury trial in favor of bench trial with permission of the judge alone. The full Committee at one point approved a much narrower amendment that would be applicable only during an emergency declaration. That provision, which was approved by the Committee and submitted to Standing Committee (page 217), provided that if the defendant waives a jury trial in writing, that court may conduct a bench trial without government consent if, after providing an opportunity for the parties to be heard, the court finds a bench trial is necessary to avoid violating the defendant's constitutional rights.

Professor King said the Standing Committee sent the proposed amendment back to the Criminal Rules Committee for consideration of several concerns. First, was an amendment necessary? A bench trial would be necessary to avoid violating the defendant's constitutional rights in only a very small number of cases, and judges were already handling those problems. Second, this particular proposal might be controversial enough to potentially derail the package of emergency rules that was going to the Supreme Court on an accelerated timeline. In both the Standing Committee and on this Committee, she said, there had been considerable division among the members on the policy question whether the rules should provide some opportunity for defendants to waive a jury without the prosecution's consent. And at the Subcommittee, the Criminal Rules Committee, and Standing Committee there was some disagreement about how often the government withholds consent. There had been no FJC study, and it was pretty clear that it differed from district to district. In some districts people said that was happening, and in other districts they said this never happens. The government either consents or it's not a problem.

Professor King said the question presented by the new proposal was whether at this point the Committee wanted a subcommittee to study this further. The reporters' memo states the view that this is not a constitutional question. It is a policy question on which the states are divided, with two thirds of them roughly following the federal model of requiring government consent, and the remaining 19 states allowing bench trials without government consent.

Judge Bates returned to the point Judge Dever had made earlier, saying this proposal again raises the basic rules approach of asking a series of questions. First, is there a problem? If so, is a rules amendment the best way to address the problem, and would it fix the problem? And are there any collateral consequences? He commented that whether there was a problem here was a real issue to be examined. He said he had one data point, though admittedly it was on a unique category of cases. He had queried all his colleagues and the clerk's office to get data on the January 6th cases in his district. He learned that to date there had been 44 bench trials, and 15 more were currently scheduled. All of those required the government's consent. He was aware of only one case in which the government did not consent. That was in one of the Oath Keepers sedition conspiracy cases. The judge in that case thought it was proper for the government not to

consent to because the case really should go before a jury. And in one other case the judge declined to have a bench trial because the judge felt that similar kinds of issues really should go before a jury. But, Judge Bates said, except for those two instances, which were pretty unusual, the government had been pretty regularly agreeing to bench trials on the January 6th cases.

And as a follow up to that data point, Judge Dever noted on page 248 the FCPC submission seems to say that in 2020, 13% of the criminal trials in federal court have been bench trials, which by definition means DOJ consented in those. He thought that further confirmed Judge Bates' observational data point.

Judge Bates agreed with Professor King's earlier statement that it does vary from jurisdiction to jurisdiction. He said to his knowledge there were some U.S. Attorney's Offices that generally speaking will not consent to bench trials.

Given that data point, Mr. Wroblewski asked, how do we determine if there is a problem or not? If we ask a subcommittee to look into this and they gather more data, he wondered if we would be in any better position a year from now when we have more data points. We now know 13% of the trials nationwide are bench trials, and we know sometimes it doesn't happen. And there are differences among districts. But how do we know if there's a problem?

Judge Dever commented that what brought every member to the Committee was their life and professional experience, and that was why we were asking them the initial question. We live in a world of limited resources. We do form subcommittees and study proposals, but sometimes we decline to do it. He highlighted Professor King's point that when we looked at this issue most recently, it was in the context of Rule 62 and an emergency already having been declared. Judge Dever noted that one of the FCPC's arguments was that there was a great backlog of cases due to COVID. He wanted to hear whether that was true in the districts other committee members were familiar with, because it was not the case in his own district. He thought Mr. Wroblewski had made a really good point. Part of the discussion at this meeting was on the first principle: is there a problem with the rule that's essentially been written the way it's been written for 80 years, that 31 of 50 states essentially follow, and that survived a constitutional challenge in 1965. As the Supreme Court stated, the Sixth Amendment speaks in terms of the accused. But the jury trial provision in Article 3, Section 2 doesn't limit it to the accused, and this raises the issue of the United States' interest.

Judge Bates agreed it would be necessary for the committees involved with the proposal to see what data might support it. He also observed that one of the bases for the proposal was a claim that there is backlog of cases awaiting jury trials in the federal courts because of the pandemic. That too would have to be assessed. He was not sure it was universally true. It was not true in some districts, including his own, where any backlog was being caused by the unique presence of the January 6th cases, not by the COVID pandemic. Also, because the rule process takes several years, it would not be possible for a rules amendment to address any current backlog from the pandemic. It would be at least four years before a rule could go into effect.

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A judicial member of the committee asked if members from the defense bar thought there were certain categories of cases where the defense thought it was beneficial to have a bench trial rather than a jury trial, and the government is disproportionately not consenting in that category of cases. He thought this might be true, for example, in child porn or child enticement cases.

Professor King responded to the question how we know if there is a problem. She said we cannot know just by looking absolute statistics of bench trials, because there is a qualitative aspect. Suppose, she said, we find that there are particular districts or particular set of cases where defense attorneys are concerned that the government should have consented to the waiver but did not do so. Do we then look to see why the government wanted a jury? Do we look to see if consent was granted in other cases? Or whether there a conviction on all counts anyway? What, she asked, is the problem with the government's refusal in the cases where it is refusing consent? And is that something that the rules could deal with as opposed to something else? She thought in these districts it would be very difficult to identify a threshold point at which the judges or the government should be consenting. She commented that it is very, very difficult to look back and identify when that was happening, and she emphasized that this is an adversarial process.

A judicial member said he had a fact-based concern as well as a principled concern regarding the backlog rationale for the proposal. The experience in his district, he said, was completely the opposite from that underlying the FCPC proposal: in his district they were unable to find jury trials. Criminal filings had at one time exceeded civil filings in his district, but now they are a fraction of the civil filings. So in his district, there would be no need to reverse the presumption in favor of jury trials. As to an objection based on principle, he expressed concern about the vanishing of the criminal jury trial, noting studies had found that jury trials are disappearing on the criminal side as fast or faster than on the civil side. He saw adding another way to reduce the number of criminal jury trials as a problem for the justice system, not a benefit. For that reason, he thought requiring both parties to consent to a bench trial was very positive. He would be reluctant to alter that.

Another member commented that this is an adversarial process, and she asked why we would take away the government's right to consent or not consent to a bench trial. That, she thought, would have to be considered if the Committee decides to take up the proposal.

After a 10 minute recess, Judge Dever called the meeting to order and he opened the floor to other committee members for discussion of the question whether they perceived a problem with the rule as written that warrants further study.

A practitioner member stated that she had previously chaired the committee of the American College (the FCPC) that submitted the proposal. When the Criminal Rules Committee was considering emergency Rule 62, she had reached out to the FCPC to ask its members if they had seen a problem with refusals to consent to bench trials. That enquiry was the genesis of the current proposal. She heard, at that time, there absolutely was a problem. Although we have statistics indicating that the government must have consented in 13% of the cases, she pointed

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out that we do not know how often the government refused to consent. The open empirical question, she said, looms large and warrants the Committee's involvement because it has the mechanisms to examine whether a problem does exist. That is what it was doing with the Rule 17 Subcommittee, which had been inviting subject matter experts to describe their experiences. She emphasized that the FCPC had continued to pursue this issue after Rule 62 was drafted. The FCPC, she said, includes defense practitioners from all across the country, as well as current and retired U.S. Attorneys and Assistant U.S. Attorneys (though not a sitting Assistant U.S. Attorney). She thought the breadth of the FCPC's membership gave "at least some indication that across the country, practitioners believe that a problem exists."

Professor Beale related those comments to something several speakers said at the Committee's October meeting: in their districts defense counsel did not ask for subpoenas because they knew they would not be successful. For that reason she thought it would not be sufficient to know how many requests have been refused. Rather, the real issue was whether practitioners ask and the government consents in appropriate cases. And of course that would require the Committee to have some idea of what constitutes an appropriate case for a bench trial. She noted that when Judge Bates was describing the January 6th cases, he referred to a case the judge thought "should" go to a jury. She said that if the Committee took up the proposal it would have to think about some very fundamental questions, including what kind of cases should go to juries even if the defendant doesn't want to, and when the government's refusal to consent would be inappropriate. Noting that a prior speaker had emphasized this was an adversarial system, Professor Beale commented that there are not two equal adversaries. Instead, many aspects of the rules treat the defense differently from the government. And the government cannot refuse to allow the defendant to plead guilty or refuse to allow the defendant to incriminate herself. There are many protections for the defendant that the government cannot require a defendant to use. On the other hand, she said, the parties are not permitted to agree to have a private or closed trial, because there is a public interest in having a public trial and the First Amendment requires an open courtroom. So a full examination of the proposal would require consideration of the function of the jury, and whether it is just a right of the defendant. Or does the government have an equal right? And there are also empirical questions. Are there districts, as a prior speaker said, in which the government will never consent? And if that's the case, how many are there? And does the Committee think that's a problem? That would require the Committee to have a normative or policy position. The proposal contends there is a sufficient problem that then we need to investigate the empirics and have our own conclusion about the policies. But it was for the Committee to decide whether there was a big enough problem that it wished to commit the resources of a subcommittee, the reporters, and meeting time. The Committee cannot do everything and must prioritize.

A member said that sounded like an even deeper and broader probe than originally presented in the FCPC proposal. He wanted to understand what problem the proposal was seeking to remedy. What, he asked, is the problem with two party consent given the constitutional presumption of a jury trial? Professor Beale responded that there may not be a

problem. She thought that was the ultimate policy or normative question. She also reminded the Committee that it did not have to adopt or reject the particular proposal. As with Rule 17, the question is whether there is enough of a problem it would be worth looking again at Rule 23. If so, the Committee might substantially revise the proposed amendment or might (as with Rule 6 recently) study it for quite a while and then conclude that it was not prepared to go ahead with an amendment. She asked whether members were persuaded from the proposal or their own experience that this issue warranted a significant expenditure of Committee time.

Focusing on what kind of evidence the Committee needed, another member noted the proposal had attempted to provide evidence of a problem. On pages 215-16, the proposal described an informal survey finding that in at least 12 districts prosecutors rarely or never consent to a bench trial. Thus the Committee had information about at least twelve districts, and it had been told that the process differs district by district: we get bench trials in some places, but not in others. The member thought that was enough of an indication of a problem: procedural unfairness where defendants are being treated differently in different districts across the country based on different prosecutorial decisions—assuming that the Committee did not think the prosecutor needs to have that authority. She noted that there are different charging decisions in different districts, but that was within the role of prosecutorial discretion. This proposal, in contrast, focused on a procedural rule that the Committee had created on how to waive a jury trial. At some point the Committee added the requirement that the defendant has to ask for a bench trial, the prosecutor has to agree, and the court has to approve. But it could revisit the question whether that's the right procedure, and whether the prosecutor's consent should be required. The Committee could also assess whether the Rule is being applied differently across the country. As to the earlier comment about the disappearing jury trial, the member said action by the Sentencing Commission concerning "the trial tax" might be a better way to reinvigorate jury trials.

Judge Bates suggested there might be a middle course between appointing a subcommittee and removing the proposal from the Committee's agenda. In some instances when he had thought it premature for the Civil Rules Committee to appoint a subcommittee, as chair he and the reporters (sometimes working with the FJC representative) worked together to gather additional empirical data that would be useful in deciding whether there was a sufficient problem. So it might be possible to develop more information without appointing a subcommittee.

Mr. Wroblewski said that if there is a problem with a backlog of cases that could be solved by bench trials, we should find out now and respond immediately. He said that during the pandemic many districts were not holding jury trials, and there were significant issues with defendants being able to exercise their constitutional right to have a trial. The Department of Justice pressed all of its U.S. Attorneys to offer every defendant the opportunity to have a bench trial to avoid this particular problem. But the vast majority—almost all defendants—declined the offer. So if there was a current problem that could be solved by the government consenting to bench trials, he thought we should find out right away, so that DOJ could get the word out to the

U.S. Attorneys that you appear to have a backlog, and this is a way to address it now. We do not, he emphasized, need to wait three or four years before an amendment could be adopted.

A member agreed completely, saying no matter how many problems we might find it was still the government's right, and it should be the government's right to waive or not to waive a jury trial. As Mr. Wroblewski said, the Department should get the message out to its prosecutors to waive a jury when there is a significant backlog. The member thought that would be much better than taking away the government's precious right to a jury trial.

Mr. Wroblewski emphasized that although he had not yet had an opportunity to survey his DOJ colleagues, he was fairly confident that they would share his reaction that the proposal was not particularly persuasive, and it was not a very close call. One of the two primary problems identified in the proposal was interference with the defendant's rights because of the unavailability of jurors. But as this Committee and the Standing Committee recognized in considering Rule 62, and as reflected in the case cited in the proposal (United States v. Cohn, page 248), a judge can impose a bench trial over the government's objection when necessary to protect the defendant's constitutional rights. The constitution supersedes any provision of the Federal Rules of Criminal Procedure. No amendment is needed to change that, and the case discussed in the FCPC proposal (Cohn) demonstrates that.

Mr. Wroblewski also stressed that the Constitution has an explicit preference for jury trials. Article III states that "The trial of all crimes, except in the cases of impeachment, shall be by jury." That, he said, is the presumption. The Supreme Court has explained there are exceptions, but that is the presumption. He wondered whether the fact that 13% of cases involve bench trials shows that problem is that there are too many, not too few, jury waivers. He noted there are many very good reasons for the constitutional presumption. We want the community to be involved. There is a big difference between a jury and a judge—who is a government employee. And there is a difference between 12 jurors that must act unanimously and one single judge who decides on his or her own. He urged the Committee to recognize the values embedded in the Constitution and its jury trial provisions. He thought Professor Beale was asking the right questions: when is it appropriate to waive that and give that up? He suggested all members needed to wrestle with that.

In connection with the comment on the jury's constitutional role, Judge Dever observed that under Rule 29(a) the court may grant a motion for a judgment of acquittal at the close of the government's evidence. To the extent there was concern about the need for a bench trial in a certain kind of case because of concerns that the jury may act irrationally if they see certain types of evidence or a technical defense, Rule 29(a) provides another procedural remedy within the jury trial process and the existing rules.

Another member said that anecdotally at least the Committee is aware that in some districts the government does not consent to waiver of a jury trial. She did not know whether that was a problem that a subcommittee could resolve. As Mr. Wroblewski had observed, the issue really is whether the government is entitled not to waive the jury. Thus it might be premature to

appoint a subcommittee to gather additional empirical information, rather than first tackling the broader policy question. She was not sure who the additional empirical information (e.g., whether 10% or 20% of districts did not consent) could help answer the policy question.

The member also asked whether this was something that the Department of Justice could address as a matter of policy. To the extent that there was a district operating outside of the norm the Department expects, she suggested the solution might be for the Department to enact some sort of policy or directive. She and another member used to practice in the same district, and neither could recall a single case where the U.S. Attorney didn't consent if the defense wanted to waive, regardless whether the prosecutors were comfortable with that. The member did not recall whether that was an official office policy, but it was very close to that. So that was a policy matter, and she was doubtful that a subcommittee, rather than the Department, could take care of the problem.

A practitioner member commented that the extraordinary situations of COVID and the January 6th trials (where it was in the interest of the government to move those cases along and may encourage bench trials) were so atypical they might skew the data. She focused on situations that the courts do not see: when defendants request that the prosecution consent to a bench trial, the government says no, and that is the end of it. She returned to the policy question raised earlier: do we want cases like this to be decided by the government or by the court? As Rule 23 now stands, the government is pretty much the sole arbiter of whether a defendant can waive a jury trial except in cases in which the government's refusal would result in a violation of some other constitutional right. In those cases, courts have granted relief. But the courts do not see other cases in which the prosecution refuses a defense request for consent to a bench trial, and there is no extraordinary constitutional favor. In those cases the defense is unlikely to present the issue to the courts, which may be unaware of the scope of the problem. She concluded by restating the question whether as a policy matter the prosecution or the court should decide whether a particular case needs to be public and open in front of 12 jurors.

Another member said he was intrigued by Judge Bates' suggestion that there might be some way to get the data that the Committee might need, but he wondered how we would get data on the cases just described. He thought there might be informal surveys of judges and/or lawyers asking about scenarios where defense may have had a conversation with the prosecution and made a request and the prosecution said no. He wondered whether as a practical matter the Committee could get enough data to decide if this is an issue.

Noting that other members had framed this as an adversarial provision, a member said that conceptually the Sixth Amendment and the Article III provision related to jury trial clearly give the defendant a constitutional right, but there is also a community right. He distinguished this community right from any right of the government. He then raised the question whether the government should be the arbiter of when that community right is vindicated, or whether it should be left to the court. He thought that framing was critical. He also appreciated the challenges with regard to collecting the necessary data. The proposal did include some data. He

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thought there might, as Judge Bates had suggested, be a middle ground of ways to gather more evidence, whether it's anecdotal or some sort of survey that would inform whether the proposal was worth pursuing.

Judge Bates acknowledged that collecting the data might be difficult, but he also identified several sources of data the Committee might pursue, perhaps with the assistance of the FJC. The Justice Department could reach out to the U.S. attorneys and units within Main Justice for information regarding requests for bench trials. With the help of the FJC, the Committee could do something similar through the Federal Public Defenders, and it might get some useful information on how often the government refuses defense requests for consent to jury waivers. Though that information might be imperfect, he thought it would be useful.

A member responded that all of the data would really be specific to each district. For example, suppose there is a district in which the prosecutors never agree to jury trials because they think the judges are biased in the sense of being really bent towards the defense. So the prosecutors refuse to consent. Given the different possibilities, the member cautioned it would be necessary to try to understand what is really going on once we gather data.

Professor King posed several questions. If there are reasons that are impermissible for the prosecutor to deny consent, are those same reasons also impermissible for the judge? Or suppose the prosecutor says "I believe in the jury. I think everyone should have a jury trial. I think it's important to the community. So I do not consent to bench trials." If that is acceptable, she thought every prosecutor who wanted to deny consent could just say that. Except for the narrowly written draft emergency rule (limited to cases in which the court found a bench trial was necessary to avoid violating the defendant's constitutional rights) she thought it would be very difficult to determine what sorts of reasons are permissible and what sorts are not for purposes of a rule. Other alternatives might be better, such as the judiciary Benchbook, or DOJ policy. She thought the procedure for deciding could certainly be clarified in the rule, but it would be much more difficult to make the normative decision what reasons are and are not legitimate.

A member suggested that it would be legitimate for the government to refuse consent because the prosecutor thinks the judge would not like the government's case. She asked whether others agreed.

Another member responded to the question how to gather the data. She supported seeking data from the Justice Department and the Federal Defenders. But she emphasized that the Committee already had a statement from the private bar: the statement in the proposal. Lawyers from across the country decided that it was worthy enough of consideration that they put together and submitted this proposal.

A member expressed curiosity about districts that as a matter of course never agree to a bench trial and wanted to know more about that. He could only recall a couple of times where the government did not agree to bench trial when the defense had asked for it. He also stated that

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his district was not experiencing any backlog from the pandemic. He thought the January 6th trials were a real exception. He could see where the court in some cases, such as some of these January 6th cases, would really want to have a jury trial as opposed to a bench trial.

The Standing Committee liaison returned to Professor Beale's question whether there are classes of cases where it would be inappropriate for the government to deny a bench trial to a defendant who is seeking one, saying he had been struggling with that question. For him, the presumption of jury trial was so strong presumption that he needed to try to identify what are the kinds of cases where we would be willing to effectively say by rule that the government should not be allowed to object. He had not experienced the problem of the government objecting, but he felt he had powerful tools to ensure a fair jury trial: overseeing the voir dire process, enforcing Evidence Rule 403, and properly instructing the jury. He thought those tools were so powerful that he had great confidence that he could pick a fair jury in almost any kind of case. He thought Professor Beale might have been thinking of cases that involve really ugly brutal facts, or cases that have such extraordinary pretrial publicity that the polarization is horrendous. Although one might think you need the option of a bench trial in those cases, he said he had tried those kinds of cases. He had tried the governor of Puerto Rico when he was running for reelection, and they were able to pick a fair jury. So he did not immediately see that there was a class of cases where by rule we would be willing to effectively tell the government it is not allowed to prevent a bench trial.

A member responded that one example where the defense might want a bench trial is a defendant with prior criminal convictions who wants to testify and believes that the judge could set aside the prejudice that those convictions might show. That defendant might think a jury, even if well instructed, is just going to take those convictions into account. She thought that was an example where the bias that a jury might have is hard to overcome, and a defendant might think they could get a fair trial in front of a judge and want to testify. Regarding the history of Rule 23 that was described in an earlier memo,[1] the member commented that whether the government should have this veto had been addressed several times but not resolved. She thought might be worth investigating that idea again, including consideration of whether there is disparity across the country. She thought the Committee could already say anecdotally there is such disparity, though it might not be able to answer whether the government was objecting for good reasons or not. She asked why the government veto was originally included in Rule 23. She suggested an alternative: if the defense requests a bench trial, they should state their reasons, the government can respond why they oppose, and then the judge would be in a position to represent the community's interest. She acknowledged the constitutional preference for jury trials, but said the judge could enforce that constitutional preference rather than the prosecutor. She thought it was a question of where that power should be. Since the Committee knows the government does not consent in some districts, she did not think it was important to learn more about how many such districts there are. As to the reason Rule 23 was drafted, she appreciated the earlier research

[1] The member was referring to the memo on pp. 220-29 of the agenda book.

memo[2] that indicated there was not much discussion of this issue when the rule originally came up. One commentator said the defendant can waive all these other rights, why not also the jury trial. The 1960s was the last time this was seriously considered, and there was another view. She suggested the key question was why the government, rather than the judge, should have that veto authority.

Judge Dever commented that the research memo the member had referenced did discuss the nine cases that were totally consistent with Singer. In upholding the constitutionality of Rule 23 as written, the Singer Court distinguished exceptional cases where the judge may determine it would not be possible to get a fair jury. There are change of venue provisions, and Judge Dever noted that the previous day had been the horrible anniversary of the bombing in Oklahoma City, and that trial took place in Denver because it was not possible to get a jury in Oklahoma.

A member interjected that she did not read the memo on pages 220-29 of the agenda book as a setting forth a constitutional right of the government to a jury trial.

Mr. Wroblewski said he would be happy to take up any request for research among the U.S. Attorney community to ask them about which districts have what policies and also to consider, at the appropriate time, whether the Department should have some sort of policy. He also noted that Professor King had raised a good question: what is the appropriate standard? When is it appropriate to waive and when is it not appropriate? He thought it was not obvious, and he asked how one could write a policy other than to say you should not reject a request for a bench trial without thinking about it and considering all the totality of all the circumstances. He reiterated that he was happy to gather any information requested, as well as to discuss the possibility of guidance either immediate to address any backlog or longer term to address any other concerns.

Judge Dever thanked Mr. Wroblewski, and said that he thought it would make good sense for Mr. Wroblewski to gather that information as well as information about (1) whether there is a COVID backlog, and (2) data on declining and whether there is a national policy or instruction from the Attorney General, or something U.S. Attorney specific. Judge Dever said the Committee could also try to gather information from the Federal Public Defender community. A member suggested also seeking information from CJA panel attorneys, which she said had a very good organization that could provide additional information, and Judge Dever agreed.

