Agenda E-19 (Summary)
Rules
September 2012

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

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

1. Approve the proposed amendments to Appellate Rules 13, 14, 24, 28, and 28.1, and to Form 4, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.. . . . . pp. 2-5

2. a. Approve the proposed amendments to Bankruptcy Rules 1007(b)(7), 4004(c)(1), 5009(b), 9006(d), 9013, and 9014, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and

   b. Approve the proposed revisions of Official Bankruptcy Forms 7, 9A–9I, 10, and 21, to take effect on December 1, 2012. . . . . pp. 7-11

3. Approve the proposed amendments to Civil Rules 37 and 45, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.. . . . . pp. 19-24

4. Approve the proposed amendment to Criminal Rule 11, and transmit it to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law. . . . . pp. 26-29

5. Approve the proposed amendment to Evidence Rule 803(10), and transmit it to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.. . . . . pp. 33-35

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

Agenda E-19
Rules
September 2012

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 (the "Committee") met on June 11, 2012. All members attended, except ex officio member Deputy Attorney General James M. Cole.

Representing the advisory rules committees were: Judge Jeffrey S. Sutton, Chair, and Professor Catherine T. Struve, Reporter, of the Advisory Committee on Appellate Rules; Judge Eugene R. Wedoff, Chair, Professor S. Elizabeth Gibson, Reporter, and Professor Troy A. McKenzie, Associate Reporter, of the Advisory Committee on Bankruptcy Rules; Judge David G. Campbell, Chair, Professor Edward H. Cooper, Reporter, and Professor Richard L. Marcus, Associate Reporter, of the Advisory Committee on Civil Rules; Judge Reena Raggi, Chair, and Professor Sara Sun Beale, Reporter, of the Advisory Committee on Criminal Rules; Judge Sidney A. Fitzwater, Chair, and Professor Daniel J. Capra, Reporter, of the Advisory Committee on Evidence Rules.

Participating in the meeting were Professor Daniel R. Coquillette, the Committee's Reporter; Peter G. McCabe, the Committee's Secretary; Professor Geoffrey C. Hazard, Jr., Professor R. Joseph Kimble, and Joseph F. Spaniol, Jr., consultants to the Committee; Jonathan C. Rose, Chief of the Administrative Office's Rules Committee Support Office; Benjamin J.

Robinson, Counsel and Deputy Chief of the Rules Committee Support Office; Julie Wilson, Attorney Advisor in the Rules Committee Support Office; Andrea L. Kuperman, Chief Counsel to the Rules Committees; James H. Wannamaker III, Senior Attorney in the Administrative Office's Bankruptcy Judges Division; Bridget M. Healy, Attorney Advisor in the Bankruptcy Judges Division; Holly T. Sellers, Attorney Advisor in the Administrative Office's Office of Judges Programs; Julie G. Yap, Supreme Court Fellow; and Judge Jeremy D. Fogel, Director, and Dr. Joe Cecil, Senior Research Associate, of the Federal Judicial Center. Elizabeth J. Shapiro, Ted Hirt, J. Christopher Kohn, H. Thomas Byron III, and Kathleen A. Felton attended on behalf of the Department of Justice.

FEDERAL RULES OF APPELLATE PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules submitted proposed amendments to Rules 13, 14, 24, 28, and 28.1, and to Form 4, with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench, bar, and public for comment in August 2011.

Rules 13, 14, and 24

The proposed amendments to Rules 13, 14, and 24 concern appeals from the United States Tax Court. The proposed amendments to Rules 13 and 14 revise those rules to address permissive interlocutory appeals from the Tax Court under 26 U.S.C. § 7482(a)(2). The advisory committee developed the proposals in consultation with the Tax Court and the Tax Division of the Department of Justice. The proposed amendment to Rule 24 more accurately reflects the status of the Tax Court as a court. No comments were received and the advisory committee recommended approval of the proposed amendments to Rules 13, 14, and 24, as published.

Rules 28 and 28.1

The proposed amendment to Rule 28 revises Rule 28(a)'s list of the required contents of an appellant's brief by removing the requirement of separate statements of the case and of the facts. Current Rule 28(a)(6) requires "a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below." Current Rule 28(a)(7) requires "a statement of facts." Rule 28(a) further requires these items to appear "in the order indicated." The proposed amendment to Rule 28(a) consolidates subdivisions (a)(6) and (a)(7) into a new subdivision (a)(6) that provides for one "statement of the case." It allows a lawyer to present the factual and procedural history of a case chronologically, but also provides flexibility to depart from chronological ordering. Conforming changes renumber Rules 28(a)(8) through (11) as Rules 28(a)(7) through (10), revise Rule 28(b)'s discussion of the appellee's brief, and revise Rule 28.1's discussion of briefing on cross-appeals.