Judge Dever said that was how the Committee would proceed, and in concluding the discussion of this item he echoed an earlier comment about the thoughtful discussion. He noted that one of the key benefits of the Committee's process was hearing from so many different stakeholders and perspectives to get to the right result.

[2] The member was referring to the memo on pp. 220-29 of the agenda book.

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Rule 49.1 and Privacy Protections for Social Security Numbers

Professor Beale introduced the next item on the agenda, on page 274 of the agenda book, concerning privacy protections for Social Security numbers under Rule 49.1. Our docket contains a public suggestion that is a portion of a letter from Senator Wyden of Oregon to the Chief Justice. She noted that the treatment in the agenda book was very short because it was a cross-committee suggestion concerning a suite of rules that were all drafted at the same time, after the adoption of the E-Government Act. The parallel rules all have the same language and take the same approach. So any possible change to those to our rule would inevitably require consideration of parallel changes to other rules as well.

Thus the question is how best to move forward and which group has the biggest stake in this? There is agreement that the Bankruptcy Rules Committee has the biggest stake, so they are going to take the lead. Professor Beale asked Mr. Byron to provide an update from the Bankruptcy Rules Committee's meeting and information about what might be coming next. She noted that Criminal Rules would clearly be in the back seat on this, not in the driver's seat, and the car has to go in the same direction for all of these Committees.

Mr. Byron said that the Bankruptcy Rules Committee has begun discussing this question, which is very complicated for them. Many provisions in the Bankruptcy Rules require the last four digits of individual Social Security number or taxpayer ID number, and many reasons have been advanced historically and reiterated in the most recent discussion for why those rules should retain that requirement. He stated that it was not likely that the Bankruptcy Rules Committee would complete its consideration of this question quickly. One of the things discussed in the Bankruptcy Rules meeting a few weeks ago was the fact that the FJC is undertaking a study about compliance with not just the redaction requirement for Social Security numbers, but also the other requirements for redaction in the privacy rules generally. He said there might have been some uncertainty about whether that FJC study would also address the question that the Bankruptcy Rules Committee was considering, which is whether there is a policy reason to change or retain the current requirement in the privacy rule. The discussion in the Bankruptcy Rules Committee might require additional time.

Mr. Byron said that he would discuss with all the chairs and reporters whether it made sense to continue to await resolution by the Bankruptcy Rules Committee or whether instead to go ahead and ask Criminal, Civil, and Appellate Rules to consider on their own whether some change is warranted. It would be premature to say what the outcome of that discussion will be, because we need more information about where Bankruptcy is heading, and how long it would take to resolve those questions. Mr. Byron thought it was unlikely what the Bankruptcy have reached a decision by the fall meeting of this Committee. He also noted it was possible Bankruptcy's problems might be unique. Because they have so many financial records, they might decide to continue to require the last four digits of the Social Security numbers. But it could be that Civil and Criminal—or even just Criminal Rules—might conclude that they do not really need the last four digits of the Social Security number, that it's too much of an

infringement on people's privacy to have that somewhere it can be accessed. But Mr. Byron cautioned that at present it was too preliminary and the decision has been made that Bankruptcy will continue to try to work through this, though there will come a point at which we will have to think about the other rules.

Professor Beale summed up the discussion with the comment that the next steps involving the various committees would be orchestrated by Professor Struve, Judge Bates, and Mr. Byron. At this point, the Committee was not being asked to take any action, and likely the issue would not be on its agenda for the fall meeting.

Removal of Items from the Study Agenda

Judge Dever asked Professor Beale to introduce the next items on the agenda, and she directed the Committee's attention to page 277 of the agenda book, which was the first of two proposals to remove items from the Committee's study agenda. The study agenda allows the Committee to put suggestions to one side to allow additional time before making a determination whether there are sufficient indications of a problem to warrant the substantial commitment of Committee resources for the in-depth study of a possible amendment. In the case of these two items, the reporters recommend that the suggestions be removed from the study agenda, because there has not been a showing of a significant problem that could be remedied by a rules amendment. She stressed that this was merely a recommendation from the reporters, who were inviting comment and consideration by members.

The first of the two study agenda items concerned conditional guilty pleas under Rule 11(a)(2). Professor Beale explained that Judge Susan Graber, who was then a member of the Standing Committee, sent the Committee a very brief e-mail saying here is a recent decision in United States v. Lustig,[3] and there may be room to clarify the rule.

In Lustig, the Court of Appeals concluded that the District Court had erred in denying a motion to suppress. The majority held that that error had was not harmless because it could have affected the defendant's decision to plead guilty. It identified the proper test for conditional plea cases as whether there's a reasonable possibility that the error contributed to the defendant's decision to plead guilty. The court noted that test will necessarily be hard for the government to meet because the record will seldom contain enough information to allow the court to conclude beyond a reasonable doubt that the error did not contribute to the defendant's plea decision. Judge Watford concurred, writing separately to highlight his different view of what Rule 11(a)(2) required. In his view, the statement "A defendant who prevails on appeal may then withdraw the plea" leaves no room for any harmful error analysis as long as the defendant has prevailed on appeal. When the defendant reserves the right to appeal a ruling under Rule 11(a), the only question for the appellate court is whether the ruling in question was in error. Harmless error comes into play only in determining whether the district court's ruling itself could be affirmed.

[3] 830 F.3d 1075 (9th Cir. 2016).

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The question for the Committee, Professor Beale said, is whether this demonstrates a problem warranting an amendment. There are only a relatively small number of conditional pleas, and this seems to be a garden variety disagreement between two members of the same court (each of which then cited cases from other circuits). When this suggestion was first presented, the Committee was not sure this was a distinctive and significant problem, so it put it on the study agenda to see whether other courts saw a problem, or whether there were calls for a clarification of the rule. There had been no further indications of support for an amendment. The Lustig opinion did demonstrate a disagreement about the proper interpretation of Rule 11. But it is not the Committee's job to try to identify and resolve every disagreement among courts of appeals about exactly how a rule should be interpreted. The reporters recommended that the Committee not wade into that disagreement, and that it remove this item from its agenda.

Judge Dever opened the floor for discussion. After a brief clarification distinguishing between tabling the suggestion (which had essentially been done while it was on the study agenda) and removing it from the agenda, the Committee unanimously agreed to remove the item from the study agenda.

Professor Beale introduced the next agenda item, on page 278 of the agenda book. A practitioner named Mr. Gleason wrote suggesting an amendment to address cases where the prosecution and the defense both agreed the defendant should be found not guilty by reason of insanity. He stated that in a recent case where he represented the defendant, the government and the defense both agreed the proper outcome was a verdict of not guilty by reason of insanity. But the rules do not allow a plea of not guilty by reason of insanity.

Professor Beale explained that the Insanity Defense Reform Act of 1984 and Rule 11 together create the current landscape. The Act calls for a special verdict if the issue of insanity is properly raised by notice to the government under Rule 12.2. The Act provides that the jury shall be instructed to find—or in the event of a non-jury trial, the court shall find—the defendant guilty, not guilty, or not guilty by reason of insanity. This channels the insanity defense through a verdict in either a bench trial or jury trial, and the Act makes no provision for a plea that the government might agree to, or that the defendant has a right to enter. That raised the question how such cases are being handled now. As the reporters' memo explains, an informal practice has developed in which the parties agree to the relevant facts and they are submitted to the court for a bench trial. There's usually a stipulation of those facts. If there are expert reports from the person who's examined the defendant finding that he or she was insane at the time of the crime and the government is confident that this is correct, there is no reason to dispute it. But there is no provision for a plea that the parties agree to. So the case is submitted to the court on the stipulated facts, and the court enters the special verdict that's provided for under the Act. Professor Beale noted the Act was enacted by Congress after John Hinckley was found not guilty by reason of insanity. The Act reflected a concern about overuse of the insanity defense, and it included the narrower federal definition of insanity. So Congress was seeking to keep insanity cases on track and within some narrow limits. She noted that when the issue was raised at an earlier meeting Mr. Wroblewski told the Committee that the criminal chiefs and others had

described this workaround procedure of a bench trial on stipulated facts. It can be cumbersome; it takes a little longer than just having the parties come in and do a plea. But it is workable. At that meeting, one member commented that the bench trial on stipulated facts avoids a problem where the defendant, because of his mental state, may be unable to appreciate something like his role in the events and thus may not be able to plead knowingly. That member said they could not support a plea proceeding because of potential incapacity on the defendant's part, even though the defendant would be competent to stand trial.

The Committee decided to put the suggestion on its study agenda. The reporters confirmed the use of the procedure. We had an earlier research memo from Mr. Crenny, who tried to identify courts in which this procedure had been used. The agenda book memo, pp. 277-80, which updated Mr. Crenny's research, included lengthy footnotes citing the many courts of appeals that have acknowledged this procedure occurred in particular cases in front of them, and many cases in the district courts.

The question before the Committee was whether to remove the item from its study agenda or move ahead with a proposed amendment. Is there a significant problem that would warrant a change in the rule? Professor Beale said it was the reporters' view that the informal practice was working well enough, and that it would be prudent to remove the item from the study agenda. She said the issue was presented for discussion.

Judge Dever began with the observation that one benefit of the so-called workaround process ensures that the judge gets all those reports and is able to review them before making a decision, and the judge then has the defendant before him in court. He then opened the floor for discussion of the proposal to remove this from the study agenda.

A member agreed that no amendment was needed in light of the workaround procedure, but he had a question about the Committee's process. What happens when an item is removed from the study agenda? Does the person who suggested an amendment receive notification?

Professor Beale responded that over the years there has been an effort to respond, at least to judges who have made a proposal, and certainly to do so in the case of a judge that has been a member of the committee. She was not sure whether that was the case for all public suggestions.

Mr. Byron added that there is a tracking system on the Administrative Office website that includes all suggestions for any of the rules. The tracking system allows any member of the public to see the status of their suggestion or any other suggestion. When an item is removed from a committee's consideration, the website is updated to reflect that action. And, as Professor Beale mentioned, at the chair's discretion there is individual communication for some suggestions.

Judge Dever stated his general view that if someone took the time to write in with the proposal, we ought to let that person know once we make a decision. He also noted how much thought goes into the consideration of each proposal.

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A motion was made, seconded, and approved unanimously to remove this item from the study agenda.

Judge Dever advised the Committee that its next meeting would be on October 26, 2023. He anticipated it would be in the Midwest or the East Coast, and he said that members would be notified when the choice of location was final.

Judge Dever reminded the Committee that this was the last meeting for Judge McGiverin and Ms. Hay. He said both had made enormously helpful contributions to the Committee's work, noting also that each had to travel a substantial distance to meetings. He invited them to make parting remarks.

Judge McGiverin said he was grateful for the opportunity to serve on this Committee. He found it inspiring to see the members' strong commitment to getting it right, down to the last comma in the committee notes. It was also inspiring to see members from both the defense bar and from the DOJ (Mr. Wroblewski and others) go beyond mere advocacy to arrive at a more disinterested place to get the rules right. Judge McGiverin said each of the chairs of the Committee while he was a member—Judges Molloy, Kethledge, and Dever—had provided exemplary leadership, and he also praised the work of the reporters, saying that it anchored the Committee's work.

Ms. Hay expressed gratitude for the professionalism and collegiality she had experienced during her three years on the Committee. She said she appreciated that the Committee generally takes a conservative approach, making changes only when needed. But she commented that sometimes the rules have not really kept up with the practice and there is great variation in how courts are interpreting them. She encouraged the Committee to also continue to be creative in its responses. She cited public access to grand jury records and subpoenas under Rule 17(c) as examples where the rules are not being followed. When the rules are not followed, she suggested, it may be a disservice not to clarify or modify them. Ms. Hay stated that she really appreciated the thoughtfulness people have put into the Committee's deliberations, and she thanked Judge Dever, his predecessor Judge Kethledge, and the reporters. We could not do this work, she said, without the research and guidance that they had provided to keep us organized, educated, and on the right track. She too had found her service on the Committee inspiring.

After thanking the staff at the Administrative Office and the reporters for the work that went into the meeting preparations and announcing that lunch was available, Judge Dever adjourned the meeting and wished all participants safe travels home.

Draft

TAB 7

TAB 7A

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

JOHN D. BATES
CHAIR

H. THOMAS BYRON III
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAY S. BYBEE
APPELLATE RULES

REBECCA B. CONNELLY
BANKRUPTCY RULES

ROBIN L. ROSENBERG
CIVIL RULES

JAMES C. DEVER III
CRIMINAL RULES

PATRICK J. SCHILTZ
EVIDENCE RULES

MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Patrick J. Schiltz, Chair
Advisory Committee on Evidence Rules

RE: Report of the Advisory Committee on Evidence Rules

DATE: May 10, 2023

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met in Washington, D.C., on April 28, 2023. At the meeting the Committee discussed and gave final approval to five proposed amendments that had been published for public comment in August 2022. The Committee also tabled a proposed amendment.

The Committee made the following determinations at the meeting:

● It unanimously approved proposals to add a new Rule 107 and to amend Rules 613(b), 801(d)(2), 804(b)(3), and 1006, and recommends that the Standing Committee approve the proposed rules amendments and new rule.

● It voted to table an amendment to Rule 611 that would impose safeguards to apply if a court decides to allow jurors to propose questions to witnesses.

A full description of all these matters can be found in the draft minutes of the Committee meeting, attached to this Report. The proposed amendments (including committee notes, summary of public comment, and gap reports) can be found as attachments to this Report.

II. Action Items

A. New Rule 107, for Final Approval

At the Spring 2022 meeting, the Committee unanimously approved a proposal to add a new rule to regulate the use of illustrative aids at trial. The distinction between "demonstrative evidence" (admitted into evidence and used substantively to prove disputed issues at trial) and "illustrative aids" (not admitted into evidence but used solely to assist the trier of fact in understanding other evidence) is sometimes a difficult one to draw, and is a point of confusion in the courts. Similar confusion exists in distinguishing a summary of voluminous evidence, covered by Rule 1006, and a summary that is not evidence but rather presented to assist the trier of fact in understanding evidence. In addition, the standards for allowing the use of an illustrative aid are not made clear in the case law, in part because there is no specific rule that sets any standards.

The proposed amendment, published for public comment as a new Rule 611(d), allowed illustrative aids to be used at trial after the court balances the utility of the aid against the risk of unfair prejudice, confusion, and delay. The pitch of that balance was left open for public comment --- whether the negative factors would have to *substantially* outweigh the usefulness of the aid (the same balance as Rule 403), or whether the aid would be prohibited if the negative factors simply outweighed the usefulness of the aid.

Because illustrative aids are not evidence, adverse parties do not receive pretrial discovery of such aids. The proposal issued for public comment would have required notice to be provided, unless the court for good cause orders otherwise. This notice requirement was most controversial when applied to the use of illustrative aids on opening and closing --- leading the Committee to exclude openings and closings from the proposal as issued for public comment.

Lawyer groups (such as bar associations) and the Federal Magistrate Judges' Association submitted comments in favor of the proposed amendment. But most practicing lawyers were critical. Most of the negative public comment went to the notice requirement; the commenters argued that a notice requirement was burdensome and would lead to motion practice and less use of illustrative aids. Other comments questioned the need for the rule. Others argued (in the face of contrary case law) that the courts were having no problems in regulating illustrative aids.

In light of the public comment, as well as comments from the Standing Committee and those received at the symposium on the rule proposal in the Fall of 2022, the Committee unanimously agreed on the following changes: 1) deletion of the notice requirement; 2) extending the rule to openings and closings (reasoning that after lifting the notice requirement, there was no reason not to cover openings and closings, especially because courts already regulate illustrative aids used in openings and closings and it would be best to have all uses at trial covered by a single rule); 3) providing that illustrative aids can be used unless the negative factors *substantially* outweigh the educative value of the aid (reasoning that it would be confusing to have a different balancing test than Rule 403, especially when the line between substantive evidence and illustrative aids may sometimes be difficult to draw); 4) specifying in the text of the rule that illustrative aids are not evidence; 5) adding a subdivision providing that summaries of voluminous evidence are themselves evidence and are governed by Rule 1006; and 6) relocating the proposal to a new Rule 107 (reasoning that Article VI is about witnesses, and illustrative aids are often used outside the context of witness testimony).

Because illustrative aids are not evidence, the proposed rule provides that an aid should not be allowed into the jury room during deliberations, unless the court, for good cause, orders otherwise. The committee note specifies that if the court does allow an illustrative aid to go to the jury room, the court must upon request instruct the jury that the aid is not evidence.

Finally, to assist appellate review of illustrative aids, the rule provides that illustrative aids must be entered into the record, unless it is impracticable to do so.

The Committee strongly believes that this rule on illustrative aids will provide an important service to courts and litigants. Illustrative aids are used in almost every trial, and yet nothing in the rules specifically addresses their use. This amendment rectifies that problem.

At its Spring 2023 meeting, the Committee unanimously gave final approval to the proposed new Rule 107. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be approved by the Standing Committee.

The proposed amendment to add a new Rule 107, together with the proposed Committee Note, the gap report, and the summary of public comment, is attached to this Report.

B. Proposed Amendment to Rule 1006, for Final Approval[1]

Evidence Rule 1006 provides that a summary can be admitted as evidence if the underlying records are admissible and too voluminous to be conveniently examined in court. The courts are in dispute about a number of issues regarding admissibility of summaries of evidence under Rule 1006 --- and much of the problem is that some courts do not properly distinguish between summaries of evidence under Rule 1006 (which are themselves admitted into evidence) and summaries that are illustrative aids (which are not evidence at all). Some courts have stated that summaries admissible under Rule 1006 are "not evidence," which is incorrect. Other courts have stated that all of the underlying evidence must be admitted before the summary can be admitted; that, too, is incorrect. Still other courts state that the summary is inadmissible if any of the underlying evidence *has* been admitted; that is also wrong.

After extensive research and discussion, the Committee unanimously approved an amendment to Rule 1006 that would provide greater guidance to the courts on the admissibility and proper use of summary evidence under Rule 1006.

The proposal to amend Rule 1006 dovetails with the proposal to establish a rule on illustrative aids, discussed above. These two rules serve to distinguish a summary of voluminous evidence (which is itself evidence and governed by Rule 1006) from a summary that is designed to help the trier of fact understand admissible evidence (which summary is not itself evidence and would be governed by new Rule 107). The proposed amendment to Rule 1006 would clarify that a summary is admissible whether or not the underlying evidence has been admitted. The Committee believes that the proposed amendment will provide substantial assistance to courts and litigants in navigating this confusing area.

The rule proposal for public comment received only a few public comments, largely favorable.

At its Spring 2023 meeting, the Committee unanimously gave final approval to the proposed amendment to Rule 1006. The Committee recommends that the proposed amendment, and the accompanying Committee Note, be approved by the Standing Committee.

The proposed amendment to Rule 1006, together with the Committee Note, the gap report, and the summary of public comment, is attached to this Report.

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[1] This rule is taken out of numerical sequence because it is of a piece with the proposed amendment on illustrative aids.

C. Proposed Amendment to Rule 613(b) for Final Approval

The common law provided that before a witness could be impeached with extrinsic evidence of a prior inconsistent statement, the adverse party was required to give the witness an opportunity to explain or deny the statement. The existing Rule 613(b) rejects that "prior presentation" requirement. It provides that extrinsic evidence of the inconsistent statement is admissible so long as the witness is given an opportunity to explain or deny the statement at some point in the trial. It turns out, though, that most courts have retained the common law "prior presentation" requirement. These courts have found that a prior presentation requirement saves time, because a witness will often concede that she made the inconsistent statement, and that makes it unnecessary for anyone to introduce extrinsic evidence. The prior presentation requirement also avoids the difficulties inherent in calling a witness back to the stand to give her an opportunity at some later point to explain or deny a prior statement that has been proven through extrinsic evidence.

The Committee has unanimously determined that the better rule is to require a prior opportunity to explain or deny the statement, with the court having discretion to allow a later opportunity (for example, when the prior inconsistent statement is not discovered until after the witness testifies). The amendment will bring the rule into alignment with what appears to be the practice of most trial judges --- a practice that the Committee concluded is superior to the practice described in the current rule.

The rule published for public comment provides that extrinsic evidence of a prior inconsistent statement is not admissible until the witness is given an opportunity to explain or deny the statement. It gives the court the discretion to dispense with the requirement, in order to allow flexibility. The default rule brings the courts into uniformity and opts for the rule that provides more fairness to the witness and a more efficient result to the court. The rule received only a few public comments, largely favorable.

At the Spring 2023 meeting, the Committee unanimously gave final approval to the proposed amendment to Rule 613(b). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be approved by the Standing Committee.

The proposed amendment to Rule 613(b), together with the proposed Committee Note, gap report, summary of public comment, is attached to this Report.

D. Proposed Amendment to Rule 801(d)(2) Governing Successors-in-Interest, for Final Approval

Rule 801(d)(2) provides a hearsay exemption for statements of a party opponent. Courts are split about the applicability of this exemption in the following situation: a declarant makes a statement that would have been admissible against him as a party-opponent, but he is not the party-opponent because his claim or defense has been transferred to another (either by agreement or by operation of law), and it is the transferee that is the party-opponent. Some circuits would permit the statements made by the declarant to be offered against the successor as a party-opponent statement under Rule 801(d)(2), while others would foreclose admissibility because the statement was made by one who is technically not the party-opponent in the case.

The Committee has determined that the dispute in the courts about the admissibility of party-opponent statements against successors should be resolved by a rule amendment, because the problem arises with some frequency in a variety of predecessor/successor situations (most commonly, decedent and estate in a claim brought for damages under 42 U.S.C. § 1983). The Committee unanimously determined that the appropriate result should be that a hearsay statement would be admissible against the successor-in-interest. The Committee reasoned that admissibility was fair when the successor-in-interest is standing in the shoes of the declarant --- because the declarant is in substance the party-opponent. Moreover, a contrary rule results in random application of Rule 801(d)(2), and possible strategic action, such as assigning a claim in order to avoid admissibility of a statement. The Committee approved the following addition to Rule 801(d)(2):

> If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

The proposed committee note emphasizes that to be admissible against the successor, the declarant must have made the statement before the transfer of the claim or defense. It also specifies that if a statement made by an agent is not admissible against a principal, then it is not admissible against any successor to the principal.

The rule as published for public comment received only a few comments, largely favorable.

At its Spring 2023 meeting, the Committee unanimously gave final approval to the proposed amendment to Rule 801(d)(2). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be approved by the Standing Committee.

The proposed amendment to Rule 801(d)(2), together with the Committee Note, the gap report, and the summary of public comment, is attached to this Report.

E. Proposed Amendment to the Rule 804(b)(3) Corroborating Circumstances Requirement, for Final Approval

Rule 804(b)(3) provides a hearsay exception for declarations against interest. In a criminal case in which a declaration against penal interest is offered, the rule requires that the proponent provide "corroborating circumstances that clearly indicate the trustworthiness" of the statement. There is a dispute in the courts about the meaning of the "corroborating circumstances" requirement. Most federal courts consider both the inherent guarantees of trustworthiness underlying a particular declaration against interest as well as independent evidence corroborating (or refuting) the accuracy of the statement. But some courts do not permit inquiry into independent evidence --- limiting judges to consideration of the inherent guarantees of trustworthiness surrounding the statement. This latter view --- denying consideration of independent corroborative evidence --- is inconsistent with the 2019 amendment to Rule 807 (the residual exception), which requires courts to look at corroborative evidence, if any, in determining whether a hearsay statement is sufficiently trustworthy under that exception. The rationale is that corroborative evidence can shore up concerns about the potential unreliability of a statement --- a rationale that is applied in many other contexts, such as admissibility of co-conspirator hearsay, and tips from informants in determining probable cause.