Six sets of comments were received, four of which supported the proposed amendments' goal. Among the supportive comments, two proposed drafting changes to address a concern that deletion of some of the current language of Rule 28(a)(6) could be problematic. The advisory committee carefully reviewed all the comments, including those arguing against the proposed amendments. To address the concerns of the commenters, the advisory committee revised the text of proposed Rule 28(a)(6) and added a new paragraph to the Committee Note.

As published, proposed Rule 28(a)(6) had referred to "a concise statement of the case setting out the facts relevant to the issues submitted for review and identifying the rulings presented for review, with appropriate references to the record (*see* Rule 28(e))." In response to commenters' concerns that this language did not mention procedural history, the advisory committee revised the proposed rule to refer to "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 (*see* Rule 28(e))." The advisory committee added a second paragraph to the proposed Committee Note that describes the contents of the statement of the case and notes the permissibility of including subheadings. The latter point responds to one commenter's concern that judges and clerks need a way to locate quickly, in the brief, a description of the rulings presented for review. The advisory committee also added a reference in the Committee Note to Supreme Court Rule 24.1(g), on which the amended Rule text is loosely modeled. With these changes, the advisory committee recommended approval of the proposed amendments to Rules 28 and 28.1.

Form 4

The proposed amendments to Form 4 concern applications to proceed *in forma pauperis* (IFP) on appeal. Appellate Rule 24 requires a party seeking to proceed IFP in the court of appeals to provide an affidavit that, among other things, "shows in the detail prescribed by Form 4 . . . the party's inability to pay or to give security for fees and costs." (Likewise, a party seeking to proceed IFP in the Supreme Court must use Form 4. *See* Supreme Court Rule 39.1.) Questions 10 and 11 on the current Form 4 have been criticized by commentators for seeking information unnecessary to the IFP determination. Some commentators have suggested that Questions 10 and 11 might in some circumstances seek disclosure of information protected by attorney-client privilege and/or work product immunity. Though research by the advisory committee's reporter suggested that the information solicited is relatively unlikely to be subject to privilege, it may sometimes constitute protected work product. Even if not privileged or protected, the advisory committee determined that the disclosure of some information solicited could disadvantage some IFP litigants and may be requesting information not necessary to the

IFP determination. Accordingly, the proposed amendment replaces Questions 10 and 11 with a new Question 10 that reads: "Have you spent – or will you be spending – any money for expenses or attorney fees in connection with this lawsuit? If yes, how much?"

The proposed amendments also include technical amendments to Form 4, to bring the form into conformity with changes approved by the Judicial Conference in Fall 1997, but (apparently due to an oversight) not subsequently transmitted to Congress.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 13, 14, 24, 28, and 28.1, and to Form 4, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Appellate Procedure are in Appendix A, with an excerpt from the advisory committee report.

Rules Approved for Publication and Comment

The advisory committee submitted proposed amendments to Rule 6 with a request that they be published for comment. Rule 6 concerns appeals to the court of appeals in a bankruptcy case. The proposed amendments update that rule's cross-reference to the Bankruptcy Part VIII Rules; amend Rule 6(b)(2)(A)(ii) to remove an ambiguity dating from the 1998 restyling of the Appellate Rules; add a new Rule 6(c) to address permissive direct appeals from a bankruptcy court under 28 U.S.C. § 158(d)(2); and revise Rule 6 to take account of the range of methods available now or in the future for dealing with the record on appeal. The Committee approved the advisory committee's recommendation to publish the proposed amendments for public comment.

Informational Items

At its Spring 2012 meeting, the advisory committee reached consensus on an approach to a proposal that Rule 29 be amended to treat federally recognized Native American tribes the same as states, allowing them to file amicus briefs as of right and exempting them from Rule 29's authorship-and-funding disclosure requirement. In the end, the advisory committee decided to maintain this item on its agenda and to revisit it in five years. In the meantime, the chair of the advisory committee sent a letter to each of the chief circuit judges reporting on the advisory committee's discussions of this issue.