The Committee believes that it is important to rectify the dispute among the circuits about the meaning of "corroborating circumstances" and that requiring consideration of corroborating evidence not only avoids inconsistency with the residual exception, but is also supported by logic and by the legislative history of Rule 804(b)(3).

The proposal published for public comment provided as follows:

Rule 804(b)(3) Statement Against Interest.

A statement that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, the court finds it ~~is~~ supported by corroborating circumstances that clearly indicate trustworthiness --- after considering the totality of circumstances under which it was made and evidence, if any, corroborating it. ~~if it is offered in a criminal case as one that tends to expose the declarant to criminal liability~~.

There were only a few public comments to the rule, and all were favorable about requiring consideration of corroborating evidence. But there was some confusion about the two different uses of the word "corroborating" in the rule. What is the difference between "corroborating circumstances" and "corroborating evidence"? The answer is that "corroborating circumstances" is a term of art --- an undeniably confusing one, because it combines the notion of corroborating evidence and circumstantial guarantees of trustworthiness. In contrast, "corroborating evidence" refers to independent evidence that supports the declarant's account --- under the proposal, that kind of information must be considered in assessing whether "corroborating circumstances" are found.

In using the term "corroborating evidence" the Committee was intending to use the exact language that was adopted in the residual exception, Rule 807, in 2019. But after considerable discussion at the Spring 2023 meeting, the Committee concluded that the better result would be to use a different word than "corroborating"; the deviation from the Rule 807 language is justified by the fact that Rule 807 refers to "trustworthiness" --- not "corroborating circumstances" --- so use of "corroborating" in that rule is not confusing. The Committee determined that it could reach the same result with different terminology.

The proposal unanimously approved by the Committee, for which it seeks final approval, reads as follows:

Rule 804(b)(3) Statement Against Interest.

A statement that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, the court finds it ~~is~~ supported by corroborating circumstances that clearly indicate trustworthiness --- after considering the totality of circumstances under which it was made and any evidence that *supports or contradicts* it. ~~if it is offered in a criminal case as one that tends to expose the declarant to criminal liability~~.

A major advantage of this revision is that (freed from uniformity with Rule 807) it can specifically require the court to consider both evidence supporting the statement and evidence that contradicts it.

At its Spring 2023 meeting, the Committee unanimously gave final approval to the proposed amendment to Rule 804(b)(3). The Committee recommends that the proposed amendment, and the accompanying Committee Note, be approved by the Standing Committee.

The proposed amendment to Rule 804(b)(3), together with the Committee Note, the gap report, and the summary of public comment, is attached to this Report

III. Information Item

Tabling the Proposed Amendment Setting Forth Safeguards When the Court Allows Jurors to Submit Questions for Witnesses

There is controversy in the courts over whether jurors should be allowed to question witnesses at trial. The Committee was never seeking to resolve that controversy in a rule amendment. But the Committee did develop a proposed amendment that would set forth the minimum safeguards that should be applied if the trial court does decide to allow jurors to question witnesses. Standards regulating the practice can be found in some court of appeals cases, but the Committee determined that it would be useful to set forth a single set of safeguards in an Evidence Rule. The proposal would have required the court to instruct jurors, among other things, that they must submit questions in writing; that they are not to draw negative inferences if their question is rephrased or does not get asked; and that they must maintain their neutrality. The proposal also provided that the court must consult with counsel when jurors submit questions, and that counsel must be allowed to object to such questions outside the jury's hearing. The Committee held a symposium on the rule proposal, and on juror questions of witnesses more generally, at its Fall 2022 meeting.

While the proposal sought only to impose safeguards and avoided weighing in on the practice itself, members of the Standing Committee and the Advisory Committee expressed concern that if the proposal were adopted, more courts would be likely to allow the practice; and these members were opposed to the practice. The most voiced objections were: 1) that allowing jurors to ask questions of witnesses would shift control of the litigation from the parties and counsel to jurors; 2) that jurors were likely to become advocates as opposed to factfinders; and 3) that a juror question might alert the prosecutor or plaintiff of the need to introduce evidence on an element of the crime or claim --- evidence that they might otherwise not have introduced.

At its Spring meeting, these doubts about the practice of allowing jurors to question witnesses led the Committee to table the proposal. The Committee did suggest that the proposed safeguards might be usefully placed in the Benchbook for U.S. District Court Judges. After the meeting, the Reporter referred the proposed safeguards, as well as the research done by the Committee, to the Benchbook Committee. The Chair of that Committee, Judge Julie Robinson,

indicated that the Benchbook Committee has recently been reconstituted and would consider the proposed safeguards.

III. Minutes of the Spring 2023 Meeting

The draft of the minutes of the Committee's Spring 2023 meeting is attached to this report. These minutes have not yet been approved by the Committee.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE[1]

1 **Rule 107. Illustrative Aids**

2 **(a)** ***Permitted Uses.*** The court may allow a party to
3 present an illustrative aid to help the trier of fact
4 understand evidence or argument if the aid's utility
5 in assisting comprehension is not substantially
6 outweighed by the danger of unfair prejudice,
7 confusing the issues, misleading the jury, undue
8 delay, or wasting time.

9 **(b)** ***Use in Jury Deliberations.*** An illustrative aid is not
10 evidence and must not be provided to the jury during
11 deliberations unless:

12 **(1)** all parties consent; or

13 **(2)** the court, for good cause, orders otherwise.

14 **(c)** ***Record.*** When practicable, an illustrative aid used at
15 trial must be entered into the record.

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

16 **(d)** ***Summaries of Voluminous Materials Admitted as***
17 ***Evidence.*** A summary, chart, or calculation admitted
18 as evidence to prove the content of voluminous
19 admissible evidence is governed by Rule 1006**.**

Committee Note

The amendment establishes a new Rule 107 to provide standards for the use of illustrative aids. The new rule is derived from Maine Rule of Evidence 616. The term “illustrative aid” is used instead of the term “demonstrative evidence,” as that latter term is vague and has been subject to differing interpretation in the courts. An illustrative aid is any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument. “Demonstrative evidence” is a term better applied to substantive evidence offered to prove, by demonstration, a disputed fact.

Writings, objects, charts, or other presentations that are used during the trial to provide information to the factfinder thus fall into two categories. The first category is evidence that is offered to prove a disputed fact; admissibility of such evidence is dependent upon satisfying the strictures of Rule 403, the hearsay rule, and other evidentiary screens. Usually the jury is permitted to take this substantive evidence to the jury room during deliberations, to study it, and to use it to help determine the disputed facts.

The second category—the category covered by this rule—is information offered for the narrow purpose of helping the factfinder to understand what is being communicated to them by the witness or party presenting

evidence or argument. Examples may include drawings, photos, diagrams, video depictions, charts, graphs, and computer simulations. These kinds of presentations, referred to in this rule as "illustrative aids," have also been described as "pedagogical devices" and sometimes (and less helpfully) "demonstrative presentations"—that latter term being unhelpful because the purpose for presenting the information is not to "demonstrate" how an event occurred but rather to help the finder of fact understand evidence that is being or has been presented.

A similar distinction must be drawn between a summary of voluminous admissible information offered to prove a fact, and a summary of evidence that is offered solely to assist the trier of fact in understanding the evidence. The former is subject to the strictures of Rule 1006. The latter is an illustrative aid, which the courts have previously regulated pursuant to the broad standards of Rule 611(a), and which is now to be regulated by the more particularized requirements of this Rule 107.

While an illustrative aid is by definition not offered to prove a fact in dispute, this does not mean that it is free from regulation by the court. It is possible that the illustrative aid may be prepared to distort or oversimplify the evidence presented, or stoke unfair prejudice. This rule requires the court to assess the value of the illustrative aid in assisting the trier of fact to understand the evidence or argument. Cf. Fed.R.Evid. 703; *see* Adv. Comm. Note to the 2000 amendment to Rule 703. Against that beneficial effect, the court must weigh most of the dangers that courts take into account in balancing evidence offered to prove a fact under Rule 403—one particular problem being that the illustrative aid might appear to be substantive evidence of a disputed event. If those dangers substantially outweigh the value of the aid in assisting the trier of fact, the trial court should

prohibit the use of—or order the modification of—the illustrative aid. And if the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used. Cf. Rule 105.

The intent of the rule is to clarify the distinction between substantive evidence and illustrative aids, and to provide the court with a balancing test specifically directed toward the use of illustrative aids. Illustrative aids can be critically important in helping the trier of fact understand the evidence or argument.

Many courts require advance disclosure of illustrative aids, as a means of safeguarding and regulating their use. Ordinary discovery procedures concentrate on the evidence that will be presented at trial, so illustrative aids are not usually subject to discovery. Their sudden appearance may not give sufficient opportunity for analysis by other parties, particularly if they are complex. That said, there is an infinite variety of illustrative aids, and an infinite variety of circumstances under which they might be used. Ample advance notice might be possible for a computer simulation of the accident giving rise to the lawsuit, but advance notice may not be possible for a handwritten chart prepared by an attorney as a witness responds to the attorney's questions on cross-examination. The amendment therefore leaves it to trial judges to decide whether, when, and how to require advance notice of an illustrative aid.

Because an illustrative aid is not offered to prove a fact in dispute and is used only in accompaniment with presentation of evidence or argument, the amendment provides that illustrative aids are not to go to the jury room unless all parties consent or the court, for good cause, orders otherwise. The Committee determined that allowing the jury

to use the aid in deliberations, free of the constraint of accompaniment with witness testimony or party presentation, runs the risk that the jury may unduly emphasize the testimony of a witness with whom it was used, or otherwise misinterpret the import, usefulness, and purpose of the illustrative aid. But the Committee concluded that trial courts should have some discretion to allow the jury to consider an illustrative aid during deliberations. If the court does allow the jury to review the illustrative aid during deliberations, the court must upon request instruct the jury that the illustrative aid is not evidence and cannot be considered as proof of any fact.

This rule is intended to govern the use of an illustrative aid at any point in the trial, including in opening statement and closing argument.

While an illustrative aid is not evidence, if it is used at trial it must be marked as an exhibit and made part of the record, unless that is impracticable under the circumstances.

Changes Made After Publication and Comment

The notice requirement was deleted. The rule was extended to cover the use of illustrative aids during opening statements and closing arguments. The text of the rule was amended to emphasize that illustrative aids are not evidence. And a separate subdivision was added to state that summaries of voluminous admissible evidence are covered under Rule 1006. Finally, the rule was moved from a proposed addition to Rule 611 to a new Rule 107.

The committee note was amended to respond to the changes in the text.

Summary of Public Comment

Jacob Hayward, Esq., (2022-EV-0004-0003) supports the proposed amendment because it will "meaningfully contribute to and clarify federal evidence law."

Richard Cook, Esq., (2022-EV-0004-0005) contends that the proposed amendment is unnecessary because "Rules 403 and 611 already empower a trial judge in his discretion to admit or exclude such evidence and decide whether the evidence should go back to the jury room."

Anonymous, (2022-EV-0004-0006) opposes the amendment, arguing that it "would severely limit the ability of trial lawyers to present their evidence to a jury." He concludes that lawyers "have been using visual aids in courtrooms forever and it seems unnecessary to put parameters on the use of visual aids now."

Andrew Delaney, Esq., (2022-EV-0004-0007) opposes the proposed amendment as an effort to "restrict or sanitize" illustrative aids.

Graham Esdale, Esq., (2022-EV-0004-0008) recommends that the notice requirement of the proposed amendment be deleted. He states that the notice requirement "severely limits an attorneys ability to make on the fly changes in the mode and order of presenting evidence."

Robert Collins, Esq., (2022-EV-0004-0009) opposes the proposed amendment on the ground that "[l]imiting information that any party submits to show their position impugns the 7th Amendment right to a fair and impartial jury trial."

Robert Fleury, Esq., (2022-EV-0004-0010) opposes the proposed amendment, on the grounder that "[d]epriving the jury of illustrative aids that help them deliberate is unconscionable."

Ryan Babcock, Esq., (2022-EV-0004-0011) opposes the amendment because he disapproves of trial court exercise of discretion over illustrative aids.

Henry Fincher, Esq., (2022-EV-0004-0012) asserts that: "For at least 50+ years federal courts have dealt with demonstrative evidence and have applied the same standards for admission. There's no need to add additional hurdles that prevent juries from using tools to help them understand the situation."

James Lampkin, Esq., (2022-EV-0004-0013) opposes the proposed amendment because it is "duplicative" of Rule 611(a) but also because it is "unduly restrictive on a lawyer's ability to present evidence during the trial of a case."

Warner Hornsby, Esq., (2022-EV-0004-0014) states that the proposed amendment "unnecessarily and dangerously forces lawyers to provide mental impressions, strategies, and other usually protected thoughts to the other side."

The Federal Magistrate Judges Association (2022-EV-0004-0015) "applauds the effort to clarify the distinction between evidence introduced in summary form and illustrative aids offered to assist the trier of fact in understanding the evidence." The Association states that "the addition of Rule 611(d) imposing disclosure requirements for illustrative aids and guidance regarding their use is an improvement which will help clarify a

sometimes contentious topic." The Association suggests "greater clarity regarding application of Rule 611(d) to Power Point presentations or other visual aids used by attorneys in opening statements or closing arguments."

Jason Roth, Esq., (2022-EV-0004-0016) opposes the amendment on the ground that it "would be detrimental to all real trial, lawyers, and negatively impact the presentation of evidence."

Frederick Hall, Esq., (2022-EV-0004-0017) argues that the proposed amendment "is unnecessary and adds another layer of complexity to already well understood requirements to lay a foundation for the use of demonstrative exhibits."

Troy Chandler, Esq., (2022-EV-0004-0018) submitted an opposing comment identical to many others, such as Charles Herd, 2022-EV-0004-0028**:**

> The proposed changes to Rule 611 regarding demonstrative aids will increase expense of litigation and cause unnecessary delays. Put two lawyers in a room and they can argue about anything. The proposed change encourages frivolous objections over what is " . . .the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time;" This language already exists in Rule 403 of the FRE and all state court equivalents. It leaves the discretion in the capable hands of the judge and should not be changed in a way that benefits the billable time sheets of hourly lawyers.

Andrew Seerden, Esq., (2022-EV-0004-0019) submitted an opposing comment identical to many others, such as Troy Chandler, 0018, and Charles Herd, 0028.

John Munoz, Esq., (2022-EV-0004-0020) opposes the amendment as a hindrance on the presentation of evidence" and states that "[m]ost trial judges can handle the issues as they arise without the necessity of additional regulations."

Anonymous, (2022-EV-0004-0021) opposes the amendment, concluding that it would "drastically limit the effectiveness and use of illustrative aids/exhibits in Federal Court" because there would be motion practice "over each demonstrative aid either party intends to use."

Christy Crowe Childers, Esq., (2022-EV-0004-0022) opposes the proposed amendment, contending that it would impose restrictions on illustrative aids that do not already exist.

Sherry Chandler, Esq., (2022-EV-0004-0023) states that the proposed amendment to Rule 611 is "are unnecessary and will add further time, expense, and judicial involvement in a smooth trial." She declares that "[i]f the court believes a certain type of evidence is improper or unhelpful, the court can rule on an objection if raised."

Amar Raval, Esq., (2022-EV-0004-0024) argues that adding a "new requirement" will lead to more arguments between counsel.

Attorney 911 (2022-EV-0004-0025) opposes the amendment by submitting the same comment as Andrew Seerden, (0019)).

Alyssa Wood, Esq., (2022-EV-0004-0026) opposes the proposed amendment, arguing that it "would make it drastically more difficult to bring in demonstratives that trial attorneys often rely on to teach their case to jurors." She is concerned that the notice requirement will raise questions such as "if attorneys have to turn over the entirety of their powerpoint presentation in advance of trial (and how far in advance), and if they intend to write something on the blackboard, does this have to be turned over in advance."

Morgan Adams, Esq., (2022-EV-0004-0026) opposes the amendment, arguing that it is "duplicative of Rule 403"; that the notice requirement cannot apply to evidence "created on the fly"; and that the notice requirement will result in unnecessary motion practice and delay of the trial.

Charles Herd, Esq., (2022-EV-0004-0028) opposes the amendment by submitting the same comment as Andrew Seerden, (0019), and Attorney 911, (0025)).

Scott Brazil, Esq., (2022-EV-0004-0029) opposes the amendment, in a comment identical to that of Andrew Seerden (0019) and Charles Herd (0028).

Tim Riley, Esq., (2022-EV-0004-0030) opposes the amendment because it sets forth "a new framework by which practitioners will be precluded from using such demonstrative aids due to lack of prior notice to opposing counsel." He asserts that an amendment is unnecessary because "the law is well-established that the trial court must weigh the utility of the aid in assisting the jury in determining a disputed issue of fact, including an analysis as to whether the demonstrative aid is misleading because it is insufficiently similar to the issue or product at hand."

Daniel Horowitz, Esq., (2022-EV-0004-0031) objects to the notice requirement of the proposed amendment, arguing that he should not have to give notice and get permission to use a flip chart.

Darryl Nabors, Esq., (2022-EV-0004-0032) opposes the amendment on the ground that it would it would "drastically limit the effectiveness of illustrative aids and exhibits in Federal Court."

Alexander Melin, Esq., (2022-EV-0004-0033) contends that the proposed amendment "will create unnecessary motion practice, substantially increase the expense and burden of litigation, and basically make it unfeasible to use illustrative exhibits that are in all actuality noncontroversial and that have been used for years."

Anonymous, (2022-EV-0004-0034) opposes the amendment, in a comment identical to that of Charles Herd, (2022-EV-0004-0028).

Matthew Millea, Esq., (2022-EV-0004-0035) states that the presentation of illustrative aids has "never been a problem" and that the notice requirement of the proposed amendment "is vague, and is not consistent with how trials are usually conducted."

Anonymous (2022-EV-0004-0036) states that **"**the proposed changes to Rule 611 regarding demonstrative aids will increase expense of litigation and cause unnecessary delays."

Anonymous (2022-EV-0004-0037) concludes that the proposed amendment "will unnecessarily complicate trials" and that the trial judge "can resolve objections to any illustrative aid that arises."

Kevin Liles, Esq., (2022-EV-0004-0038) opposes the proposed amendment, submitting a comment identical to others including Troy Chandler, 0018, and Charles Herd, 0028.

Matthew Menter, Esq., (2022-EV-0004-0039) argues that "Rule 403 already allows courts the discretion to admit or exclude prejudicial or misleading evidence" and that "[c]hanging Rule 611 would invite and encourage frivolous objections and arguments by giving attorneys have a new standard to test."

Michael Crow, Esq., (2022-EV-0004-0040) opposes the proposed amendment because "lawyers have been using illustrative aids forever to assist jurors. there are sufficient rules for Judges to use their discretion in allowing or disallowing aids."

Ryan Skiver, Esq., (2022-EV-0004-0041) opposes the amendment on the ground that it "adds another layer of complexity for no reason, and will increase the time and expense associated with trials." He argues that illustrative aids "are already addressed in Rule 403." And he states that often "demonstrative evidence is created on the fly, with a witness on the stand, and can't be 'scheduled.'"

Shelton Williams, Esq., (2022-EV-0004-0042) opposes the amendment on the ground that it would make illustrative aids less likely to be used.

Thomas Ryan, Esq., (2022-EV-0004-0044) opposes the amendment, arguing that the notice requirements would allow one lawyer to improperly obtain the work product of another lawyer.

Charles Kettlewell, Esq., (2022-EV-0004-0045) opposes the amendment on the ground that it "would drastically limit the effectiveness and use of illustrative aids/exhibits in Federal Court."

Curtis Fifner, Esq., (2022-EV-0004-0046) contends that the proposed amendment would "deprive the jury of useful demonstrative aids that help them better understand the evidence and issues."

Dennis Lansdowne, Esq., (2022-EV-0004-0047) states: "The notion that in examining a witness, particularly on cross, counsel could not draw on a blackboard (or easel or overhead) without first providing it to opposing counsel is not only contrary to 200 years of practice in this country, it will deny the jurors needed explanation and stimulation."

Anonymous (2022-EV-0004-0048) opposes the amendment, stating: "There is no reason why mechanisms should be added to make it more difficult to aid a jury's understanding of complicated subjects."

Anonymous (2022-EV-0004-0049) opposes the amendment, out of a concern that the notice requirement will result in "gotcha" practice.

William Hommel, Esq. (2022-EV-0004-0050) states: "Most good trial lawyers will deal with demonstratives in their motion *in limine*. We don't need a rule to prop up lawyers that don't know how to try cases."

Anthony Gallucci, Esq., (2022-EV-0004-0051) objects to the amendment, asserting that "[a]dvanced disclosure is not always possible as many such demonstratives are made during trial as the case progresses" and that the notice requirement "would unfairly tip off

opposing counsel on the contents of the presenter's opening statement, witness examination, and/or closing argument."

Robert Rutter, Esq. (2022-EV-0004-0052) opposes the amendment, arguing that "[t]rials are dynamic and illustrative aids are often developed at the last minute."

Zoe Littlepage, Esq., (2022-EV-0004-0053) opposes the amendment, claiming that it "aims to take trials back to the dark ages instead of forward to the realities of the 21st century." She asserts that the amendment "creates the impression that visual aids are discouraged and their value needs to be overtly proven, an outcome that would be opposite to what we all know is effective at trial."

John Meara, Esq., (2022-EV-0004-0054) argues that the proposed amendment would "make the use of demonstratives more difficult at trial." He opposes the notice requirement is specific, claiming that it is "unrealistic for counsel to prepare all demonstrative aids in advance."

Elizabeth Faiella, Esq., (2022-EV-0004-0055) opposes the amendment on the ground that it "would limit the ability of attorneys to use demonstrative exhibits during trial."

Rainey Booth, Esq., (2022-EV-0004-0056) states that "[a]n amendment that seeks to limit or dissuade the use of visuals, in any way, is harmful and regressive."

Margaret Simonian, Esq., (2022-EV-0004-0057) opposes the amendment, arguing that under the proposal a party "could argue a medical expert cannot draw a picture for the jury unless the expert draws it for the court and opposing counsel first, and then after that disruption continue the objection because the drawn

arteries are significant to a disputed fact, and/or because the drawing is not accurate because it isn't exact."

Matt Leckman, Esq. (2022-EV-0004-0058) argues that "the inevitable outgrowth of this rule will be to restrict, not expand, the use of visual aids at trial." He specifically opposes the notice requirement, claiming that it **"**is directly at odds with the generally held truth that your opponent shouldn't be permitted to see your cross-examination playbook before you conduct it."

William Bailey, Esq., (2022-EV-0004-0059) opposes the amendment, arguing that it "shows an ill-advised hostility toward the use of visuals in trials at a time when the entire world is going in the other direction, using images as teaching and learning tools."

Thomas Wickwire, Esq., (2022-EV-0004-0060) opposes the amendment, arguing that it would prohibit the use of illustrative aids that are prepared shortly before trial.

Kyle Wright, Esq., (2022-EV-0004-0061) states: "The notion that in examining a witness, particularly on cross, counsel could not draw on a blackboard (or easel or overhead) without first providing it to opposing counsel is not only contrary to 200 years of practice in this country."

Mark Lanier, Esq., (2022-EV-0004-0062) argues that advance notice requirement will negatively affect cross-examination and will result in unnecessary motion practice and slow down trials.

William Cummings, Esq., (2022-EV-0004-0063) argues that the notice requirement improperly intrudes upon the lawyer's thought process, and opposes the rule more generally, asserting that "[v]isual presentation of evidence and illustrative aids should be encouraged, not discouraged."

Parker Lipman LLP, (2022-EV-0004-0064) opposes the proposed amendment, arguing that illustrative aids can be regulated under Rule 403 and that "[t]he advance notice requirement will give opposing counsel a preview of arguments or witness' examinations and thus interfere with counsel's strategy and work product and a trial's truth-seeking mission." The firm also states that any balancing test in the rule should use the word "substantially" to align with Rule 403. Otherwise, "it will be confusing to have two different, yet substantially similar, standards—proposed Rule 611(d)'s merely outweighed standard and Rule 403's substantially-outweighed standard."

Frank Gallucci, Esq., (2022-EV-0004-0065) opposes the notice requirement as unworkable and will work to erode the ability of trial lawyers to try cases "in a manner that best educates the trier of fact."

Jessica Ibert, Esq., (2022-EV-0004-0066) opposes the amendment, contending that it will result in "increased litigation expenses if parties are forced to create illustrative aids (that may or may not be used) well in advance of trial to meet the notice requirement in the proposed amendment."

Raeann Warner, Esq., (2022-EV-0004-0067) is concerned that "the rule as written is overbroad and may lead to less effective cross-examinations due to the requirement for 'notice.' When a witness is testifying at trial, an opposing lawyer may wish to use some type of illustrative aid – such as notes or a graph on a whiteboard – to help more effectively communicate with the witness and/or jury. It would be impossible to provide notice of that the opposing lawyer before the witness actually testified."

Timothy Bailey, Esq., (2022-EV-0004-0068) argues that the notice requirement of the rule is particularly

unfair to plaintiffs, because illustrative aids "are strategic decisions about the manner in which we will present our case" and plaintiffs "would be forced weeks before the trial to tell the opposing party exactly how we were planning to present our case, including the order and flow of our evidence and what we view as critical evidence in that presentation."

Jackson Pahlke, Esq., (2022-EV-0004-0069) contends that the notice requirement would lead to motion practice and "likely result in attorneys forgoing many useful and well thought out illustrations and instead having witnesses or experts just freehand draw on the spot which will be less effective in aiding the jurors in making their determination."

Robert Kleinpeter, Esq., (2022-EV-0004-0070) opposes the amendment, contending that the notice requirement is "impractical" and that the amendment would result in less use of illustrative aids.

Tyler Atkins, Esq., (2022-EV-0004-0071) opposes the amendment, arguing it "would restrict all litigants' freedom to present their case at trial by creating unnecessary hurdles to present evidence at trial" because "advance notice of illustrative aids far is simply not always possible."

James Tawney, Esq., (2022-EV-0004-0072) argues that under the amendment, attorney "could not write questions down or answers spontaneously at trial to help communicate, nor could we use unanticipated charts and diagrams due to the violation of the notice provision."

Michael Cruise, Esq., (2022-EV-0004-0073) agrees with the amendment's provisions that illustrative aids be made part of the record, and that because they are not

evidence, they should ordinarily not go to the jury for deliberations. He disagrees with the notice requirement, arguing that it would be "impracticable" because "[d]emonstrative aids are normally prepared very close to the start of a trial by plaintiffs and defendants alike" and "requiring early notice will make litigation even more expensive for the parties than it already would be." He argues further that "parties often only realize the utility of an illustrative aid very close to trial, or even after the trial has begun" and "to restrict them with arbitrary notice requirements or other needless burdens risks causing real harm to the truth-finding process."

Frederick B. Goldsmith, Esq., (2022-EV-0004-0074) is utterly opposed to the notice requirements of the proposed amendment.

John Choi, Esq., (2022-EV-0004-0075) approves the parts of the rule that prohibit illustrative aids from going to the jury, and that require the aid to be preserved for the record. He is opposed to the notice requirement, stating that "[d]emonstrative aids are routinely prepared close to the start of a trial by plaintiffs and defendants alike. Illustrative aids can be expensive, and requiring early notice will make litigation even more expensive than it already is. Another reason is parties often realize the utility of an illustrative aid on the eve of trial, or after the trial has started. To restrict them with notice requirements or other procedures that create obstacles to the truth-finding process."

Alan Singer, Esq., (2022-EV-0004-0076) argues that the amendment "will create new burden, cause confusion, and adds a new barrier to persons seeking justice."

Caitlyn Bridges, Esq., (2022-EV-0004-0077) declares: "The disclosure requirement contains the implication that any plan to underline a sentence or circle a portion of a map becomes the subject of disclosure. Attorneys, of course, often don't ever even plan an instance where they might decide to emphasize something in a document or draw something on a screen to aid a jury's understanding. The rule could lead to contentious (and unnecessary) arguments about what constitutes an illustrative aid and whether one attorney's decision to highlight a portion of a statement should have been disclosed."

Comment 2022-EV-0004-0078 was withdrawn.

Frank Verderame, Esq., (2022-EV-0004-0079) states: "If this committee believes in the right to a jury trial, the committee should leave some room for the application of common sense by the judge and the jury."

Bryan Edwards, Esq., (2022-EV-0004-0080) submitted a comment that is identical to many others, including Troy Chandler, Esq., (2022-EV-0004-0018).

Paul Levin, Esq., (2022-EV-0004-0081) states that the wording of the amendment should guarantee a permissive use of illustrative aids.

Jeffrey Jones, Esq., (2022-EV-0004-0082) opposes the notice requirement as creating problems for contemporaneous preparation of illustrative aids.

Don Huynh, Esq., (2022-EV-0004-0083) states that "[t]he jury should be permitted to view illustrative aids during deliberations, and if there are any objections made by either party regarding the admissibility of an illustrative aid, the aid should be part of the record so that any related

evidentiary objections are more clearly evident and preserved on appeal."

The American College of Trial Lawyers (2022-EV-0004-0084) states that the bracketed "substantially" in the Rule 611(d) balancing test should be made part of the rule. Without that addition, the rule would require the utility of the aid to be merely outweighed, rather than substantially-outweighed, by its danger of unfair prejudice. That change would be "unwise" because "Rule 403's substantially outweighed standard has worked well for decades, and this change will create uncertainty and require further legal developments." The College also argues that the notice requirement is "unworkable" because "(a) it will encourage objections and slow down trials, interfere with effective crossexamination and the presentation of evidence, and discourage the use of illustrative aids, (b) is not feasible for spontaneously created illustrative aids, and (c) is unnecessary when a party is given a reasonable opportunity to object."

Leah S. Snyder, Esq. (2022-EV-0004-0085) objects to the notice requirement in the proposed amendment. She states that it "would eliminate the use of any drawings, sketches, graphs, drawings of experts, drawings of witnesses, use of a whiteboard, use of a pencil, pen, or highlighter during trial."

Christopher Seufert, Esq. (2022-EV-0004-0086) opines that it is difficult in some cases to determine what is an illustrative aid and what is not.

Michael Slack, Esq. (2022-EV-0004-0087) is opposed to the notice requirement, and also states that "it is important for the rule to presume that illustrative aids are usable at trial, while still allowing the court to prohibit or

limit their use as necessary to avoid unfair prejudice, surprise, confusion, or wasting time.

Kevin Hannon, Esq., (2022-EV-0004-0088) is in favor of the notice requirement, but is opposed to the provision allowing the court for good cause to submit an illustrative aid to the jury. He states that if a party objects the illustrative aid "must not go to the jury or it becomes an adversarial tool."

The American Association for Justice (AAJ) (2022-EV-0004-0089) opposes the notice requirement; suggests that the text of the rule provide a definition of an illustrative aid; and suggests that the Committee adopt Maine Rule 616 rather than the proposed amendment. AAJ also suggests that a cross-reference to Rule 1006 should be added to the rule.

Samuel Cannon, Esq. (2022-EV-0004-0090) states that "[t]he goal of clarifying the rules regarding illustrative aids is admirable and is certainly an area where the rules currently provide little guidance." He opposes the proposed amendment, however, because of the notice requirement, and because it is unclear whether it applies to aids used during opening and closing arguments.

The Committee to Support Antitrust Laws (2022-0004-0091) complains that the proposed amendment does not provide a specific definition of illustrative aids. It also recommends that the notice requirement be deleted, and that the rule set forth a presumption of permissibility of illustrative aids.

Anonymous (2022-EV-0004-0092) states that "Judges are well-equipped to exclude unnecessary illustrative evidence without the addition of 611(d)."

Macgyver Newton, Esq., (2022-EV-0004-0093) states as follows: "I approve of the addition of FRE 611(d). The use of illustrative aids at trial is and has long been a useful, nearly indispensable tool to aid with jury comprehension of complicated evidence. Rules dealing with their use have been hodge-podge and varied based on the court. The current system also has the disadvantage of being unpredictable. Adding this rule helps regulate in a standardized way something that has been unregulated or unevenly regulated for decades. Illustrative aids can sometimes have a greater impact on a juror than admitted evidence itself; it is a welcome advancement in the FRE that handles their use in a consistent way."

Seth Cardeli, Esq. (2022-EV-0004-0094) complains that "a blanket rule that makes no differentiation to the type of illustrative aid could have the effect of requiring 'notice and a reasonable opportunity to object' to an illustrative aid that is drawn on a pad of paper during a cross examination." He recommends that the regulation of illustrative aids should be left to the individual practices of trial judges.

Christopher Johnson, Esq. (2022-EV-0004-0095) states that the "advance disclosure requirement is unnecessary and almost impossible to comply with without severely hampering a lawyer from being presenting information in the most effective way." He agrees with the requirement that illustrative aids be preserved for the record. "This is a commonsense practice that will assist appellate courts understand the nuances of a trial as well providing helpful context. Moreover, since the jury viewed such materials during trial, it only makes sense that there should be some record made of those materials, even if not evidence."

Paul Byrd, Esq. (2022-EV-0004-0096) opposes the notice requirement, arguing that "[i]t is not fair to the client to handcuff their lawyer to only the arguments and visual aids that the lawyer might with the benefit of 20/20 hindsight could or should have thought of weeks before the trial started."

Jonathan Halperin, Esq. (2022-EV-0004-0097) supports the amendment, concluding that "a formal rule governing the use of illustrative aids is long overdue." He suggests, however, that additional examples be provided to show the distinction between demonstrative evidence and illustrative aids. And he suggests that the enforcement of the notice requirement be conditioned on a finding of prejudice.

Seth Carroll, Esq. (2022-EV-0004-0098) opposes the notice requirement, concluding that it would likely limit flexibility, "and could arguably restrict the use of necessary illustrative evidence developed during the course of trial."

The Federal Courts Committee of the New York City Bar Association (2022-EV-0004-0099) states that the amendment "provides valuable clarification as to when a summary may be used to prove a fact that could otherwise be adduced only through laborious examination of voluminous evidence and when an illustration, although not itself evidence, may be used to help the trier of fact understand admitted evidence." The Committee, however, opposes the provision allowing the court to permit the jury to have access to illustrative aids during deliberation, upon a showing of good cause. The Committee states that if an illustrative aid is in the jury room, "it will be difficult for the jury to distinguish illustrative aids from summaries, and there is a risk that any attorney advocacy that they contain would be considered by the jury outside the context of the opposing advocacy."

The National Association of Criminal Defense Lawyers (NACDL) (2022-EV-0004-0100) "strongly supports the proposal to add a new paragraph (d) to Rule 611 for the purpose of distinguishing between 'demonstrative evidence' and 'illustrative aids.'" The NACDL contends that "illustrative aids are, not infrequently, subject to abuse" and that the proposed amendment should go a long way toward curbing that abuse. NACDL recommends that the word "substantially" not be added to the balancing test, because unlike information evaluated under Rule 403, illustrative aids are not evidence, and have no direct probative value. NACDL argues that "[e]very illustrative aid, by its nature, creates a risk of confusion in the minds of jurors, who are not trained to distinguish between what is and is not evidence, and the significance of that difference."

Colleen Libbey, Esq., (2022-EV-0004-0101) objects to the notice requirement, arguing that it would improperly interfere with legitimate use of illustrative aids.

Mark Larson, Esq., (2022-EV-0004-0102) opposes the notice requirement, arguing that it would preclude the use of illustrative aids that are developed during the trial.

Greg Gellner, Esq., (2022-EV-0004-0103) argues that the notice requirement "would stifle creativity and hinder the best presentation of evidence."

The National Employment Lawyers Association (2022-EV-0004-0104) opposes the notice requirement and contends that the proposed amendment imposes a "presumption" against the use of illustrative aids.

Richard Friedman, Esq., (2022-EV-0004-0105) opposes the amendment on the ground that some

representations that might be considered illustrative aids might also be considered as evidence.

Wayne Parsons, Esq., (2022-EV-0004-0106) states that illustrative aids “are often developed just before trial, or during trial, based upon the evidence in the case, the lawyer observations of the jury during testimony, and the attorneys’ trial judgment. Notice requirements will force the parties to decide on an Illustrative Aid, before the lawyers know what will be helpful to the fact-finder.” He concludes that notice requirements will reduce the use of illustrative aids.

Bryce Montague, Esq., (2022-EV-0004-0107) states that “illustrative aids/demonstratives are often indicative of a trial lawyer’s work product and/or legal strategy, which opposing counsel and the Court have no right to obtain prior to its presentation at Court” and that they are often “cannot be scripted beforehand.”

The Federal Bar Council (2022-EV-0004-0108) supports the proposed amendment, concluding that it “will provide an important service to courts and litigants.” It suggests, however, that the rule is more properly placed in article 10, rather than article 6, which covers “witnesses.”

Sean Domnick, Esq., (2022-EV-0004-0109) states: “It is often quite impossible to exchange this type of demonstrative aid, which merely helps explain or illustrate a point, in advance. Furthermore, it will invade the trial strategy of the parties and their counsel in advance.”

Jeremy McGraw, Esq., (2022-EV-0004-0110) opposes the notice requirement: “Requiring an intelligent and creative attorney to turn over their work product and to risk the disclosure of trial plans and attorney thinking in

advance of trial only serves to benefit those attorneys who may not work as hard for their clients."

Mark Kittrick, Esq., (2022-EV-0004-0111) argues that the notice requirement can intrude on work product and will reduce the use of illustrative aids.

Brian McKeen, Esq., (2022-EV-0004-0112) suggests that "it would be better to amend FRE 403 and simply state that FRE 403 also applies to illustrative aids, although they are not substantive evidence." He also suggests that the notice requirement should be amended to provide dates certain, and that the good cause standard should be replaced with a list of specific factors.

Sahar Malek, Esq., (2022-EV-0004-0113) argues that the rule should contain a specific definition of illustrative aids, and contends that the notice requirement will make it more difficult to employ illustrative aids.

Walter McKee, Esq., (2022-EV-0004-0114) opposes the amendment on the ground that it "has the court on the frontline of determining whether a party is going to present an illustrative aid." He also argues that it should be up to the parties to determine whether an illustrative aid should be made part of the record.

Amy Zeman, Esq., (2022-EV-0004-0115) opposes the amendment because it does not contain an explicit definition of illustrative aids, and because the notice requirement is "one size fits all."

Nolan Niehus, Esq., (2022-EV-0004-0116) argues that the notice requirement mandates that all illustrative aids "be prepared well in advance and gives the opposing side a large peek behind the curtain of the attorneys work product."

He also argues that the rule is unnecessary "as it just seeks to apply the standard in FRE 403, which would already apply to a demonstrative exhibit."

Joseph Miller, Esq., (2022-EV-0004-0117) opposes the notice requirement on the ground "it will invade the sacred attorney work product and mental impressions so the opposition can then draft a counter to those mental impressions" and "it will ultimately be an exercise in futility, because most lawyers cannot identify the illustrative aids they will use weeks and months before trial without observing in trial testimony." He also opines that the rule should provide a specific definition of illustrative aids.

Joseph Bauer, Jr., Esq., (2022-EV-0004-0118) opposes the notice requirement, arguing that "requiring lawyers from both sides to exchange illustrative aids weeks before trial creates an unnecessary expense." He opposes the balancing test in the rule on the ground that courts are already employing Rule 403 to regulate illustrative aids.

Andrew Lampros, Esq., (2022-EV-0004-0119) states that the notice requirement "will impinge on the right to a thorough and sifting cross examination, a cornerstone of our jury system."

Benjamin Bailey, Esq., (2022-EV-0004-0120) contends that the amendment is misplaced in Rule 611 because it does not deal with witnesses; that the notice requirement would be disruptive and would result in improper disclosure of work product; and that illustrative aids are currently being regulated by courts without any problem at all.

Andres Lampros, Esq., (2022-EV-0004-0121) adds to his previously posted comment: "unnecessary and a bad idea."

Patrick Kirby, Esq., (2022-EV-0004-0122) opposes the amendment on the ground that it "might arguably" infringe the Seventh Amendment right to a jury trial, and that the notice requirement would force the parties to prepare their cases far in advance of trial.

Andrew Fuller, Esq., (2022-EV-0004-0123) argues that the rule is unnecessary because courts already have the discretionary authority to regulate the use of illustrative aids. He opposes the notice requirement on the ground that "[f]orcing attorneys to disclose the content of their illustrative exhibits weeks, or even days, in advance of the trial forces attorneys to inappropriately preview their arguments to the other side before trial has even started."

Wyatt Montgomery, Esq., (2022-EV-0004-0124) states that the notice requirement the "would invade the mental impressions of attorneys by informing opponents of potential trial strategy."

Mark Lanier, Esq., (2022-EV-0004-0125) opposes the notice requirement, arguing that " it will give adverse witnesses and their counsel a preview of the cross-examination planned for the witness and allow them to preempt or script around the illustrative aid. Scripting of that kind interferes with the truth-seeking function of the trial and alone justifies exclusion of the notice provision from the rule."

Genevieve Zimmerman, Esq., (2022-EV-0004-0126) and (2022-0004-0129) contends that the Federal Rules of Evidence currently provide "adequate guidelines"

for lawyers using illustrative aids. She specifically opposes the notice requirement as designed to "hamstring trial counsel's ability to nimbly and persuasively communicate their case to the trier of fact."

Michael Romano, Esq., (2022-EV-0004-0127) argues that the notice requirement will lead to extensive pretrial determinations and that the rule is unnecessary because courts already have discretion to regulate the use of illustrative aids.

Christine Spagnoli, Esq., (2022-EV-0004-0128) states that the notice requirement "could lead to micro-managing by federal judges of simple examinations of witnesses through the use of a white board or a flip chart. Do federal judges really have the time to referee disputes over whether sufficient notice has been provided when counsel attempts to use a flip chart during the examination of a witness?"

Jordan Lebovitz, Esq., (2022-EV-0004-0130) objects to the notice requirement, arguing that "[t]o be forced to identify, and then share, these demonstrative drawings or outlines is contrary to the purpose of a trial, and inconsistent with the use of advocacy in a Courtroom."

The D'Amore Law Group, PC (2022-EV-0004-0131) supports the proposed amendment: "As plaintiff's attorneys we are often tasked with explaining large amounts of complicated evidence and data to a jury. In this role illustrative aids are routinely used during the trial to aid with these explanations." It approves of the safeguards in the rule and agrees that the trial court should have discretion to allow such aids to be viewed by the jury during deliberations.

Dov Sacks, Esq., (2022-EV-0004-0132) opposes the amendment, claiming that the language that the court may allow the use of an illustrative aid "effectively requires the party presenting the illustrative aid to make a prima facie showing before the court can even consider allowing it."

Rhett Wallace, Esq., (2022-EV-0004-0133) argues that the proposed amendment is unnecessary because courts are currently regulating the use of illustrative aids under Rule 403. He believes that the amendment would require a hearing before any illustrative aid can be used. He opposes the notice requirement because, as he interprets the rule, "both parties would have to reveal their cross-examination strategies in advance, thereby giving this witness the chance to prepare, undermining the purpose of cross-examination in the first place."

Gabrielle Holland, Esq., (2022-EV-0004-0134) argues that the balancing test in the proposed amendment is unnecessary because courts are already excluding unfair illustrative aids under Rule 403. She opposes the notice requirement, concluding that "requiring the attorneys for both sides to exchange Illustrative aids weeks ahead of the trial date creates an unnecessary expense" and "[r]equiring courts to hold hearings to approve every illustrative aid imposes and unnecessary burden on already busy trial courts." She states that "Proposed 611(d)(3) is a good idea. It is beneficial to label and properly paginate with Bates Numbers all exhibits presented to the trier of fact. This helps the record remain organized."

DiCello Levitt LLC (2022-EV-0004-0135) is opposed to the notice requirement, concluding that "any proposal that would mandate advanced disclosure of illustrative aids by a plaintiff would allow defendants would

gain an unfair advantage and access to the plaintiff's litigation plan."

William Rossbach, Esq. (2022-EV-0004-0136) believes that the proposed amendment is hostile toward illustrative aids, because it states that "the court may allow" them. He prefers a rule which would state that a party may use illustrative aids, with the court having the authority to exclude them. He complains that the text of the rule does not set forth an explicit and all-encompassing definition of illustrative aids. And he opposes the notice requirement as an improper limitation on trial strategy and the questioning of witnesses.

Rachel Sykes, Esq., (2022-EV-0004-0137) asserts that the language stating that "the court may allow a party to present an illustrative aid" is "problematic because it inherently infringes on the court's ability to act as gatekeeper and could therefore limit the court's discretion to make evidentiary rulings." She opposes the notice requirement as a problematic limit on the lawyer's ability to uses illustrative aids extemporaneously at trial.

Bailey & Oliver Law Firm (2022-EV-0004-0138) interprets "the court may allow" as setting the default position of not allowing any illustrative aids unless a judge finds they are appropriate for a particular reason." And the firm opposes the notice requirement as an impediment on the use of illustrative aids.

Michael Warshauer, Esq., (2022-EV-0004-0139) contends that the balancing test is unnecessary because courts are currently using Rule 403 to control illustrative aids. He opposes the notice requirement, interpreting to have no good cause exception, with the court having to rule on every illustrative aid that will be used at trial: "Requiring the

attorneys for both sides to exchange Illustrative aids weeks ahead of the trial date creates an unnecessary expense. Requiring courts to hold hearings to approve every illustrative aid imposes and unnecessary burden on already busy trial courts." He agrees with the provision requiring all illustrative aids to be part of the record, noting that some courts do not do this.

Anthony Petru, Esq., (2022-EV-0004-0140) argues that the notice requirement would be unfair to plaintiffs, who go first, and that the rule is unnecessary, because Rule 403 is currently used by the courts to govern the use of illustrative aids.

1 **Rule 613. Witness's Prior Statement**

2 * * * * *

3 **(b) Extrinsic Evidence of a Prior Inconsistent**

4 **Statement.** Unless the court orders otherwise,

5 ~~E~~extrinsic evidence of a witness's prior inconsistent

6 statement ~~is admissible only if~~ may not be admitted

7 until after the witness is given an opportunity to

8 explain or deny the statement and an adverse party is

9 given an opportunity to examine the witness about it

10 ~~or if justice so requires~~. This subdivision (b) does not

11 apply to an opposing party's statement under

12 Rule 801(d)(2).

Committee Note

Rule 613(b) has been amended to require that a witness receive an opportunity to explain or deny a prior inconsistent statement *before* the introduction of extrinsic evidence of the statement. This requirement of a prior foundation is consistent with the common law approach to impeachment with prior inconsistent statements. *See, e.g.*, *Wammock v. Celotex Corp.*, 793 F.2d 1518, 1521 (11th Cir. 1986) ("Traditionally, prior inconsistent statements of a witness could not be proved by extrinsic evidence unless and until the witness was first confronted with the impeaching

statement.”). The existing rule imposes no timing preference or sequence and thus permits an impeaching party to introduce extrinsic evidence of a witness’s prior inconsistent statement before giving the witness the necessary opportunity to explain or deny it. This flexible timing can create problems concerning the witness’s availability to be recalled, and lead to disputes about which party bears responsibility for recalling the witness to afford the opportunity to explain or deny. Further, recalling a witness solely to afford the requisite opportunity to explain or deny a prior inconsistent statement may be inefficient. Finally, trial judges may find extrinsic evidence of a prior inconsistent statement unnecessary in some circumstances where a witness freely acknowledges the inconsistency when afforded an opportunity to explain or deny. Affording the witness an opportunity to explain or deny a prior inconsistent statement before introducing extrinsic evidence of the statement avoids these difficulties. The prior foundation requirement gives the target of the impeaching evidence a timely opportunity to explain or deny the alleged inconsistency; promotes judges’ efforts to conduct trials in an orderly manner; and conserves judicial resources.