At its Spring 2012 meeting, the advisory committee discussed a proposal to amend Rule 28(a) to take account of the possibility of including an introduction in a brief. During the discussion, it was noted that, if the proposed amendment to Rule 28(a) is adopted, Rule 28(a)(6) will be sufficiently flexible to permit inclusion of an introduction as part of the statement of the case. It was also suggested that the advisory committee wait and see how practice develops under amended Rule 28(a)(6) before giving further consideration to addressing introductions. Based on this suggestion, the advisory committee removed the item from its present agenda.

The advisory committee is examining several other issues, including a proposal to amend the rules to address redaction and sealing of appellate filings. The issue of sealed filings intersects with past and ongoing discussions in several other Judicial Conference committees. In light of the varying approaches that circuits currently take to sealed filings on appeal, the advisory committee will consider the advisability of adopting a national rule or addressing the matter through alternative means.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Bankruptcy Rules submitted proposed amendments to Rules 1007(b), 4004(c)(1), 5009(b), 9006, 9013, and 9014, and Official Forms 7, 9A-9I, 10, and 21, with a recommendation that they be approved and transmitted to the Judicial Conference. Except as noted below, the proposed changes were circulated to the bench, bar, and public for comment in August 2011. In all, 15 comments were submitted and the advisory committee received testimony telephonically from one interested bar association. The comments and testimony were considered by the appropriate subcommittees and in discussions at the advisory committee's Spring 2012 meeting.

Rules 1007 and 5009

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 conditioned the receipt of a discharge for individual debtors on their completing a personal financial management course, with some exceptions. Rule 1007(b) requires individual debtors to file a statement with the court certifying that they have completed the course. Official Form 23 is prescribed for this purpose. The proposed amendment to Rule 1007(b)(7) would relieve individual debtors of the obligation to file Official Form 23 if the provider of an instructional course concerning personal financial management directly notifies the court that the debtor has completed the course.

The proposed amendment to Rule 5009(b) reflects the proposed amendment of Rule 1007(b)(7). Rule 5009(b) currently requires the clerk to send a warning notice to an individual debtor who has not filed Official Form 23 within 45 days after the first date set for the meeting of creditors. The proposed amendment would require the clerk to send the notice only if

the course provider has not already notified the court of the debtor's completion of the course and the debtor has failed to file the statement in 45 days.

The advisory committee received five comments, three expressing support for the amendments, and two opposing them. The advisory committee carefully considered the comments and concluded that the concerns raised by the negative comments did not justify modifications to the published amendments.

Rule 4004

The proposed amendments to Rule 4004(c)(1) conform to the simultaneous amendment of Rule 1007(b)(7) and to state in more precise language other provisions of subdivision (c)(1). Rule 4004(c)(1)(H) would be amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The other two changes to Rule 4004(c)(1) are clarifications. One makes clear that the circumstances listed in the paragraph prevent the court from entering a discharge. The other specifically states that the prohibition on entering a discharge under subdivision (c)(1)(K) ceases when a presumption of undue hardship expires or the court concludes a hearing on the presumption.

Because the latter amendments would simply state more precisely the existing meaning of the provision and because the first is a conforming amendment, publication for public comment was unnecessary.

Rules 9006, 9013, and 9014

Rule 9006(d) prescribes time limits for the service of written motions and responses. The proposed amendments to this subsection draw attention to the rule's default deadlines for the

service of motions and written responses by amending the title to add a reference to the "time for motion papers." This change is consistent with Civil Rule 6 and should make it easier to find the provision governing motion practice. Rule 9006(d) currently covers only the timing of serving opposing affidavits. The proposed amendments would expand the coverage of subdivision (d) to address the timing of the service of any written response to a motion. The change would make the provision as inclusive as possible to make local motion practice more consistent.

Rule 9013, which addresses the form and service of motions, is amended to provide a cross-reference to the time periods in Rule 9006(d). The amendment also calls greater attention to the default deadlines for motion practice. In addition, stylistic changes are made to Rule 9013 to add greater clarity. Rule 9014, which addresses contested matters in bankruptcy, is similarly amended to provide a cross-reference to the times under Rule 9006(d) for serving motions and responses. No comments were submitted on these amendments.

Official Forms

Official Form 7 (Statement of Financial Affairs) requires debtors to disclose certain payments made to or for the benefit of "insiders." The current version of the form contains a definition of "insider" that differs from the definition in the Bankruptcy Code. The proposed amendment amends the definition in Form 7 to conform to the statutory definition which includes "any persons in control of a corporate debtor." The statutory reference on the form following the definition is also updated to include a pinpoint citation to the definition of insider in the Code. No comments were submitted on the amendment.