The amendment preserves the trial court’s discretion to delay an opportunity to explain or deny until after the introduction of extrinsic evidence in appropriate cases, or to dispense with the requirement altogether. A trial judge may decide to delay or even forgo a witness’s opportunity to explain or deny a prior inconsistent statement in certain circumstances, such as when the failure to afford the prior opportunity was inadvertent and the witness may be afforded a subsequent opportunity, or when a prior opportunity was impossible because the witness’s statement was not discovered until after the witness testified.

Changes Made After Publication and Comment

There were no changes to the text of the amendment after publication. There were minor stylistic changes to the committee note. In response to a public comment, the reference to preventing "unfair surprise" was also deleted from the penultimate paragraph of the committee note because the Committee concluded that preventing unfair surprise was not a goal of the amendment.

Summary of Public Comment

Federal Magistrate Judges' Association (EV-2022-0004-0015) supports the amendment, opining that it will ensure consistent practice throughout federal courts.

National Association of Criminal Defense Lawyers (EV-2022-0004-0100) supports the amendment, stating that "the proposal should make for a more orderly and efficient presentation of evidence, with no loss of fairness." The NACDL expressed concern that some courts might allow deviation from the prior foundation requirement embodied in the amended rule too easily and suggested stronger language in the Committee note regarding a need for special circumstances to justify a deviation. The NACDL also opined that lawyers should be required to seek permission from the court before deviating from the prior foundation requirement and suggested an addition to the Committee note requiring leave of court.

Richard Friedman, Esq. (EV-2022-0004-0105) supports the amendment because "it only sets a default rule; it makes sense that the prescribed order should be the one ordinarily followed, and the proposal properly preserves the discretion of the court, in appropriate circumstances, both to vary the order and to admit the evidence even absent an

opportunity to explain or deny." Professor Friedman suggests deleting the reference to "unfair surprise" from the Committee note, opining that it refers to a bygone era and that there are superior policies supporting the amendment. The Committee adopted this suggestion and deleted the reference to "unfair surprise" from the Committee note.

New York City Bar Association (EV-2022-0004-0099) argues that the amendment requiring a prior foundation for admission of extrinsic evidence of a witness's prior inconsistent statement will not serve its purpose because it includes a "boundless" exception allowing the trial court to dispense with the requirement. As a result, the NYCBA opines that Rule 613(b) should not be amended.

1 **Rule 801. Definitions That Apply to This Article;**
2 **Exclusions from Hearsay**

3 * * * * *

4 **(d) Statements That Are Not Hearsay.** A statement
5 that meets the following conditions is not hearsay:

6 * * * * *

7 **(2)** ***An Opposing Party's Statement.*** The
8 statement is offered against an opposing
9 party and:

10 **(A)** was made by the party in an
11 individual or representative capacity;

12 **(B)** is one the party manifested that it
13 adopted or believed to be true;

14 **(C)** was made by a person whom the party
15 authorized to make a statement on the
16 subject;

17 **(D)** was made by the party's agent or
18 employee on a matter within the

19 scope of that relationship and while it
20 existed; or
21 **(E)** was made by the party's
22 coconspirator during and in
23 furtherance of the conspiracy.
24 The statement must be considered but does not by itself
25 establish the declarant's authority under (C); the existence or
26 scope of the relationship under (D); or the existence of the
27 conspiracy or participation in it under (E).
28 If a party's claim, defense, or potential liability is
29 directly derived from a declarant or the declarant's principal,
30 a statement that would be admissible against the declarant or
31 the principal under this rule is also admissible against the
32 party.

Committee Note

The rule has been amended to provide that when a party stands in the shoes of a declarant or the declarant's principal, hearsay statements made by the declarant or principal are admissible against the party. For example, if an estate is bringing a claim for damages suffered by the decedent, any hearsay statement that would have been

admitted against the decedent as a party-opponent under this rule is equally admissible against the estate. Other relationships that would support this attribution include assignor/assignee and debtor/trustee when the trustee is pursuing the debtor's claims. The rule is justified because if the party is standing in the shoes of the declarant or the principal, the party should not be placed in a better position as to the admissibility of hearsay than the declarant or the principal would have been. A party that derives its interest from a declarant or principal is ordinarily subject to all the substantive limitations applicable to them, so it follows that the party should be bound by the same evidence rules as well.

Reference to the declarant's principal is necessary because the statement may have been made by the agent of the person or entity whose rights or obligations have been succeeded to by the party against whom the statement is offered. The rule does not apply, however, if the statement is admissible against the agent but not against the principal --- for example, if the statement was made by the agent after termination of employment. This is because the successor's potential liability is derived from the principal, not the agent.

The rationale of attribution does not apply, and so the hearsay statement would not be admissible, if the declarant makes the statement after the rights or obligations have been transferred, by contract or operation of law, to the party against whom the statement is offered.

Changes Made After Publication and Comment

The word "defense" was added to the text to cover situations in which the party at trial has succeeded to a defense but not to potential liability.

The Committee Note was amended to clarify that if a hearsay statement is admissible against an agent but not a principal, it is not admissible against a party who succeeds to the claim, defense, or potential liability of the principal.

Summary of Public Comment

Jacob Heyward, Esq. (EV-2022-0004-0003) supports the proposed amendment to Rule 801(d)(2), stating that it will help to "clarify federal evidence law."

The Federal Magistrate Judges Association (EV-2022-0004-0015) "agrees the amendment is necessary and useful" but recommends that the text of the rule make reference to "successors in interest."

Richard Friedman, Esq. (EV-2022-0004-0105) approves the result reached by the proposed amendment, but suggests that the text would be improved if it used the term "successor in interest."

1 **Rule 804. Exceptions to the Rule Against Hearsay—**
2 **When the Declarant Is Unavailable as a**
3 **Witness**

4 * * * * *

5 **(b) The Exceptions.** * * *

6 **(3)** ***Statement Against Interest.*** A statement that:

7 **(A)** a reasonable person in the declarant's
8 position would have made only if the
9 person believed it to be true because,
10 when made, it was so contrary to the
11 declarant's proprietary or pecuniary
12 interest or had so great a tendency to
13 invalidate the declarant's claim
14 against someone else or to expose the
15 declarant to civil or criminal liability;
16 and

17 **(B)** if offered in a criminal case as one
18 that tends to expose the declarant to
19 criminal liability, is supported by

20 corroborating circumstances that
21 clearly indicate its trustworthiness~~, if~~
22 ~~it is offered in a criminal case as one~~
23 ~~that tends to expose the declarant to~~
24 ~~criminal liability~~---after considering
25 the totality of circumstances under
26 which it was made and any evidence
27 that supports or contradicts it.

Committee Note

Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by "corroborating circumstances that clearly indicate its trustworthiness," the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or contradicting it. While most courts have considered evidence independent of the statement, some courts have refused to do so. The rule now provides for a uniform approach and recognizes that the existence or absence of independent evidence supporting the statement is relevant to, but not necessarily dispositive of, whether a statement that tends to expose the declarant to criminal liability should be admissible under this exception when offered in a criminal case. A court evaluating the admissibility of a third-party confession to a crime, for example, must consider not only circumstances such as the timing and spontaneity of the statement and the third-party declarant's likely motivations in making it. The court must

also consider information, if any, supporting the statement, such as evidence placing the third party in the vicinity of the crime. Courts must also consider evidence that contradicts the declarant's account.

Although it utilizes slightly different language to fit within the framework of Rule 804(b)(3), the amendment is consistent with the 2019 amendment to Rule 807 that requires courts to consider corroborating evidence in the trustworthiness inquiry under that provision. The amendment is also supported by the legislative history of the corroborating circumstances requirement in Rule 804(b)(3). *See* 1974 House Judiciary Committee Report on Rule 804(b)(3) (adding "corroborating circumstances clearly indicate the trustworthiness of the statement" language and noting that this standard would change the result in cases like Donnelly v. United States, 228 U.S. 243 (1912), that excluded a third-party confession exculpating the defendant despite the existence of independent evidence demonstrating the accuracy of the statement).

Changes Made After Publication and Comment

In response to public comment expressing concern that the two references to "corroborating circumstances" and "corroborating evidence" in the proposed text of the amendment were confusing, the text was modified to refer to "any evidence that supports or contradicts" a statement against criminal interest. This avoids using the term "corroborating" twice in rule text in distinct contexts. Conforming changes were made to the committee note. The second paragraph of the committee note was also modified to clarify that the amendment is consistent with the 2019 amendment to Rule 807 that added a reference to "evidence,

if any, corroborating the statement," even though the two Rules utilize slightly different language.

Summary of Public Comment

Federal Magistrate Judges' Association (EV-2022-0004-0015) supports the amendment in that it resolves a division in the courts regarding the information that may be used to evaluate whether a statement against criminal interest offered in a criminal case is supported by "corroborating circumstances clearly indicating its trustworthiness." But the FMJA suggests that the text of the proposed amendment is unclear because it utilizes the term "corroborating" two times. It suggests that the amendment first makes "corroborating circumstances" mandatory, but then provides that "corroborating evidence" is not mandatory. The FMJA suggests modifying the text of the amendment to resolve the confusion.

National Association of Criminal Defense Lawyers (EV-2022-0004-0100) supports the amendment's goal to clarify the information that may be used to find corroborating circumstances. The NACDL suggests that the Committee note clarify the distinction between "corroborating circumstances" and "corroborating evidence." It further suggests softening the "corroborating circumstances" requirement. The NACDL would rewrite the amendment to require only "corroborating circumstances that *suggest* the trustworthiness of the statement."

Federal Bar Council (EV-2022-0004-0108) supports the amendment "to the extent it broadens the factors the courts may consider when deciding the applicability of this hearsay exception." The Federal Bar Council suggests revisions to the text of the amendment "to emphasize that courts are permitted to consider any relevant evidence

bearing on the possible trustworthiness of the proposed statement."

Richard Friedman, Esq. (EV-2022-0004-0105) notes his broad dissatisfaction with Rule 804(b)(3), primarily stemming from changes made to the draft of the hearsay exception in 1971 that permitted a statement inculpating a criminal defendant to be admitted through the exception. He also notes that the concern regarding manufactured statements against interest that appears to have influenced the original "corroborating circumstances" requirement is a concern about the credibility of the witness reporting the statement rather than a hearsay concern. He expresses his view that the amendment turns the exception "into a totality-of-the-circumstances rule that basically asks the court to decide whether it believes the underlying statement to be true." He further opines that *Williamson v. United States*, 512 U.S. (1994), the Supreme Court's decision regarding the proper interpretation of Rule 804(b)(3), was wrongly decided and that the Committee should consider "how to undo the rule of *Williamson*."

Caitlin Brydges, Esq. (EV-2022-0004-0077) opines that the language of the proposed amendment is confusing in that it requires "corroborating circumstances" but states that "corroborating evidence" may or may or may not be considered. She states that "the proposed rule has potential to detract from the substance of the case before the court and require counsel to advocate both their client's position and a declarant's trustworthiness."

1 **Rule 1006. Summaries to Prove Content**

2 **(a) Summaries of Voluminous Materials Admissible**

3 **as Evidence**. The ~~proponent~~ court may admit as

4 evidence ~~use~~ a summary, chart, or calculation to

5 prove the content of voluminous admissible writings,

6 recordings, or photographs that cannot be

7 conveniently examined in court, whether or not they

8 have been introduced into evidence.

9 **(b) Procedures**. The proponent must make the

10 underlying originals or duplicates available for

11 examination or copying, or both, by other parties at a

12 reasonable time and place. And the court may order

13 the proponent to produce them in court.

14 **(c) Illustrative Aids Not Covered**. A summary, chart,

15 or calculation that functions only as an illustrative aid

16 is governed by Rule 107.

Committee Note

Rule 1006 has been amended to correct misperceptions about the operation of the Rule by some

courts. Some courts have mistakenly held that a Rule 1006 summary is "not evidence" and that it must be accompanied by limiting instructions cautioning against its substantive use. But the purpose of Rule 1006 is to permit alternative proof of the content of writings, recordings, or photographs too voluminous to be conveniently examined in court. To serve their intended purpose, therefore, Rule 1006 summaries must be admitted as substantive evidence and the Rule has been amended to clarify that a party may offer a Rule 1006 summary "as evidence." The court may not instruct the jury that a summary admitted under this rule is not to be considered as evidence.

Rule 1006 has also been amended to clarify that a properly supported summary may be admitted into evidence whether or not the underlying voluminous materials reflected in the summary have been admitted. Some courts have mistakenly held that the underlying voluminous writings or recordings themselves must be admitted into evidence before a Rule 1006 summary may be used. Because Rule 1006 allows alternate proof of materials too voluminous to be conveniently examined during trial proceedings, admission of the underlying voluminous materials is not required and the amendment so states. Conversely, there are courts that deny resort to a properly supported Rule 1006 summary because the underlying writings or recordings – or a portion of them – *have been* admitted into evidence. Summaries that are otherwise admissible under Rule 1006 are not rendered inadmissible because the underlying documents have been admitted, in whole or in part, into evidence. In most cases, a Rule 1006 chart may be the only evidence the trier of fact will examine concerning a voluminous set of documents. In some instances, however, the summary may be admitted in addition to the underlying documents.

A summary admissible under Rule 1006 must also pass the balancing test of Rule 403. For example, if the summary does not accurately reflect the underlying voluminous evidence, or if it is argumentative, its probative value may be substantially outweighed by the risk of unfair prejudice or confusion.

Consistent with the original rule, the amendment requires that the proponent of a Rule 1006 summary make the underlying voluminous records available to other parties at a reasonable time and place. The trial judge has discretion in determining the reasonableness of the production in each case but must ensure that all parties have a fair opportunity to meet the summary. Cf. Fed.R.Evid. 404(b)(3) and 807(b).

Although Rule 1006 refers to materials too voluminous to be examined "in court" and permits the trial judge to order production of underlying materials "in court," the rule applies to virtual proceedings just as it does to proceedings conducted in person in a courtroom.

The amendment draws a distinction between summaries of voluminous admissible information offered to prove a fact, and illustrations offered solely to assist the trier of fact in understanding the evidence. The former are subject to the strictures of Rule 1006. The latter are illustrative aids, which are now regulated by Rule 107.

Changes Made After Publication and Comment

The Committee added the single word "admissible" to the text of Rule 1006(a) after publication to reinforce the requirement that the voluminous writings, recordings, or photographs underlying a Rule 1006 summary be admissible even if they are not admitted into evidence. In addition, the Committee made stylistic changes to the final paragraph of

the Committee note. In response to public comment suggesting the importance of notice to opposing parties of underlying records, the Committee added the fourth paragraph to the Committee note to emphasize that all parties should receive a fair opportunity to meet a Rule 1006 summary. Finally, references to Rule 611(d) in both the text of the proposed Rule and the Committee note were modified to refer to Rule 107.

Summary of Public Comment

Federal Magistrate Judges' Association (EV-2022-0004-0015) supports the amendment but suggests that language be added expressly stating that "the summary may only address evidence which would itself be admissible."

American Association for Justice (EV-2022-0004-0089) supports the amendment and opines that it provides "a useful clarification that does not change or alter the purpose of the rule."

New York City Bar Association (EV-2022-0004-0099) supports the amendment to Rule 1006 but argues that new Rule 107 should not allow illustrative aids to go to the jury room absent consent of all parties to avoid treating Rule 1006 summaries (that are evidence) and Rule 107 illustrative aids (that are not evidence) similarly.

National Association of Criminal Defense Lawyers (EV-2022-0004-0100) supports the amendment but suggests that the reference to Rule 403 in the Committee note should be strengthened "to state expressly that a summary that does not accurately and non-argumentatively present the relevant contents of the underlying materials inherently lacks probative value, which in turn would necessarily be (not just "may be") substantially outweighed by the risk of confusion, waste of time, and unfair prejudice."

Richard Friedman, Esq. (EV-2022-0004-0105) supports the amendment and agrees with the Federal Magistrate Judges' Association that the amended rule should state that the underlying documents should be otherwise admissible.

Jacob Hayward, Esq. (EV-2022-0004-0003) supports the amendment, stating that it "meaningfully contribute[s] to and clarif[ies] federal evidence law." He suggests that the text of the amended rule should make explicit the requirement that the underlying documents being summarized be admissible in evidence, even if they are not admitted.

Patrick Miller, Esq. (EV-2022-0004-0004) supports the amendment but suggests that a specific time-period be added in which parties must provide the underlying voluminous materials to the opposing side. He recommends a -5 or -15 day window prior to trial.

TAB 7B

Advisory Committee on Evidence Rules
Minutes of the Meeting of April 28, 2023
Thurgood Marshall Federal Judiciary Building
Washington, D.C.

The Judicial Conference Advisory Committee on the Federal Rules of Evidence (the "Committee") met on April 28, 2023 at the Thurgood Marshall Federal Judiciary Building in Washington, D.C.

The following members of the Committee were present:
Hon. Patrick J. Schiltz, Chair
Hon. Shelly Dick
Hon. Mark S. Massa
Hon. Thomas D. Schroeder
Hon. Richard J. Sullivan
Hon. Marshall L. Miller, Principal Associate Deputy Attorney General, Department of Justice
Arun Subramanian, Esq.
James P. Cooney III, Esq.
Rene Valladares, Esq., Federal Public Defender

Also present were:
Hon. John D. Bates, Chair of the Committee on Rules of Practice and Procedure
Hon. Robert J. Conrad, Jr., Liaison from the Criminal Rules Committee
Hon. M. Hannah Lauck, Liaison from the Civil Rules Committee
Professor Liesa L. Richter, Academic Consultant to the Committee
H. Thomas Byron III, Esq., Rules Committee Chief Counsel
Timothy Lau, Esq., Federal Judicial Center
Bridget M. Healy, Esq. Administrative Office of the U.S. Courts
Shelly Cox, Management Analyst, Administrative Office of the U.S. Courts
Christopher I. Pryby, Esq., Rules Clerk
Anton DeStefano, Office of Military Justice
Cammy Goodwin, Wheeler Trigg O'Donnell LLP
Kaiya Lyons, American Association for Justice
Sue Steinman, American Association for Justice
John McCarthy, Smith Gambrell & Russell LLP

Present via Microsoft Teams
Professor Daniel J. Capra, Reporter to the Committee
Hon. Carolyn B. Kuhl, Liaison from the Standing Committee
Professor Daniel R. Coquillette, Consultant to the Standing Committee
Professor Catherine T. Struve, Reporter to the Standing Committee
Elizabeth J. Shapiro, Esq., Department of Justice
John Hawkinson, Journalist

Draft

I. Opening Business

Announcements

The Chair welcomed everyone to the meeting and invited all participants to introduce themselves. He explained that the Reporter would be participating on Microsoft Teams.

The Chair then explained that Judge Shelly Dick, Judge Tom Schroeder, and Arun Subramanian would all be rotating off the Committee. The Chair thanked all three for their terrific service to the Committee and noted that all three would be greatly missed. Mr. Subramanian thanked the Chair for his leadership and thanked Professors Capra and Richter for their educational materials. He noted that he hoped to return to the Committee in the future. Judge Schroeder stated that his service on the Committee was one of the most rewarding things he had done as a judge. He was impressed by the work and the friendships and thanked the Chair and Professors Capra and Richter for their leadership and superb work. Judge Dick remarked that she had learned so much from her work on the Committee and commented that the agenda materials had made her a better judge. The entire Committee thanked all three for their wonderful service.

Approval of Minutes

A motion was made to approve the minutes of the October 28, 2022, Advisory Committee meeting. The motion was seconded and approved by the full Committee.

Report of Standing Committee Meeting

The Chair explained that he and the Reporter had reported to the Standing Committee on the progress the Evidence Advisory Committee was making on pending amendment proposals. He explained that comments received from the Standing Committee, if any, would be shared as the Committee discussed specific proposals.

II. Proposed Illustrative Aid Amendment

The Chair opened the discussion with the topic of illustrative aids and the proposal to add a provision to the Federal Rules of Evidence regulating their use. The Reporter directed the Committee's attention to page 93 of the agenda book to see the proposal published for notice and comment. He explained that illustrative aids are utilized in every trial and yet are not governed by any rule. He noted that the proposed amendment would bring some clarity and uniformity to the issue and would distinguish illustrative aids from demonstrative evidence offered to prove a fact and from Rule 1006 summaries designed to prove the content of voluminous writings or recordings. The Reporter explained that 130 public comments had been received on the proposal and that the agenda materials suggested changes to address issues raised in the public comment.

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A. *Notice of Illustrative Aids*

The Reporter reminded the Committee that the published amendment included a notice requirement for the use of illustrative aids that could be excused for good cause. He explained that much of the public comment opposed any notice requirement due to the impossibility of giving notice for certain illustrative aids created on the fly in the courtroom, as well as to concerns about attorney work product if notice were required of aids used in opening and closing arguments. Due to negative feedback on a notice requirement at the symposium hosted by the Committee in October 2022, the Committee determined at the Fall 2022 meeting to delete the notice requirement from the text of the amended rule. The Reporter explained that the deletion of the notice requirement would resolve most concerns raised in public comment. He proposed that the committee note could discuss the issue of notice and the importance of leaving it to the trial judge on a case-by-case basis to determine what notice, if any, is appropriate for a particular illustrative aid. The Reporter directed the Committee's attention to proposed note language designed to make this point on page 94 of the agenda materials.

One Committee member expressed support for deleting the notice requirement in the text of the amendment. He suggested that the note language should make clear that a notice requirement might apply to some illustrative aids and not apply at all to others. He opined that the note should clarify that the trial judge remains free to pick and choose according to the type of illustrative aid. The Chair commented that the note language proposed by the Reporter was very flexible and would capture the trial judge's discretion to craft notice requirements fit for all the different types of illustrative aids. The Committee member replied that the note should be clearer that notice does not apply to all types of aids. The Reporter pointed to the language in the proposed note stating that the amendment "leaves it to trial judges to decide *whether, when, and how* to require advance notice of an illustrative aid."

The Chair explained that some members of the Standing Committee had suggested that the Committee might be abandoning the notice requirement too quickly but that other members had disagreed, arguing that the Committee was right to delete the notice requirement. The Chair explained that the amendment would get stopped at the Standing Committee level if it included a notice requirement. The Reporter agreed, noting that most trial judges already require notice of illustrative aids such that the amendment loses little by omitting a notice requirement. Several members of the Committee agreed that notice was typically already required for anything that wasn't created during trial testimony. They pointed out that a failure to require notice results in disruption to the trial because the court needs to break to allow opponents to view and object to an illustrative aid. The Reporter emphasized that the notice requirement in the published amendment was the red flag that drew negative attention to the amendment and that eliminating it would chart a constructive path forward. Committee members agreed to delete the notice requirement from the text of the amendment and to include the proposed note language on page 94 of the agenda materials emphasizing the trial judge's discretion in handling notice.