Official Forms 9A-9I (Notice of Meeting of Creditors & Deadlines) and 21 (Statement of Social-Security Number(s)) are amended to reduce the risk that a debtor's Social Security number may be inadvertently disclosed publicly in a bankruptcy case. The amendments respond

to a concern of the Committee on Court Administration and Case Management that bankruptcy forms may be mistakenly filed in ways that publicly reveal debtors' private identifying information.

The proposed amendments to Form 9 make clear that a creditor should not attach a copy of the form when filing a proof of claim. Stylistic changes have also been made. Similarly, the proposed amendments add to Form 21 a prominent warning about proper submission of the form, in order to avoid its inadvertent inclusion on the court's public docket. Because the changes to the forms do not alter their function or purpose, publication for public comment was unnecessary.

The proposed amendments to Official Form 10 (Proof of Claim) eliminate a reference to filing a power of attorney with a proof of claim, thereby conforming to Rule 9010(c). The rule generally requires that an agent give evidence of its authority to act on behalf of a creditor in a bankruptcy case by providing a power of attorney. This requirement, however, does not apply when an agent files a proof of claim. The amendment removes from the signature box of Form 10 the instruction that an authorized agent "attach copy of power of attorney, if any."

The proposed amendments also include in Line 7 statements that certain required documentation is attached. For claims secured by the debtor's principal residence, the form will state that the Mortgage Proof of Claim Attachment – required as of December 1, 2011 – is being filed with the claim. For claims based on an open-end or revolving consumer credit agreement, the form will state that the information required by Rule 3001(c)(3)(A) – scheduled to take effect on December 1, 2012 – is attached. Because the proposed amendments are technical and conforming amendments, publication for public comment was unnecessary.

The advisory committee recommended that all proposed amendments to the Official Forms go into effect on December 1, 2012.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference–

a. Approve the proposed amendments to Bankruptcy Rules 1007(b)(7), 4004(c)(1), 5009(b), 9006(d), 9013, and 9014, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law; and

b. Approve the proposed revisions of Official Bankruptcy Forms 7, 9A-9I, 10, and 21, to take effect on December 1, 2012.

The proposed amendments to the Federal Rules of Bankruptcy Procedure and Official Forms are in Appendix B, with an excerpt from the advisory committee report.

Rules Approved for Publication and Comment

The advisory committee submitted proposed amendments to Rules 1014, 7004, 7008, 7012, 7016, 8001-8028, 9023, 9024, 9027, and 9033, and Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, and 22C-2, with a request that they be published for comment. The Committee approved the advisory committee's recommendation.

Rule 1014

The proposed amendment to Rule 1014(b) clarifies the proper course of action when bankruptcy petitions involving the same or related debtors are filed in different districts. The current rule provides that, upon motion, the court in which the first-filed petition is pending may determine – in the interest of justice or for the convenience of the parties – the district or districts in which the cases will proceed. Other courts must stay proceedings in later-filed cases until the first court makes its determination, unless that court orders otherwise. Therefore, by default, the later cases are stayed while the venue question is pending before the first court.

The proposed amendment alters this default requirement. It specifies that proceedings in later filed cases are stayed only on order of the court in which the first-filed petition is pending. The change is intended to prevent disruption of the other cases unless there is a judicial determination that a stay of a related case is needed while the first court makes its venue determination. The amendment also clarifies who should receive notice of the hearing on the venue motion by incorporating by reference the entities entitled to notice under Rule 2002(a). In addition, stylistic changes have been made to improve the rule.

Rule 7004

The proposed amendment to Rule 7004(e) shortens the period in which a summons remains valid from 14 days to 7. The change is intended to ensure that a defendant has sufficient time to respond to a complaint in bankruptcy litigation. Under the Bankruptcy Rules, unlike the Civil Rules, the time for a defendant to respond is calculated from the date the summons is issued, rather than when it is served. Although Rule 7012(a) gives a defendant (other than a United States officer or agency) 30 days to answer a complaint, a lengthy delay between issuance and service of a summons may unduly shorten a defendant's time to respond in a bankruptcy proceeding.

Rules 7008, 7012, 7016, 9027, and 9033

The proposed amendments to Rules 7008, 7012, 7016, 9027, and 9033 respond to the Supreme Court's decision in *Stern v. Marshall,* 131 S. Ct. 2594 (2011). In *Stern*, the Court held that a non-Article III bankruptcy judge could not enter final judgment on a debtor's state common law counterclaim brought against a creditor of the bankruptcy estate. Although 28 U.S.C. § 157(b) specifies that counterclaims by the estate against persons filing claims against the estate are "core" proceedings that a bankruptcy judge may hear and determine, the Court

found Congress's assignment of final adjudicatory authority to a bankruptcy judge in the particular proceeding in *Stern* to be unconstitutional.