One Committee member queried whether subsection three of the proposed amendment requiring illustrative aids to be made a part of the record was necessary. The Chair responded that it was because many trial judges do not make aids a part of the record. He noted that the failure to make illustrative aids part of the record hampers appellate review.

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B. *Extending the Amendment to Opening Statements and Closing Arguments*

The Reporter next raised the question of extending the amendment to cover aids used during opening statements and closing arguments. He explained that this issue was controversial during public comment due to concern about disclosing work-product material to be used in opening and closing to opposing counsel in advance. With the notice requirement gone, this concern disappears. The Reporter noted that illustrative aids used during opening and closing are subject to regulation in the same manner as other trial aids and that there was no reason to treat them differently with respect to the balancing test used to determine their utility. In addition, he noted that it would be problematic for the amendment to regulate illustrative aids used during trial testimony and for the court to regulate illustrative aids used during opening and closing outside the rule. The Reporter directed the Committee's attention to proposed changes to the rule text and committee note on pages 96 and 97 of the agenda materials to extend the amendment to cover opening statements and closing arguments.

One Committee member noted that the proposed changes would extend the rule to cover a "party's argument" and expressed concern that this would *not* cover opening statements because opening statements are supposed to be a forecast of the evidence and *not* an argument. He suggested adding language to specifically cover "forecasts of the evidence" as well as a "party's argument." The Reporter explained that this concern was addressed by the proposed committee note that would state that the amendment governs the use of an illustrative aid at any point in trial, "including opening statements and closing argument." Committee members agreed to this solution.

C. *Is the Amendment "Hostile" to Illustrative Aids?*

The Reporter informed the Committee that several public comments emphasized the importance of illustrative aids for juror understanding and suggested that the amendment was discouraging illustrative aids. He noted that there was no intent to be hostile to illustrative aids. To the contrary, the goal of the amendment was to bring clarity and uniformity to the consideration of illustrative aids by articulating the standard courts already use to evaluate them in rule text. He conceded that the notice requirement could be seen as an obstacle to illustrative aids. The Reporter suggested that the deletion of the notice requirement would reduce concerns about hostility to illustrative aids.

The Reporter explained that the balancing test included in the amendment to evaluate illustrative aids could also encourage or discourage illustrative aids depending upon how it is drafted. Specifically, he noted that the amendment was published with the modifier "substantially" in brackets. Including the term "substantially" would align the balancing test with the balance used in Rule 403 and would favor use of illustrative aids, rejecting them only if the risk of unfair prejudice "substantially outweighs" their utility. Thus, a balancing test that includes the modifier "substantially" is the most encouraging of illustrative aids. In contrast, removing the term "substantially" would reject illustrative aids whenever their utility is outweighed to *any extent* by the risk of unfair prejudice, etc. A balancing test that eliminates

"substantially" would be less encouraging of illustrative aids. The Reporter pointed out that it would also differ slightly from the test outlined in Rule 403, perhaps creating confusion.

To further address concerns about the amendment's hostility to illustrative aids, the Reporter suggested including the modifier "substantially" in the balancing test and adding language to the committee note stating, "Illustrative aids can be critically important in helping the trier of fact understand the evidence or the argument and this rule should be read to promote their use."

One Committee member queried whether the amendment would simply put the Rule 403 balancing test into the illustrative aids rule. The Chair responded that the Rule 403 test was distinct from the test used in the amendment because Rule 403 deals with the admissibility of evidence. Because illustrative aids are not evidence, the test in the amendment assesses the utility of the illustrative aid in assisting comprehension rather than its probative value. Thus, the two tests remain distinct. Another Committee member opined that the language in the committee note "promoting" the use of illustrative aids should not be used. She noted that some illustrative aids can be inappropriate and should not be "promoted." The Chair agreed, explaining that the amendment should be regulating illustrative aids and not promoting them. He suggested deleting the final part of the sentence in the committee note stating "and this rule should be read to promote their use." The Committee agreed with the Chair's suggestion. The Chair remarked that there is some irony in the public comment that the amendment is "hostile" to illustrative aids. He noted that adding a rule regulating juror questions was thought to "promote" the practice, while adding a rule regulating illustrative aids was seen as "hostile" to the practice.

The Reporter recommended that the Committee add the word "substantially" to the text of the Rule. The Federal Public Defender reminded the Committee that the agenda materials referenced Judge Campbell's argument against including the term "substantially." He opined that, because illustrative aids are not evidence (and are merely aids to comprehension), they should not be allowed to inject *any* risks into the trial process. Unlike evidence with probative value, illustrative aids should be rejected if they introduce prejudice or confusion at all. The Federal Public Defender argued that the modifier "substantially" should be omitted from the amendment. The Principal Associate Deputy Attorney General agreed, arguing that aids should only be used if they help and should not be permitted if, on balance, they cause delay, confusion, or prejudice. He also pointed out that lawyers create many illustrative aids in advance and have the ability to control what they include. He suggested that the test in the rule ought to strike the appropriate balance to direct lawyers' efforts.

The Chair explained that he appreciated the theory but expressed concern about deleting the modifier "substantially" because it would create a more stringent test for illustrative aids than the one used for evidence. He noted that the line between what is demonstrative evidence and what is merely an aid can be elusive and that a balancing test that treats the two differently would place more pressure on proper classification. If the same balancing test is applied to both, the classification is less significant and creates fewer opportunities for error. Another Committee member agreed with the Chair, asking why the amendment should require more of a mere aid than it requires of evidence. He noted that rejection of the "substantially" modifier could undermine the use of illustrative aids and create concerns about hostility to the practice described

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in public comment. Another Committee member argued that the case against using the modifier "substantially" could be made in the Rule 403 context as well. He expressed a preference for keeping the balance between Rule 403 and the amendment the same to avoid confusion. A majority of the Committee agreed that adding the modifier "substantially" was the superior alternative.

The Reporter noted that some public comment suggested that the language "The court may allow" was hostile to illustrative aids because it suggested that parties must first ask the court for permission to use aids. The comment suggested changing the language to read: "A party may use an illustrative aid if . . . ." The Reporter explained that the majority of the Evidence Rules utilize the "court may allow" language and that it doesn't require advance permission in practice. The Chair agreed, explaining that nobody asks for advance permission except in a motion *in limine*. The Committee agreed to retain the "court may allow" language.

D. ***Including a Definition of Illustrative Aids***

The Reporter explained that some public comment suggested that the amendment should define illustrative aids. He explained it would be challenging to come up with a comprehensive definition that would encompass all possible types of illustrative aids. The Reporter explained that he would be hesitant to include a precise definition in rule text but suggested that the committee note could include a sentence in the first paragraph loosely defining illustrative aids. The proposed sentence would read: "An illustrative aid is any presentation offered not as evidence, but rather to assist the trier of fact to understand other evidence or argument."

The Chair asked whether the sentence would need to refer to any "visual presentation." Another Committee member responded that an illustrative aid need not be "visual" and could be an "auditory" aid. The Reporter inquired whether it would be better to refer to "material" as opposed to a "presentation." The Committee member suggested it could be a musical composition played for the jury that wouldn't be "material." Another participant asked whether the word "item" would work. The Reporter noted that "item" sounds like evidence and that illustrative aids are not evidence. The Committee decided to characterize illustrative aids as "any presentation offered not as evidence, but rather to assist the trier of fact to understand evidence or argument."

E. ***Is a Rule Necessary?***

The Reporter explained that several public comments suggested that there is no need for a rule regulating illustrative aids because courts already regulate their use in the absence of a specific rule. He explained that the reason to add a specific rule was to bring some clarity and uniformity to the regulation already being done by the courts and to place the standard routinely utilized by courts in accessible rule text rather than requiring parties to hunt for standards in the case law. The Committee agreed that adding a rule on illustrative aids was helpful.

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F. *Adding a Cross-Reference to Rule 1006*

The Reporter reminded the Committee that courts are not infrequently confused about the difference between an illustrative aid and a summary admitted to prove the content of voluminous records under Rule 1006. He explained that an amendment to Rule 1006 had also been published to help distinguish the two and that the Rule 1006 proposal contained a cross-reference to the illustrative aid rule. The Reporter informed the Committee that some public commenters thought that the illustrative aid rule should contain a parallel reference (or direction-finder) back to Rule 1006 to provide further clarity. He explained that a fourth subsection could be added to the illustrative aid amendment as reflected on page 104 of the agenda materials to serve this purpose. The Reporter explained that the Rules do not contain any other two-way references, and that lawyers are likely to start with Rule 1006 when they seek to use a summary (which will direct them to the illustrative-aid provision if they cannot meet the Rule 1006 foundation). Still, he noted that the double cross-references could help the novice. The Reporter noted that the style consultants had preferred not to add a cross-reference to the illustrative aid rule but were not opposed to it if the Committee wished to include it. Committee members noted that the companion amendments to Rules 1006 and 611 were designed to clear up confusion and that cross-references in both rules would create the most clarity. All members agreed that the cross-reference to Rule 1006 should be added to the text of the illustrative-aid amendment.

G. *Moving the Amendment to Article I*

The Reporter explained that some public comments suggested moving the illustrative-aid amendment out of Rule 611(d) where it was placed for purposes of publication. The Reporter reminded the Committee that the proposed amendment was included in Rule 611 because trial judges have utilized their authority under Rule 611(a) to regulate illustrative aids. Public comment noted that Article VI of the Federal Rules of Evidence governs "Witnesses" and that the illustrative-aid rule does not deal with witnesses. Public comment suggested moving the illustrative-aid rule to Article X. The Reporter opined that Article X would not be a good fit both because the new rule could get lost at the back of the rulebook and because Article X deals with the best-evidence rule, which is also not connected to illustrative aids.

The Reporter suggested that Article I containing "General Provisions" might be a better fit and that the new rule on illustrative aids would be more visible in the front of the rulebook. He suggested that the Committee could consider whether to propose the illustrative-aid amendment as new Rule 107. All Committee members favored adding the illustrative-aid amendment as Rule 107 for the reasons suggested by the Reporter.

H. *The (Not so) Elusive Line Between Illustrative Aids and Demonstrative Evidence*

A Committee member noted that a new paragraph had been proposed for the committee note regarding the "elusive distinction" between illustrative aids and demonstrative evidence as reflected on page 109 of the agenda materials. The Committee member suggested that the point of the amendment was to create a clear line and to tell litigants that illustrative aids are *not evidence* and that they must comply with the Federal Rules of Evidence to admit something as evidence. He expressed concern that the new note paragraph could create confusion, particularly

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with respect to sending aids to the jury room. If trial judges are told that the line between evidence and aids is a fuzzy one, they may be inclined to send more back to the jury room. The Chair responded that the distinction is quite clear in theory but can be difficult in application. Still, he explained that the proposed paragraph was drafted to respond to public comment and may do little to help in applying the rule. Accordingly, the Chair said he was inclined to delete the paragraph from the note. Another Committee member suggested that the second sentence of the paragraph regarding the "elusive" distinction might be deleted, with the remainder of the paragraph retained. A different Committee member favored deleting the entire paragraph because it would not help a trial judge solve a problem. The Chair agreed, characterizing the paragraph as more of a "P.R. campaign" than useful. The Committee agreed to delete the entire proposed paragraph from the note.

I. *"Trier of Fact"*

The Reporter explained that the amendment published for notice and comment referenced the "finder of fact" but that the Rules typically refer to the "trier of fact." He suggested that the term should be changed to conform to the convention utilized throughout the Rules. The Committee agreed.

J. *"Admitted Evidence"*

A Committee member noted that Rule 107(a) on page 119 of the agenda materials references presenting an illustrative aid to help the trier of fact understand "admitted evidence." He suggested that this terminology would not fit when an aid is used to explain evidence that has not yet been admitted or is presented simultaneously with the aid. The Chair agreed with the concern and suggested deleting the modifier "admitted" from subsection (a) such that it would read "to help the trier of fact understand evidence or argument." Committee members concurred. The Reporter also noted that Rule 107(b) had been slightly modified due to a helpful suggestion from Judge Bates such that it now reads: "An illustrative aid *is not evidence and* must not be provided to the jury during deliberations unless . . . ."

K. *Illustrative Aids in the Jury Room*

The Reporter noted that the amendment published for notice and comment provided that illustrative aids should not go to the jury room during deliberations absent consent of all parties or a finding of good cause by the trial judge. One Committee member queried why something that is *not evidence* should ever go to the jury room absent the consent of all parties. The Chair explained that it does happen, noting that in a recent trial there was a helpful map used throughout the trial that was permitted in the jury room over objection. Another Committee member agreed that jurors refer to the illustrative aids throughout trial and then want to have access to them while deliberating. A different Committee member expressed concern about this reality, arguing that the jury always *wants* the illustrative aids but that government PowerPoint slides shouldn't go to the jury room over a defense objection nonetheless. He queried whether "good cause" exists under the amendment merely because the jury asks for an illustrative aid. He further suggested that allowing illustrative aids into the jury room opens the door to mischief.

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Another Committee member echoed these concerns, asking whether the amendment would bestow discretion to allow nonevidence in the jury room.

The Chair opined that the Committee could not prohibit sending illustrative aids to the jury room over objection without republishing the amendment because that would effect too big a change to the proposal. Judge Bates agreed that the Committee could not ban sending illustrative aids to the jury room except in the case of consent without republication. He stated that the Committee should feel free to republish the amendment if it felt that was the appropriate result because it was important to wait to get the right rule. A Committee member opined that the existing proposal was satisfactory given that any illustrative aid sent to the jury room would be accompanied by a limiting instruction cautioning the jury that it is not evidence. The Chair agreed, emphasizing that the aid is something the jury has been allowed to view during the trial. A Committee member asked why *all* illustrative aids shouldn't be sent to the jury room under that theory. He opined that consent is a different situation but that a "good cause" exception could be problematic. The Principal Associate Deputy Attorney General explained that in complex organizational prosecutions, nonargumentative aids like organizational charts are commonly very helpful to the jury simply to keep names and parties straight. The Chair agreed, describing a complex tax-malpractice case in which jurors needed an illustrative aid to understand the relationships among parties. Another Committee member asked whether any other Rules allow admission with consent. The Reporter stated that consent wasn't expressly used in other provisions but that it makes sense in dealing with illustrative aids and tees up an exception for "good cause."

The Chair then queried whether the Committee would need to republish the amendment if the "good cause" standard were strengthened slightly to an "exceptional circumstances" standard. Judge Bates opined that slight tweaking of the standard would be fine without republication but not a wholesale change. The Reporter reminded the Committee that it did discuss the possibility of a prohibition on sending illustrative aids to the jury room absent consent prior to publication of the proposal and rejected a prohibition. The Chair asked whether the text of the amendment could be retained but the committee note strengthened to signal that judges should not send illustrative aids to the jury room absent consent frequently but that the rule conferred some discretion to do so.

The Reporter directed the Committee's attention to the final paragraph of the committee note on page 121 of the agenda materials addressing illustrative aids in the jury room and suggested that it already signaled sparing transmission to the jury absent consent. The Chair asked whether the note language was too generous. Judge Bates opined that modification of the note language would not require republication. A Committee member proposed retaining the "good cause" standard in rule text but modifying the note reference to sending an illustrative aid to the jury room whenever the jury asks for it. Professor Coquillette stated that the historic standard used to determine whether republication is necessary is "whether the public would feel ambushed by a change" about which they were unable to provide commentary. The Reporter noted that the issue of the circumstances under which an aid could go to the jury room *was* included in the published amendment and that it was commented on by some. He suggested that the Committee could change the requirement in the rule text without another round of publication if it so desired but that he understood the Committee did not wish to do so. The

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Reporter for the Standing Committee opined that republication would be necessary for a change to the rule text but that no republication would be needed for modifications to the committee note. The Reporter suggested deleting the examples of "good cause" in the committee note that stated that the trial judge's discretion "is most likely to be exercised in complex cases, or in cases where the jury has requested to see the illustrative aid." Committee members who were concerned with the good-cause exception were satisfied by that solution. Other Committee members also agreed.

L. ***Final Proposal***

The Reporter explained that the question for the Committee was whether to recommend adoption of Rule 107 on pages 119–122 of the agenda materials with the agreed-upon changes. One Committee member suggested deleting the words "exercise its discretion" from the final sentence of the committee note discussing the "good cause" exception, and all agreed. Another member suggested adding the word "statement" after "opening" in the penultimate paragraph of the committee note. In the third paragraph on page 120 of the agenda materials, the Chair suggested adding the word "may" so that the second sentence would begin: "Examples may include". He also suggested removing the commas from around "during deliberations" in the last sentence of the second paragraph on page 120. In the first sentence of that second paragraph, the Chair also recommended deleting the word "separate" so that it would read "two categories."

Another Committee member asked whether the paragraph in the note regarding sending illustrative aids to the jury room should state that the court "should" give a limiting instruction instead of "must" give one. The Reporter responded that Rule 105 on limiting instructions uses the word "must" and that the note should use the same word to remain consistent. The Chair agreed. The Rules Clerk suggested that the language of Rule 107(b) would allow the trial judge to decline to send an illustrative aid to the jury room even *with consent* due to the combination of the language "must not"–"unless." The Reporter noted that the stylists had approved the language, and the Chair recommended leaving the text as it is. Judge Bates recommended deleting the word "other" in the fifth line of the first paragraph of the committee note because illustrative aids are not evidence and so do not explain "other evidence." Judge Bates also suggested removing the comma between "voluminous, admissible" in Rule 107(d) and to ensure that all references to "voluminous admissible" information in Rules 107 and 1006 are consistent.

Another Committee member commented that the example of PowerPoint presentations had been removed from the examples listed in the third paragraph of the committee note. He noted that PowerPoint presentations are the most frequently used illustrative aid and questioned its removal. The Reporter agreed that PowerPoint presentations are common illustrative aids currently but explained that the Rules have to avoid referencing specific technologies that could become outdated. While PowerPoint presentations are certainly regulated by the amendment, it is best not to refer to them directly. On that note, another Committee member suggested removing the reference to "blackboard" drawings in the note. All Committee members agreed.

With all the discussed changes, the Committee unanimously approved new Rule 107.

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III. Rule 1006 Summaries

Professor Richter directed the Committee's attention to Tab 3 of the agenda book and the proposed amendment to Rule 1006. She reminded the Committee that the Rule 1006 proposal was a companion amendment to the illustrative aid amendment to address confusion in the courts regarding the distinction between a summary offered as an illustrative aid and one offered as alternate proof of the content of voluminous materials. She explained that courts sometimes incorrectly caution juries that Rule 1006 summaries are "not evidence." In order to prove the content of materials too voluminous to be conveniently examined in court, Rule 1006 summaries *must* be admitted as evidence and the amendment so provides. In addition, Professor Richter reminded the Committee that courts sometimes refuse to permit a Rule 1006 summary when the underlying voluminous materials it summarizes are not admitted into evidence at trial. Because the Rule 1006 summary is supposed to offer *alternative* evidence of the content of underlying voluminous materials, those underlying materials need not be admitted into evidence. In contrast, some courts refuse to allow use of a Rule 1006 summary if underlying materials *have been* admitted into evidence. Professor Richter explained that the amendment would permit a Rule 1006 summary to be used upon a proper foundation "whether or not" the underlying materials have been admitted into evidence.

Professor Richter noted two changes to the proposed amendment since it was published for notice and comment. First, she explained that the materials underlying a Rule 1006 summary must be *admissible* even if they need not be *admitted*. Because courts displayed no confusion regarding this element of the Rule 1006 foundation, the original published amendment did not specify this requirement. Because other elements of the Rule 1006 foundation were made express in the amendment, the Committee concluded at the Fall 2022 meeting that it was best to include this part of the foundation in rule text as well. The word "admissible" was placed in Rule 1006(a) after the word "voluminous" to clarify that the underlying materials must be admissible. In addition, the Committee made one stylistic change to a sentence in the final paragraph of the committee note distinguishing between illustrative aids and Rule 1006 summaries.

Professor Richter explained that only seven comments were received on Rule 1006 and that they were mostly supportive of the amendment. A few commenters suggested that the Committee should include the requirement that the underlying records be "admissible" in rule text. As already noted, this change was made by the Committee at its Fall 2022 meeting.

Another commenter suggested that the committee note regarding the application of Rule 403 to Rule 1006 summaries ought to be strengthened. This commenter suggested that inaccurate and argumentative summaries inherently lack probative value such that they should not be admitted through Rule 1006. Professor Richter explained that the Committee could consider modifying the committee note as shown on page 149 of the agenda materials to address this concern. Alternatively, Professor Richter noted that courts have long required Rule 1006 summaries to accurately reflect underlying voluminous content and be nonargumentative. She suggested that the Committee might consider placing this portion of the Rule 1006 foundation in rule text given that all other aspects of the foundation were included in the text.

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The Chair expressed reluctance to include "accurate and nonargumentative" in rule text as part of the Rule 1006 foundation. He explained that everything presented in chart form can be said to be "argumentative." He offered the example of a chart blowing up text messages. He noted that even "accurate" texts could be said to be "argumentative" because they were enlarged and made more compelling. He also offered an example of a chart showing presents given to child victims by a defendant that included a picture of a victim with a present. The Chair also opined that the modification to the committee note suggested by public comment was not helpful because even argumentative summaries have *some* probative value. Accordingly, the Chair stated that he was inclined to stick with the published version of the note and rule with respect to the issue of accurate and nonargumentative summaries. All Committee members agreed.

A Committee member queried whether the word "admissible" was necessary in the heading of subsection (a) now that the modifier "admissible" had been placed in rule text. Professor Richter explained that the two uses of the term "admissible" referred to distinct concerns and that both references are needed. The heading refers to the fact that the Rule 1006 summary is itself "admissible as evidence" and should not be accompanied by a limiting instruction cautioning the jury against its substantive use. The term "admissible" in rule text refers to the fact that the *underlying voluminous material* summarized must meet admissibility requirements. Accordingly, both references are necessary. The Committee agreed.

Professor Richter next informed the Committee that one public comment had suggested adding a specific time-period for the production of the underlying voluminous materials to the other side under Rule 1006(b). She noted the sparing use of specific time-periods in the Evidence Rules due to the need for flexibility in the trial process as well as the lack of a time-counting provision in the Rules. She explained that the Committee had carefully considered utilizing a specific time-period during the amendment process for the notice provision of Rule 404(b) in 2018 and had rejected the concept. For those reasons, Professor Richter suggested that the Committee not add a specific time-period to Rule 1006(b).

Professor Richter alerted the Committee to the fact that recent amendments to notice provisions in Rule 404(b) and Rule 807 had utilized language ensuring that an opponent receive a "fair opportunity to meet the evidence." She suggested that the Committee could consider whether to add similar "fair opportunity" language to the text of Rule 1006(b) or to the committee note to create consistency among recent amendments. She pointed out bracketed material in Rule 1006(b) on page 148 of the agenda materials as well as a proposed addition to the committee note on page 149 of the agenda to track the "fair opportunity" standard. The Reporter explained that the Criminal Rules Committee had recently borrowed the "fair opportunity" language for an amendment to the Criminal Rules.

All Committee members agreed that Rule 1006(b) should not include a specific time-period within which to produce underlying materials. The Federal Public Defender opined that the "fair opportunity" language would be helpful, however, and should be included. The Chair agreed that the "fair opportunity" language could provide help in a criminal case where the government dropped a set of voluminous materials underlying a summary on the defense on the eve of trial. Another Committee member argued that the "fair opportunity" language should not be included in the rule text. He stated that a "reasonable time" and a "fair opportunity" mean the

same thing, such that adding "fair opportunity" language would be redundant. Another Committee member disagreed, explaining that there is a difference between a "reasonable time" and giving the opponent a "fair opportunity" to meet the evidence. He suggested that the production of underlying materials presents Confrontation Clause issues in a criminal case and that including "fair opportunity" language reminds judges and litigants of those issues.

Another Committee member noted that the notice provisions in Rules 404(b) and 807 require "pre-trial" disclosure. He suggested that Rule 1006 could include a pretrial production requirement as well. The Chair disagreed, stating that the production could be permitted at trial and that it would be problematic to add a pre-trial requirement to Rule 1006. The Reporter noted that issues of pre-trial notice were more significant in the Rule 404(b) and Rule 807 contexts such that there could be a good reason for a pre-trial requirement in those contexts and not in Rule 1006.

Another Committee member pointed to draft language in Rule 1006(b) on page 148 of the agenda requiring a "fair opportunity to meet the evidence." He queried whether "the evidence" referred to the Rule 1006 summary or to the underlying documents. Professor Richter explained that it referred to the summary because production of the underlying documents is necessary for the proponent to evaluate the foundation for the Rule 1006 summary. The Chair asked whether the language was sufficiently clear that "the evidence" refers to the summary.

A Committee member opined that it was better to omit the "fair opportunity" language from the rule text because it was superfluous. Another Committee member disagreed, stating that he felt strongly that the "fair opportunity" language added an important component to the production requirement. He argued that it might be perfectly "reasonable" for the government to turn over voluminous documents two days before trial because a summary could be prepared close to trial but that two days would not give the defense a "fair opportunity" to meet the summary. The Federal Public Defender agreed, noting that a fair opportunity is important when the government turns over thousands of documents. Another Committee member argued that the Federal Rules of Criminal Procedure will require pretrial production in any event. Still, another Committee member stated that it was a habit of the government in criminal cases to turn over a lot at the end and that it is important for Rule 1006 to clarify that the opponent should have a "fair opportunity" to meet a summary. A Committee member asked whether it was possible for production to take place at a "reasonable time" but still deny the opponent a "fair opportunity" to meet the evidence. Another Committee member responded in the affirmative, suggesting that the government in a criminal case might be perfectly reasonable in producing underlying information when it does but that the time might yet be inadequate for the recipient to respond to the summary. Another Committee member proposed keeping the "fair opportunity" language out of the text of Rule 1006(b) but putting a modified paragraph in the committee note ensuring a "fair opportunity" to meet the summary. Committee members agreed that this would be a reasonable solution. The members arguing for "fair opportunity" language in rule text were satisfied with this outcome so long as the note provides that the court "must ensure" that all parties have a fair opportunity to meet the summary.

The Committee unanimously approved the proposed amendment to Rule 1006 with the agreed-upon changes.

IV. Rule 613(b) Extrinsic Evidence of Prior Inconsistent Statements

Professor Richter directed the Committee's attention to Tab 4 of the agenda materials and the proposed amendment to Rule 613(b). The amendment would require a witness to receive an opportunity to explain or deny a prior inconsistent statement *before* the opponent may offer extrinsic evidence of the statement unless the court allows the opportunity to be delayed or eliminated entirely. Professor Richter explained that this prior foundation requirement would align the rule with the common-law practice with respect to extrinsic evidence of prior inconsistent statements. She informed the Committee that there were only four public comments offered on Rule 613(b).

The public comment offered three suggestions for altering the proposal. The first opined that the amendment would give trial courts unbridled discretion to deviate from the prior-foundation requirement and proposed some limit on the court's authority to do so, such as "good cause." Professor Richter explained that this change could easily be made but suggested that there was no need to cabin the trial judge's discretion to depart from the prior-foundation rule. Since the requirement was primarily designed to protect the efficiency of the trial process, there would seem to be no need to restrict a judge's ability to forgive a prior foundation in circumstances where the judge felt it was appropriate and that it would not create inefficient disruptions. Further, Professor Richter noted that the amendment to Rule 613(b) would align the provision with the Rule 611(b) scope-of-direct rule, which requires parties to confine cross-examination questions to the subject matter of the direct and matters affecting credibility unless the judge orders otherwise. Both provisions would state default rules with broad discretion granted to the trial judge to deviate. The Chair agreed, noting that there was no need to require the trial judge to make findings to support a decision to depart from the prior foundation requirement. All Committee members concurred that there should be no "good cause"—or other limit—placed on the trial judge's discretion to depart from the prior-foundation requirement.

Professor Richter explained that another commenter had proposed adding a requirement to the committee note that a party seek leave of court to offer extrinsic evidence of a prior inconsistent statement before offering a witness an opportunity to explain or deny. The commenter opined that a litigant should not be permitted to simply offer extrinsic evidence first in the hopes of drawing no objection and should be required to seek advance permission. Professor Richter explained that this change would be easy to make as well but recommended against it. She noted that the Rules generally require no prior permission for offering evidence except in the case of Rule 412 governing the sexual history of sexual assault victims. She noted that the decision to ask for permission reflected a strategic choice rather than a requirement of the Evidence Rules. The Chair agreed and the Committee was unanimous that no "prior permission" requirement should be added to the note.

Finally, Professor Richter explained that one commenter recommended deleting the reference to preventing "unfair surprise" as a justification for the prior-foundation requirement from the committee note, arguing that a prior foundation does not necessarily minimize surprise and that unfair surprise recalls a bygone era of gentility in impeachment that no longer applies. She agreed with the comment and suggested that the reference to "unfair surprise" be deleted

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from the committee note. The Committee unanimously agreed and unanimously approved Rule 613(b) with that single change.

V. Rule 801(d)(2) and Party–Opponent Statements Offered Against Successors

The Reporter introduced the amendment to Rule 801(d)(2) that would make the statements of a declarant that would be admissible against the declarant or against the declarant's principal admissible against a successor party whose claim, defense, or liability is directly derived from that declarant or that principal. The Reporter explained two minor proposed modifications to the amendment. First, he noted that the term "defense" should be added to the text of the rule because sometimes a party derives a defense only from a predecessor party and would derive no claim or liability. All Committee members agreed to add the word "defense" to the text of the amendment. The Reporter then noted a minor change to the first sentence of the committee note to better clarify the declarant-as-agent scenario. All agreed to this change to the note language as well.

The Reporter explained that there were some public comments on Rule 801(d)(2). The Magistrate Judges' Association suggested using the term "successor in interest" in rule text to make clearer the intent of the amendment to admit statements admissible against predecessor parties against their successors. The Reporter agreed that the "successor in interest" term might be more succinct but explained that the Committee should not use that terminology because the former-testimony hearsay exception uses the term "predecessor in interest" to describe the relationship required to allow admissibility of former testimony in civil cases. He explained that the "predecessor in interest" language has been interpreted very flexibly by the courts to require only motivational symmetry between parties and not a true legal relationship. The Reporter noted that flexible treatment makes sense in the context of the former-testimony exception because it is grounded in notions of reliability. In contrast, he explained that a true legal relationship is necessary in the context of Rule 801(d)(2) because it is grounded in notions of adversarial fairness and not in reliability. Admission against a successor is only "fair" for purposes of Rule 801(d)(2) if there is a true legal relationship. Therefore, he suggested that the Committee should not use the term "successor in interest" in Rule 801(d)(2). The Committee agreed.

Next, the Reporter noted a potential interpretive problem highlighted by the Rules Clerk. The Reporter explained that if a declarant–agent made a work-related statement after being fired by a corporation, that statement would be admissible against the declarant–agent personally, but not against the corporation. If the corporation were acquired, the declarant–agent's statement should not be admissible against the successor where it would not have been admissible against the predecessor corporation. The Rules clerk suggested that the double conjunctive in the text of the amendment could be read as allowing the statement to be admitted against the successor if it would be admissible against *either* the declarant–agent *or* the predecessor corporation. The Reporter expressed skepticism that a court would read the rule that way. But he noted that the text of the rule could be modified as illustrated on page 169 of the agenda materials to clarify that the statement must be admissible against the party *from whom the successor* derives its claim or liability. Alternatively, the Committee could add a sentence to the committee note as illustrated on page 169 of the agenda materials to deal with the potential issue. The Reporter

stated his preference to add note language only to avoid further complicating the text of the amended rule.

The Chair agreed with the Reporter and proposed leaving the text of the amendment as published, adding only the word "defense" as previously discussed, and using note language to address the concern about the double conjunctive. The Committee unanimously agreed to propose the amendment with only those changes.

VI. Rule 804(b)(3) "Corroborating Circumstances"

Professor Richter directed the Committee's attention to Tab 6 in the agenda materials and introduced the proposed amendment to Rule 804(b)(3), the statements-against-interest hearsay exception. She reminded the Committee that the exception requires a proponent to show "corroborating circumstances clearly indicating the trustworthiness" of a statement against criminal interest offered in a criminal case. She explained that courts conflict about the information that may be utilized to make this finding. Most consider both the inherent guarantees of trustworthiness surrounding the making of the statement (such as its timing, spontaneity, and motivations) as well as independent information corroborating or contradicting it. Some courts refuse to consider evidence independent of the statement, however. To resolve this conflict, and to align Rule 804(b)(3) with the 2019 amendment to Rule 807, the amendment clarifies that courts should use independent evidence, if any exists, as well as inherent guarantees of reliability in looking for "corroborating circumstances clearly indicating" the trustworthiness of a statement against interest.

Professor Richter explained that only five comments were received on the amendment, but that several of them expressed confusion over the use of the term "corroborating" twice in the amended language. The amendment references the *finding* required for admission of statements against criminal interest in criminal cases: "corroborating circumstances clearly indicating" trustworthiness. The amendment also references "corroborating" evidence in describing the *information* courts may use in making that finding. The amendment used the term twice to track the language of the 2019 amendment to Rule 807 and to avoid using different language to describe the same concept in two different rules. Commenters were confused, however, as to the distinction between the two uses of the same term: "corroborating." Professor Richter explained that the language of the amendment might be slightly altered to avoid two references to "corroborating," explaining that the Chair had proposed using the term "supporting" to describe the independent evidence courts may look to in finding "corroborating circumstances." Professor Richter noted that the Committee could also consider adding a paragraph to the committee note instructing courts and litigants on the distinction. The Reporter added that Rule 807 does not have the same "corroborating circumstances" finding that is part of Rule 804(b)(3) and that it may make sense to vary the language slightly for that reason.

The Chair noted that clear drafting was challenging in the context of this amendment because the "corroborating circumstances" finding was a term of art that had been in the hearsay exception since it was first enacted and could not be changed and also because the Committee wanted to track the language used to describe the same concept in Rule 807. He suggested that amendment language describing evidence "that supports or contradicts" the statement could be

superior to the published language. The Reporter noted that the word "supported" is also used earlier in the rule, but that he thought "supports or contradicts" was superior to using the term "corroborating" twice in the amendment. Committee members posed alternative terminology, such as "consistent" evidence, "confirming" evidence, or evidence that "reinforces" the statement. Ultimately, Committee members found these alternative word choices too weak or too strong to capture the notion of "corroborating" evidence and agreed that "any other evidence that supports or contradicts" the statement best captures the intended concept. With that modification to the text of the rule, the Committee agreed not to add a new paragraph to the committee note distinguishing "corroborating circumstances" from "corroborating evidence."

The Committee agreed to make other, modest changes to the committee note to replace the term "corroborating" with the term "supporting" where appropriate and to signal to courts and litigants that the amendment remains consistent with the 2019 amendment to Rule 807 despite its use of slightly different language. The Committee approved the proposed amendment unanimously with those changes.

VII. Procedural Safeguards for Juror Questions

The Reporter directed the Committee's attention to Tab 7 of the agenda materials and the issue of procedural safeguards when jurors are permitted to ask questions at trial. He reminded the Committee that there was a symposium on the issue at the Fall 2022 meeting in Phoenix. The Standing Committee expressed concern that an evidence rule offering procedural safeguards for jury questions might encourage more use of jury questions. The Reporter explained that he had been asked to examine two issues regarding juror questions: 1) how common is the practice of permitting juror questions? and 2) have appellate courts found error in the procedural safeguards used by the courts that have allowed the practice?

As to the first question, the Reporter noted the difficulty in obtaining precise data about prevalence but posited based upon available data that 15-20% of federal courts allow juror questions at least in some cases. The practice appears more common in civil cases than in criminal cases. He explained that the practice is used in many states and by law in some, including Washington and Arizona. As to the second question, the Reporter explained that there have been appellate errors found with respect to the use of juror questions in four major areas: 1) failure to allow lawyers to object to juror questions; 2) active solicitation or encouragement of more juror questions; 3) allowing jurors to interrupt testimony to proffer their own questions; and 4) allowing too many juror questions.

The Reporter directed the Committee's attention to the draft Rule 611(e) on page 202 of the agenda materials that would set forth procedural safeguards required to be used when juror questions are allowed. He emphasized that the amendment would *not* regulate whether juror questions should be permitted but would provide protections when a judge chooses to allow them. He noted that the terminology "when a question is submitted" had been changed to "if a question is submitted" to more clearly signal that the amendment is not encouraging juror questions. He explained that the committee note was also modified to emphasize that the amendment is not designed to promote juror questions.

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The Chair stated that the proposed rule had been sent to the Standing Committee and that Standing had sent it back to the Advisory Committee. The Standing Committee identified no concerns with the procedural safeguards articulated in the proposed rule, but some members did not favor juror questions and were concerned that covering the practice in a rule would encourage the practice to be adopted more widely. The Chair explained that the question for the Advisory Committee was whether to send the proposal up to Standing again, explaining that changes had been made and additional research performed, or whether to give up on the proposed amendment for the time being.

Ms. Shapiro offered the results of her survey of criminal chiefs in U.S. Attorneys' offices regarding the practice. She explained that the criminal chiefs all brought up both pros and cons to the practice of allowing jury questions. Some like the practice, others do not. She said that the sense was that the practice is more common in the western half of the country, that more federal judges allow jury questions in jurisdictions where state courts do, and that more judges are experimenting with the practice. She noted that Judge Bates had expressed concern that jury questions could tip off prosecutors to a gap in the evidence needed to carry their burden of proof in criminal cases. Ms. Shapiro reported that criminal chiefs did not a perceive a benefit to one side or the other in a criminal case and opined that juror questions could help or hurt either side depending on the case.

Judge Bates suggested that perhaps federal defenders ought to be surveyed about whether *they* think juror questions give the prosecution an advantage. He asked how important the prevalence of the practice is to the Committee in proposing a rule regulating it, querying whether use in 5% of federal courts is sufficient or whether something above 20% is necessary to make the proposed rule a priority. Judge Bates suggested that almost all jury questions are focused in four places: New Mexico, Arizona, Alaska, and the Eastern District of Michigan. The Chair noted that the data on the use of jury questions is incomplete, recounting that judges from Kansas City and Arkansas have reported regular use of jury questions. The Chair opined that a rule would be urgently needed if 50% of federal judges were permitting jury questions and that a rule would be less necessary if the number were 10% or less.

The Reporter suggested that the prevalence of a particular issue is not necessarily the most important driver for an amendment. He noted that the issue of use of party–opponent statements against successors covered by the proposed amendment to Rule 801(d)(2) is one that arises rarely. Still, having the Rules applied fairly and uniformly is an important objective that should be promoted even in circumstances that arise less frequently. A Committee member commented that an amendment governing jury questions would be qualitatively different from an amendment to a hearsay exception. He noted that the hearsay exceptions are well-accepted and used frequently such that getting them right is critical. But he argued that the practice of allowing juror questions fundamentally changes the nature of a trial and for that reason is only permitted by a minority of courts. The Committee member opined that the real question is whether jury questions should be allowed at all and that the Committee should not be regulating a practice that should not be adopted.

Judge Bates asked whether the Advisory Committee could recommend a rule *banning* jury questions. He opined that the Committee probably would have the authority to do so as

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questioning witnesses is a procedural question and not a substantive one. He noted that Rule 614 already regulates questioning by the trial judge and that the Rules could likely regulate questioning by the jury. Another Committee member added that there is no split of authority regarding juror questions for the Committee to resolve and that recommending a rule regulating the practice could encourage it. Another Committee member suggested that the Committee should be more focused on the *trend* with respect to jury questions than on the practice's current *prevalence*. She suggested that if the trend was more toward experimentation with jury questions, the Committee could take two approaches. It could seek to get ahead of the trend and regulate the practice before it becomes more prevalent, or it could wait and allow the courts to hash it out further before weighing in.

Another Committee member asked what the optimal mechanism of regulation would be. He suggested that a Federal Rule of Evidence is a very formal and extreme method of regulation and that a benchbook could be a superior method of recommending safeguards around jury questions. The Federal Public Defender agreed that issues of uniformity are important and that concerns regarding juror questions in criminal cases deserve consideration. He suggested that the Committee should let things play out in the courts and that a benchbook could be a helpful method of imposing some safeguards in the meantime. The Reporter explained that the question of benchbooks has been raised in Committee before but that the Committee does not draft benchbooks or guidelines. The role of the Committee is to recommend rules changes. Professor Coquillette agreed. Tim Lau of the FJC pointed out that a judicial survey was the optimal way for the Committee to get a more accurate sense of the prevalence of the practice of allowing juror questions. He also noted that prevalence is a nuanced issue. Some courts might allow juror questions but very infrequently. Others might allow them in most cases. Some courts that permit jurors to ask questions may receive very few questions, while others may receive many. Mr. Lau suggested that a judicial survey might reveal more granular data and trends.

A Committee member stated that he had been in favor of studying a possible amendment to regulate jury questions but that he was concerned that the practice could alter the nature of a trial and that a rule could have the unintended consequence of encouraging the practice. If an amendment were to be proposed, he suggested that it should consider the allowable scope of juror questions to eliminate questions that go beyond witness testimony. Another Committee member stated that it did not make sense to have a mandatory rule regulating a discretionary practice. He suggested that he would favor banning juror questions but at the very least opposed regulating a practice before deciding whether the practice should even be permitted. Another Committee member reported that his state permitted juror questions and that he has observed no ill effects but that he agreed that the Committee should probably decline to regulate at this point. A different Committee member stated his preference to table the issue for now, but to continue studying the practice to see whether a trend emerges that would justify reexamining the issue. Other members agreed and several suggested that the Reporter should explore other methods (such as a benchbook) of getting the needed safeguards to the judges who are allowing juror questions. Another Committee member suggested that a judicial survey by the FJC could also be useful in determining the true prevalence of the practice.

The Chair noted that efforts had been made to reduce the number of surveys sent to federal judges due to the sheer volume they receive. Judge Bates noted that a survey would make

sense if prevalence were the issue with which the Committee was struggling. But if the Committee is not interested in going forward at this time regardless of prevalence, a survey would not make sense. Judge Bates suggested that the Committee could communicate the need for benchbook safeguards for juror questions to the FJC. The Reporter queried whether the FJC would think that benchbook coverage of juror questions would promote the practice. Committee members all agreed to table the proposal. Judge Kuhl commented on the significant, excellent work done by the Reporter on the issue and suggested that it should be shared with circuit committees that draft pattern instructions as well as with the FJC for possible inclusion in a benchbook. Mr. Lau suggested that the Reporter's work could be forwarded to the benchbook committee that is currently working on a new edition. With that, the issue of an amendment regulating juror questions was tabled.

VIII. Closing Matters

The Chair announced that the fall meeting will be held on October 27, 2023. He noted that with all pending proposals concluded, the Committee will be working with a clean slate. He explained that the Reporter will invite a half dozen Evidence scholars to the fall meeting to present their ideas for updating the Rules. The Reporter noted that two topics on the agenda for the fall meeting will be: 1) the issue of deepfakes and authentication and 2) the possibility of expanding the Rule 801(d)(1)(A) hearsay exception to encompass more inconsistent statements. The Chair suggested finding an expert on artificial intelligence and deepfakes to educate the Committee. The meeting was then adjourned.

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TAB 8

TAB 8A

Legislation That Directly or Effectively Amends the Federal Rules
118th Congress
(January 3, 2023–January 3, 2025)

(Ordered by most recent legislative action; bills with more recent actions first.)

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
To amend title 5, United States Code, to establish Diwali, also known as "Deepavali", as a Federal holiday, and for other purposes	**H.R. 3336** *Sponsor:* Meng (D-NY) *Cosponsors:* 13 Democratic & 1 Republican cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	Bill text not yet available	• 05/15/2023: Introduced in House; referred to Oversight & Accountability Committee
Back the Blue Act of 2023	**H.R. 355** *Sponsor:* Bacon (R-NE) *Cosponsors:* 17 Republican cosponsors **H.R. 3079** *Sponsor:* Bacon (R-NE) *Cosponsors:* 17 Republican cosponsors	§ 2254 Rule 11	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr3079/BILLS-118hr3079ih.pdf https://www.congress.gov/118/bills/hr355/BILLS-118hr355ih.pdf **Summary:** Would amend Rule 11 of the Rules Governing Section 2254 Cases to bar application of Civil Rule 60(b)(6) in proceedings under 28 U.S.C. § 2254(j)	• 05/05/2023: H.R. 3079 introduced in House; referred to Judiciary Committee • 01/13/2023: H.R. 355 introduced in House; referred to Judiciary Committee
September 11 Day of Remembrance Act	**H.R. 2382** *Sponsor:* Lawler (R-NY) *Cosponsors:* D'Esposito (R-NY) Ryan (D-NY) Trone (D-MD) Gottheimer (D-NJ) **S. 1472** *Sponsor:* Blackburn (R-TN)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf (Text of S. 1472 not yet available) **Summary:** Would make September 11 Day of Remembrance a federal holiday	• 05/04/2023: S. 1472 introduced in Senate; referred to Judiciary Committee • 03/29/2023: H.R. 2382 introduced in House; referred to Oversight & Accountability Committee
Federal Extreme Risk Protection Order Act of 2023	**H.R. 3018** *Sponsor:* McBath (D-GA) *Cosponsor:* Carbajal (D-CA)	CV? CR?	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr3018/BILLS-118hr3018ih.pdf **Summary:** Would authorize a new kind of ex parte and permanent injunctive relief, albeit one sounding in criminal law, not civil law. The injunctive relief could also result in property	• 04/28/2023: Introduced in House; referred to Judiciary Committee