The Bankruptcy Rules follow the division in 28 U.S.C. § 157(b) between core and non-core proceedings and recognize that a bankruptcy judge's adjudicatory authority is more limited in non-core proceedings than in core proceedings. *Stern* has introduced the possibility, however, that a proceeding defined as core under the statute may nevertheless lie beyond the constitutional power of a bankruptcy judge to adjudicate finally. Accordingly, a proceeding could be "core" as a statutory matter, but "non-core" as a constitutional matter.

The proposed amendments alter the Bankruptcy Rules in three respects. First, the terms core and non-core are removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, parties in all bankruptcy proceedings (including removed actions) are required to state whether they consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, would direct bankruptcy courts to decide the proper treatment of proceedings.

Rules 8001-8028 (Part VIII of the Bankruptcy Rules)

The proposed amendments to Part VIII of the Bankruptcy Rules – the rules governing appeals to district courts and bankruptcy appellate panels – are the product of a multi-year project to: (1) bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedure; (2) incorporate a presumption favoring the electronic transmission, filing, and service of court documents; and (3) adopt a clearer and simpler style.

The advisory committee presented the first half of the Part VIII revision (Rules 8001-8012) for preliminary review at the Committee's January 2012 meeting. At its Spring 2012 meeting, the advisory committee made revisions responsive to the Committee's comments, and

considered the entire draft of revised Part VIII. At the June 2012 meeting, the advisory committee presented to the Committee both additional changes in the first half of the Part VIII revision and the entire second half of the Part VIII revision, not previously presented to the Committee (Rules 8013-8028).

Rules 9023 and 9024

The proposed amendments to Rules 9023 and 9024 add references to the procedure in proposed new Rule 8008 governing indicative rulings. Unlike the Civil and Appellate Rules, the Bankruptcy Rules would have a single rule prescribing the procedure for indicative rulings. Proposed Rule 8008 would govern the issuance of indicative rulings by bankruptcy judges and the corresponding procedures applicable on appeals in district courts and bankruptcy appellate panels.

Official Forms

The advisory committee submitted for publication nine forms which are the initial product of the forms modernization project, a multi-year endeavor of the advisory committee, working in conjunction with the Federal Judicial Center and the Administrative Office. The dual goals of the project are to improve the official bankruptcy forms and to improve the interface between the forms and the latest technology. Working incrementally, the project made a preliminary decision that the debtor forms for individuals and entities other than individuals should be separated, recognizing that individuals are generally less sophisticated than other entities and may not have the assistance of counsel. Publication of the following nine forms and, if adopted, their use, will provide a useful gauge of the effectiveness of the project's approach.

Proposed Official Forms 3A and 3B address payment of the filing fee in an individual's bankruptcy case. Form 3A is the application for paying the filing fee in installments, and Form

3B is the application for waiver of the filing fee in a chapter 7 case. Because these forms are most frequently completed by unrepresented debtors, the advisory committee concluded that the additional clarity would be particularly valuable.

The only changes in proposed Form 3A are stylistic, consistent with the overall approach of the project. Proposed Official Form 3B also has stylistic changes and includes three technical changes. First, Line 1 asks the size of the debtor's family. Because the debtor's dependents are now proposed to be listed in revised Official Form 6J, rather than in Official Form 6I as done presently, the reference to the number of dependents is changed from Schedule I to Schedule J. Second, consistent with the Judicial Conference Interim Procedures For Waiver of Chapter 7 Fees, proposed Official Form 3B specifies that non-cash governmental assistance (such as food stamps or housing subsidies) should not be included in stating the debtor's income level for purposes of determining eligibility for a fee waiver, although it continues to be reported for purposes of determining the debtor's ability to pay the filing fee. Third, the declaration and signature section for a non-attorney bankruptcy petition preparer has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19, which must be completed and signed by the bankruptcy petition preparer, and filed with each document for filing that it prepares.

Official Forms 6I and 6J – usually referred to as Schedules I and J – set out the income and expenses of an individual debtor. In addition to the stylistic changes made as part of the forms modernization project, the revised versions contain several changes intended to provide more accurate and useful information. First, the revisions address the situation of a debtor who lives with and pools assets with other people who are not related to the debtor by blood or marriage. Second, in chapter 13 cases, proposed Schedule J asks for expenses at two different

points – the date that the debtor files bankruptcy (Column A) and the date that a proposed 13 plan is confirmed (Column B). This allows Schedule J to state what the debtor's expenses will be as a result of the confirmed plan, thus facilitating a determination of the plan's feasibility. Finally, a new Line 23 is added to Schedule J, setting out a calculation of the debtor's monthly net income.