Last updated May 18, 2023

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
			forfeiture. May need new rulemaking to account for this kind of hybrid procedure	
Workers' Memorial Day	**H.R. 3022** *Sponsor:* Norcross (D-NJ) *Cosponsors:* 11 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2382/BILLS-118hr2382ih.pdf **Summary:** Would make Workers' Memorial Day a federal holiday	• 04/28/2023: Introduced in House; referred to Oversight & Accountability Committee
Women in Criminal Justice Reform Act	**H.R. 2954** *Sponsor:* Kamlager-Dove (D-CA) *Cosponsors:* 6 Democratic & 1 Republican cosponsors	CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2954/BILLS-118hr2954ih.pdf **Summary:** Would create a pretrial diversion program for federal criminal cases; may need new rulemaking for criminal procedure (e.g., to allow for withdrawal of guilty plea under diversion program)	• 04/27/2023: Introduced in House; referred to Judiciary, Ways & Means, and Energy & Commerce Committees
Restoring Artistic Protection (RAP) Act of 2023	**H.R. 2952** *Sponsor:* Johnson (D-GA) *Cosponsors:* 21 Democratic cosponsors	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2952/BILLS-118hr2952ih.pdf **Summary:** Would create new Fed. Rule of Evidence to exclude "evidence of a defendant's creative or artistic expression, whether original or derivative" as evidence against that defendant (not restricted to criminal cases); would permit it on certain showings by the government by clear and convincing evidence (but not clear what would happen in a civil case if the government is not a party)	• 04/27/2023: Introduced in House; referred to Judiciary Committee
Competitive Prices Act	**H.R. 2782** *Sponsor:* Porter (D-CA) *Cosponsor:* Nadler (D-NY) Cicilline (D-RI) Jayapal (D-WA)	CV 8, 12	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2782/BILLS-118hr2782ih.pdf **Summary:** Would abrogate *Twombly*'s pleading standard, at least in antitrust cases	• 04/20/2023: Introduced in House; referred to Judiciary Committee
Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2023	**H.R. 1059** *Sponsor:* Kelly (R-ND) *Cosponsors:* 30 bipartisan cosponsors **S. 1212** *Sponsor:*	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1059/BILLS-118hr1059rfs.pdf https://www.congress.gov/118/bills/s1212/BILLS-118s1212is.pdf **Summary:** Would establish national standards for remote electronic notarization; would make signature and title of notary prima facie or	• 04/19/2023: S. 1212 introduced in Senate; referred to Judiciary Committee • 02/28/2023: H.R. 1059 received in Senate; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
	Cramer (R-ND) *Cosponsor:* Warner (D-VA)		conclusive evidence in determining genuineness or authority to perform notarization.	• 02/27/2023: H.R. 1059 passed House by voice vote • 02/17/2023: H.R. 1059 introduced in House; referred to Judiciary Committee
Online Privacy Act of 2023	**H.R. 2701** *Sponsor:* Eshoo (D-CA) *Cosponsor:* Lofgren (D-CA)	CV 4, CV 23	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr2701/BILLS-118hr2701ih.pdf **Summary:** Would permit service of "petition for enforcement" for civil investigative demand under § 401 to be served by mail, and proof of service would be permitted by "verified return" including, if applicable, any "return post office receipt of delivery" Would require a class action to be prosecuted by a nonprofit organization, not an individual, and mandates equal division of total damages among entire class	• 04/19/2023: Introduced in House; referred to Energy & Commerce, House Administration, Judiciary, and Science, Space & Technology Committees
Relating to a National Emergency Declared by the President on March 13, 2020	**H. J. Res. 7** *Sponsor:* Gosar (R-AZ) *Cosponsors:* 68 Republican cosponsors	CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hjres7/BILLS-118hjres7rfs.pdf **Summary:** Terminates the national emergency declared March 13, 2020, by President Trump. Ends authority under CARES Act to hold certain criminal proceedings by videoconference or teleconference.	• 04/10/2023: Signed into law • 03/29/2023: Passed Senate (68–23) • 02/02/2023: Received in Senate; referred to Finance Committee • 02/01/2023: Passed House (229–197) • 01/09/2023: Introduced in House
St. Patrick's Day Act	**H.R. 1625** *Sponsor:* Fitzpatrick (R-PA)	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1625/BILLS-118hr1625ih.pdf **Summary:** Would make St. Patrick's Day a federal holiday	• 03/17/2023: Introduced in House; referred to Oversight & Accountability Committee
Sunshine in the Courtroom Act of 2023	**S. 833** *Sponsor:* Grassley (R-IA) *Cosponsors:* Klobuchar (D-MN) Durbin (D-IL) Blumenthal (D-CT) Markey (D-MA) Cornyn (R-TX)	CR 53	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s833/BILLS-118s833is.pdf **Summary:** Would permit, after JCUS promulgates guidelines, district court cases to be photographed, electronically recorded, broadcast, or televised, notwithstanding any other provision of law (e.g., CR 53)	• 03/16/2023: Introduced in Senate; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
Facial Recognition and Biometric Technology Moratorium Act of 2023	**H.R. 1404** *Sponsor:* Jayapal (D-WA) *Cosponsors:* 10 Democratic cosponsors **S. 681** *Sponsor:* Markey (D-MA) *Cosponsors:* Merkley (D-OR) Warrant (D-MA) Sanders (I-VT) Wyden (D-OR)	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1404/BILLS-118hr1404ih.pdf https://www.congress.gov/118/bills/s681/BILLS-118s681is.pdf **Summary:** Would bar admission by federal government of information obtained in violation of bill in criminal, civil, administrative, or other investigations or proceedings (except in those alleging a violation of the bill itself)	• 03/07/2023: H.R. 1404 introduced in House; referred to Judiciary and Oversight & Accountability Committees • 03/07/2023: S. 681 introduced in Senate; referred to Judiciary Committee
Asylum and Border Protection Act of 2023	**H.R. 1183** *Sponsor:* Johnson (R-LA)	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1183/BILLS-118hr1183ih.pdf **Summary:** Would require "an audio or audio visual recording of interviews of aliens subject to expedited removal" and would require the recording's consideration "as evidence in any further proceedings involving the alien"	• 02/24/2023: Introduced in House; referred to Judiciary Committee
Bankruptcy Venue Reform Act	**H.R. 1017** *Sponsor:* Lofgren (D-CA) *Cosponsor:* Buck (R-CO)	BK	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr1017/BILLS-118hr1017ih.pdf **Summary:** Would require rulemaking under 28 U.S.C. § 2075 "to allow any attorney representing a governmental unit to be permitted to appear on behalf of the governmental unit and intervene without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel"	• 02/14/2023: Introduced in House; referred to Judiciary Committee
Write the Laws Act	**S. 329** *Sponsor:* Paul (R-KY)	All	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s329/BILLS-118s329is.pdf **Summary:** Would prohibit "delegation of legislative powers" to any entity other than Congress. Definition of "delegation of legislative powers" could be construed to extend to the Rules Enabling Act. Would not nullify previously enacted rules, but anyone	• 02/09/2023: Introduced in Senate; referred to Homeland Security & Government Affairs Committee

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
			aggrieved by a new rule could bring action seeking relief from its application.	
Supreme Court Ethics, Recusal, and Transparency Act of 2023	**H.R. 926** *Sponsor:* Johnson (D-GA) *Cosponsors:* Nadler (D-NY) Quigley (D-IL) Cicilline (D-RI) **S. 359** *Sponsor:* Whitehouse (D-RI) *Cosponsors:* 13 Democratic or Democratic-caucusing cosponsors	AP, BK, CV, CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr926/BILLS-118hr926ih.pdf https://www.congress.gov/118/bills/s359/BILLS-118s359is.pdf **Summary:** Would require rulemaking (through Rules Enabling Act process) of gifts, income, or reimbursements to justices from parties, amici, and their affiliates, counsel, officers, directors, and employees, as well as lobbying contracts and expenditures of substantial funds by these entities in support of justices' nomination, confirmation, or appointment. Would require expedited rulemaking (through Rules Enabling Act process) to allow court to prohibit or strike amicus brief resulting in disqualification of justice, judge, or magistrate judge	• 02/09/2023: S. 359 introduced in Senate; referred to Judiciary Committee • 02/09/2023: H.R. 926 introduced in House; referred to Judiciary Committee
Fourth Amendment Restoration Act	**H.R. 237** *Sponsor:* Biggs (R-AZ)	CR 41; EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr237/BILLS-118hr237ih.pdf **Summary:** Would require warrant under Crim. Rule 41 to electronically surveil U.S. citizen, search premises or property exclusively owned or controlled by a U.S. citizen, use of pen register or trap-and-trace device against U.S. citizen, production of tangible things about U.S. citizen to obtain foreign intelligence information, or to target U.S. citizen for acquiring foreign intelligence information. Would require amendment of 41(c) to add these actions as actions for which warrant may issue. Would bar use of information about U.S. citizen collected under E.O. 12333 in any criminal, civil, or administrative hearing or investigation, as well as information acquired about a U.S. citizen during surveillance of non-U.S. citizen.	• 02/07/2023: Referred to subcommittee • 01/10/2023: Introduced in House; referred to Judiciary and Intelligence Committees
Federal Police Camera and Accountability Act	**H.R. 843** *Sponsor:* Norton (D-DC)	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr843/BILLS-118hr843ih.pdf	• 02/06/2023: Introduced in House; referred to Judiciary Committee

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
	Cosponsors: Beyer (D-VA) Torres (D-NY)		**Summary:** Among other things, would bar use of certain body-cam footage as evidence after 6 months if retained solely for training purposes; would create evidentiary presumption in favor of criminal defendants and civil plaintiffs against the government if recording or retention requirements not followed; and would bar use of federal body-cam footage from use as evidence if taken in violation of act or other law	
Limiting Emergency Powers Act of 2023	H.R. 121 *Sponsor:* Biggs (R-AZ)	CR	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr121/BILLS-118hr121ih.pdf **Summary:** Would limit emergency declarations to 30 days unless affirmed by act of Congress. Current COVID-19 emergency would end no later than 2 years after enactment date; would terminate authority under CARES Act to hold certain criminal proceedings by videoconference or teleconference.	• 02/01/2023: Referred to subcommittee • 01/09/2023: Introduced in House; referred to Transportation & Infrastructure, Foreign Affairs, and Rules Committees
Restoring Judicial Separation of Powers Act	H.R. 642 *Sponsor:* Casten (D-IL) *Cosponsor:* Blumenauer (D-OR)	AP	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr642/BILLS-118hr642ih.pdf **Summary:** Would give the D.C. Circuit certiorari jurisdiction over cases in the court of appeals and direct appellate jurisdiction over three-district-judge cases. A D.C. Circuit case "in which the United States or a Federal agency is a party" and cases "concerning constitutional interpretation, statutory interpretation of Federal law, or the function or actions of an Executive order" would be assigned to a multicircuit panel of 13 circuit judges, of which a 70% supermajority would need to affirm a decision invalidating an act of Congress. Would likely require new rulemaking for the panel and its interaction with the D.C. Circuit and new appeals structure.	• 01/31/2023: Introduced in House; referred to Judiciary Committee
No Vaccine Passports Act	S. 181 *Sponsor:* Cruz (R-TX)	BK, CR 17, CV, EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s181/BILLS-118s181is.pdf **Summary:** Would prohibit disclosure by certain individuals of others' COVID vaccination status absent express written consent; no exception made for subpoenas, court	• 01/31/2023: Introduced in Senate; referred to Health, Education, Labor & Pensions Committee

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
			orders, discovery, or evidence in court proceedings; imposes civil and criminal penalties on disclosure	
No Vaccine Mandates Act of 2023	**S. 167** *Sponsor:* Cruz (R-TX)	BK, CR 17, CV, EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s167/BILLS-118s167is.pdf **Summary:** Would prohibit disclosure by certain individuals of others' COVID vaccination status absent express written consent; no exception made for subpoenas, court orders, discovery, or evidence in court proceedings; imposes civil and criminal penalties on disclosure	• 01/31/2023: Introduced in Senate; referred to Judiciary Committee
See Something, Say Something Online Act of 2023	**S. 147** *Sponsor:* Manchin (D-WV) *Cosponsor:* Cornyn (R-TX)	BK, CR 17, CV, EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/s147/BILLS-118s147is.pdf **Summary:** Would prohibit disclosure by providers of interactive computer services of certain orders related to reporting of suspicious transmission activity; no exception made for subpoenas, court orders, discovery, or evidence in court proceedings	• 01/30/2023: Introduced in Senate; referred to Commerce, Science & Transportation Committee
Protecting Individuals with Down Syndrome Act	**H.R. 461** *Sponsor:* Estes (R-KS) *Cosponsors:* 19 Republican cosponsors **S. 18** *Sponsor:* Daines (R-MT) *Cosponsors:* 24 Republican cosponsors	CV 5.2; BK 9037; CR 49.1	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr461/BILLS-118hr461ih.pdf https://www.congress.gov/118/bills/s18/BILLS-118s18is.pdf **Summary:** Would require use of pseudonym for and redaction or sealing of filings identifying women upon whom certain abortions are performed.	• 01/24/2023: H.R. 461 introduced in House; referred to Judiciary Committee • 01/23/2023: S. 18 introduced in Senate; referred to Judiciary Committee
Lunar New Year Day Act	**H.R. 430** *Sponsor:* Meng (D-NY) *Cosponsors:* 57 Democratic cosponsors	AP 26, 45; BK 9006; CV 6; CR 45, 56	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr430/BILLS-118hr430ih.pdf **Summary:** Would make Lunar New Year Day a federal holiday	• 01/20/2023: Introduced in House; referred to Oversight & Accountability Committee
Rosa Parks Day Act	**H.R. 308** *Sponsor:* Sewell (D-AL)	AP 26, 45; BK 9006; CV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr308/BILLS-118hr308ih.pdf	• 01/12/2023: Introduced in House; referred to Oversight &

Name	Sponsors & Cosponsors	Affected Rules	Text, Summary, and Committee Report	Legislative Actions Taken
	Cosponsors: 31 Democratic cosponsors	6; CR 45, 56	**Summary:** Would make Rosa Parks Day a federal holiday	Accountability Committee
Kalief's Law	**H.R. 44** *Sponsor:* Jackson Lee (D-TX)	EV	**Most Recent Bill Text:** https://www.congress.gov/118/bills/hr44/BILLS-118hr44ih.pdf **Summary:** Would impose strict requirements on the admission of statements by youth during custodial interrogations into evidence in criminal or juvenile-delinquency proceedings against the youth	• 01/09/2023: Introduced in House; referred to Judiciary Committee

TAB 8B

Agenda Item
Summer 2023
Action

JUDICIARY STRATEGIC PLANNING (ACTION)

Issue

This item asks the Committee to endorse a report on its strategic planning initiatives in response to a request from the Judiciary Planning Coordinator, Chief Judge L. Scott Coogler. Chief Judge Coogler has also invited committees to suggest topics for discussion at upcoming long-range planning meetings.

Background

The *Strategic Plan for the Federal Judiciary* (*Plan*), updated by the Judicial Conference in September 2020 (JCUS-SEP 2020, pp. 13-14), identifies strategies and goals to enable the federal judiciary to continue as a model in providing fair and impartial justice. The approach to strategic planning, approved by the Conference when the *Plan* was first adopted, provides for the Executive Committee's identification, every two years, of strategies and goals from the *Plan* that should receive priority attention, with suggestions from Conference committees (JCUS-SEP 2010, pp. 5-6).

At its February 2023 meeting, the Executive Committee considered suggestions from Conference committees regarding which strategies and goals should receive priority attention in the next two years. After reviewing the suggestions, the Executive Committee added one new goal (Goal 3.1c) and affirmed eleven strategies and one goal previously identified, to establish the following thirteen priorities for the next two years:

Strategy 1.1	Pursue improvements in the delivery of fair and impartial justice on a nationwide basis.
Strategy 1.2	Secure resources that are sufficient to enable the judiciary to accomplish its mission in a manner consistent with judiciary core values.
Strategy 1.3	Strengthen the protection of judges, court employees, and the public at court facilities, and of judges and their families at other locations.
Strategy 2.1	Assure high standards of conduct and integrity for judges and employees.
Strategy 2.4	Encourage involvement in civics education activities by judges and judiciary employees.
Strategy 3.1	Allocate and manage resources more efficiently and effectively.
Goal 3.1c	Manage the judiciary's infrastructure in a manner that supports effective and efficient operations, and provides for a safe and secure environment.

Strategy 4.1	Recruit, develop, and retain a talented, dedicated, and diverse workforce, while defining the judiciary's future workforce requirements.
Strategy 4.3	Ensure an exemplary workplace free from discrimination, harassment, retaliation, and abusive conduct.
Strategy 5.1	Harness the potential of technology to identify and meet the needs of judiciary users for information, service, and access to the courts.
Goal 5.1d	Continuously improve security practices to ensure the confidentiality, integrity, and availability of judiciary-related records and information. In addition, raise awareness of the threat of cyberattacks and improve defenses to secure the integrity of judiciary IT systems.
Strategy 6.3	Promote effective administration of the criminal defense function in the federal courts.
Strategy 7.1	Develop and implement a comprehensive approach to enhancing relations between the judiciary and Congress.

The Executive Committee determined that committees should pay particular attention to the above priorities and give special consideration to Strategies 3.1 and 5.1 when setting the agendas for future committee meetings and determining which actions and initiatives to pursue, and that Committees should consider these priorities when assessing the impact of potential policy recommendations, resource allocation decisions, and cost-containment measures.

Consistent with the approach to planning approved by the Judicial Conference in September 2010, efforts to pursue the strategies and goals in the updated *Plan* will be led by the committees of the Judicial Conference, with facilitation and coordination by the Executive Committee. The primary means for integrating the *Plan* into committee planning and policy activities is through the development and implementation of committee strategic initiatives: projects, studies, or other efforts that have the potential to make significant contributions to the accomplishment of a strategy or goal in the *Plan*. Committees are encouraged to demonstrate the link between their respective initiatives and one or more of the above planning priorities identified by the Executive Committee. Strategic initiatives are intended to be distinct from the ongoing work of committees, for which there are already a number of reporting mechanisms, including committee reports to the Judicial Conference.

Discussion

Report On Strategic Initiatives

The Judiciary Planning Coordinator has asked that the Committee provide a report on the implementation of its strategic initiatives following the Committee's summer 2023 meeting. The Committee should review current efforts relating to planning priorities and consider whether any additional projects, studies, or other activities should be reported as strategic initiatives supporting the implementation of the *Plan*. Included as an Attachment is a draft report briefly describing each of the Committee's strategic initiatives under the following headings: the purpose; desired outcome; related strategies and goals in the *Plan*; whether the initiative is being conducted in partnership with other Judicial Conference committees or other groups; schedule; assessment approach; and results. It is anticipated that the Committee also will be asked to report on the progress of the Committee's strategic initiatives during the summers of 2024 and 2025.

The Committee is asked to consider the strategic initiatives included in the draft report in the Attachment and determine whether to approve the report.

> **Recommendation:** That the Committee approve the report on its strategic initiatives as set forth in the Attachment.

Long-Range Planning Meetings

Since 1999, the approach to strategic planning for the Judicial Conference and its committees has relied upon the leadership of committee chairs, with facilitation and coordination by the Executive Committee.[1] On the afternoon before most Judicial Conference sessions, a long-range planning meeting is held to discuss selected strategic planning issues and the judiciary's strategic planning efforts. A particular emphasis is placed on topics that cross areas of committee jurisdiction and responsibility. Participants in long-range planning meetings include the chairs of Conference committees, members of the Executive Committee, the Director of the Administrative Office, and the Director of the Federal Judicial Center.

For the upcoming September 2023 long-range planning meeting, Chief Judge Coogler has proposed a continuation of the discussion on remote access to court proceedings, along with updates on the Strategic Budget Initiative. Suggestions for additional discussion topics for the September and future long-range planning meetings are welcomed and encouraged.

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[1] *The Judicial Conference and its Committees*, August 2013, pp. 5-6.

Committee on Rules of Practice and Procedure
Brief Report on Strategic Initiatives

The integration of the *Strategic Plan for the Federal Judiciary (Plan)* into Conference committees' regular planning and policy development activities has primarily been achieved by committees through the development and implementation of strategic initiatives. As requested, this brief report provides the following information about the active strategic initiatives for this Committee: the purpose; desired outcome; related strategies and goals in the *Plan*; whether the initiative is being conducted in partnership with other Judicial Conference committees or other groups; schedule; assessment approach; and results.

Initiative 1. Evaluating the Rules Governing Disclosure Obligations in Criminal Cases.

Purpose	The Criminal Rules Committee recently amended Federal Rule of Criminal Procedure 16 (Discovery and Inspection) to clarify the scope and timing of the parties' obligations to disclose expert testimony they intend to present at trial, while maintaining the reciprocal structure of the current rule.
Desired Outcome	The amendment is intended to facilitate trial preparation, allowing the parties a fair opportunity to prepare to cross-examine expert witnesses and secure opposing expert testimony if needed.
Related Strategies/Goals	This initiative relates to Strategy 1.1.
Partnerships	No other committees are involved in this initiative.
Timeframe	The amended rule was effective December 1, 2022.
Assessment Approach or Methodology	Success of the initiative is assessed by carrying on a continuous study of the operation and effect of the rules of practice and procedure as required by statute. *See* 28 U.S.C. § 331.
Assessment	N/A

Initiative 2. Evaluating the Impact of Technological Advances.

Purpose	The e-signature rules were updated in 2018 and the Rules Committees continue to evaluate the effects of technology on court procedures and how to use technology most effectively.
Desired Outcome	For the past several years, a working group of the Rules Committees chaired by the Standing Committee Reporter has been considering a suggestion to expand the use of electronic filing by unrepresented litigants.
Related Strategies/Goals	This initiative relates to Strategy 5.1.
Partnerships	At the request of the working group, the Federal Judicial Center (FJC) interviewed personnel in courts that currently allow and actively encourage electronic filing by unrepresented litigants. The Standing Committee Reporter updated each of the Advisory Committees about this

	ongoing work at the spring 2023 meetings. No other committees are involved in this initiative.
Timeframe	No specific rule amendments are under consideration at this time.
Assessment Approach or Methodology	Success of the initiative is assessed by carrying on a continuous study of the operation and effect of the rules of practice and procedure as required by statute. *See* 28 U.S.C. § 331.
Assessment	N/A

Initiative 3. Bankruptcy Rules Restyling.

Purpose	The Bankruptcy Rules Committee has undertaken a multi-year process of restyling the bankruptcy rules to make them more user-friendly.
Desired Outcome	In each of August 2020, 2021, and 2022, approximately one third of the bankruptcy rules were restyled and published for public comment. The process is now complete and the entire set of restyled Bankruptcy Rules is before the Standing Rules Committee with a recommendation for final approval.
Related Strategies/Goals	This initiative relates to Strategy 1.1.
Partnerships	No other committees are involved in this initiative.
Timeframe	If all subsequent recommendations for final approval occur in the ordinary course, the Restyled Bankruptcy Rules would become effective December 1, 2024.
Assessment Approach or Methodology	Success of the initiative is assessed by carrying on a continuous study of the operation and effect of the rules of practice and procedure as required by statute. *See* 28 U.S.C. § 331.
Assessment	N/A

Initiative 4. Examining Ways to Reduce Cost and Increase Efficiency in Civil Litigation.

Purpose	The Civil Rules Committee completed a pilot project on mandatory initial disclosures.
Desired Outcome	Reduce cost and increase efficiency in civil litigation.
Related Strategies/Goals	This initiative relates to Strategy 1.1.
Partnerships	A report on the project was prepared by the FJC in October 2022. No other committees are involved in this initiative.
Timeframe	The committee will consider the FJC's report and determine whether the results of the pilot project support broader changes and will continue to evaluate ways to reduce costs, increase efficiency, and improve the delivery of justice in civil cases.
Assessment	Success of the initiative is assessed by carrying on a continuous study of

Approach or Methodology	the operation and effect of the rules of practice and procedure as required by statute. *See* 28 U.S.C. § 331.
Assessment	N/A

Initiative 5. Consideration of Possible Emergency Rules in Response to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Purpose	In 2020, Congress directed the Judicial Conference and the Supreme Court to consider possible rule amendments that could ameliorate future national emergencies' effects on court operations in light of the COVID pandemic (see CARES Act, Pub. L. No. 116-136, § 15002(b)(6)).
Desired Outcome	The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules subsequently recommended, and the Standing Committee approved, publication for comment of rules for future emergencies.
Related Strategies/Goals	This initiative relates to Strategy 5.1.
Partnerships	No other committees are involved in this initiative.
Timeframe	The rules have been approved by the Supreme Court and have been transmitted to Congress. If Congress takes no contrary action, the emergency rules will go into effect December 1, 2023.
Assessment Approach or Methodology	Success of the initiative is assessed by carrying on a continuous study of the operation and effect of the rules of practice and procedure as required by statute. *See* 28 U.S.C. § 331.
Assessment	N/A