Official Forms 22A-1, 22A-2, 22B, 22C-1, and 22C-2 are used in determining a debtor's current monthly income under 11 U.S.C. § 110(10A), and – in chapter 7 and 13 cases – in determining income remaining after deduction of expenses specified in statutes governing those chapters. The forms for chapter 7 and 13 cases are generally referred to as the "means test" forms. In proposed Official Form 22B – the statement of current monthly income in chapter 11 cases filed by individuals – the only changes are stylistic, conforming to the overall forms modernization project approach.

For chapters 7 and 13, however, the proposed means test forms are revised in several additional ways. First, and most significantly, they have been divided into two separate forms: one for income (Official Form 22A-1 in chapter 7, Official Form 22C-1 in chapter 13), and the other for expenses (Official Form 22A-2 in chapter 7, Official Form 22C-2 in chapter 13). Because expense information is only required of debtors whose current monthly income exceeds the applicable state median income, most debtors will not have to complete the expense forms, thereby reducing the volume of the filed forms.

Second, in both the proposed chapter 7 and chapter 13 forms, the deduction for cell phone and internet expenses is modified to reflect more accurately the IRS allowances incorporated by the Bankruptcy Code. Under the applicable IRS "other necessary expense" standard, cell phone and other optional telecommunication services expenses are deductible not only if necessary for

the health and welfare of the debtor and the debtor's dependents, as stated in the current forms, but also if necessary for the production of income if not reimbursed by the debtor's employer or deducted by the debtor in calculating net self-employment income. Proposed Official Form 22A-2 (in Line 23) and Official Form 22C-2 (in Line 19) make this correction. On the other hand, unlike their counterparts in the current forms, these lines do not permit deduction of basic home internet expenses because, under IRS guidelines adopted in 2011, these expenses are included in the Local Standards for housing and utilities.

Third, Line 60 of current Official Form 22C has not been repeated in proposed Official Form 22C-2. It allows debtors to list, but not deduct from income, "Other Necessary Expense" items not included within the categories specified by the IRS. Because debtors are separately allowed to list – and deduct – any expenses arising from special circumstances, former Line 60 was rarely used.

Finally, proposed Form 22C-2 reflects the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). Adopting a forward-looking approach, the Court stated in *Lanning* that calculation of a chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b) requires consideration of changes to income or expenses that, at the time of plan confirmation, have occurred or are virtually certain to occur. The changes could result in either an increased or decreased projected disposable income. Because only debtors whose annualized current monthly income exceeds the applicable median family income have their projected disposable income determined by the information provided on Official Form 22C-2, only these debtors are required to provide the information about changes to income and expenses on that form. Part 3 of proposed Official Form 22C-2 provides for the reporting of those changes.

Informational Items

For the various reasons set out in Appendix B, the advisory committee determined not to seek final approval for four amendments published for public comment in August 2011: Rule 3007(a), and Official Forms 6C, 22A, and 22C.

The advisory committee is currently exploring the adoption of an official form for chapter 13 plans. A survey of the bankruptcy bench established widespread support for a national form, and the advisory committee has established a working group to develop one. The working group has discussed an initial draft and expects to soon have a draft that can be informally circulated for comments. Additionally, in the course of the group's work, it became apparent that the effectiveness of a national chapter 13 form plan would depend, to a large extent, on amendments to the Bankruptcy Rules aimed at harmonizing practice among the local courts and eliminating ambiguity about the extent to which official forms may be modified locally. The working group has drafted several amendments (e.g., governing the need to file proofs of secured claims, establishing shortened filing deadlines, and clarifying procedures for treatment of claims) that the advisory committee will consider in the coming year.

As discussed above, the forms modernization project began its work by revising the forms used in cases of individual debtors. Drafting of revised non-individual forms has begun, and the initial drafts will be tested and modified as necessary before being recommended for publication. The advisory committee expects to recommend adoption of the remaining revised forms for both individual and non-individual cases.

As part of the forms modernization project, the advisory committee is considering the use of electronic signatures. It will continue to examine the issue with the goal of recommending an

amendment to the Bankruptcy Rules that establishes a uniform procedure for electronic signatures across all the rules.

Finally, the advisory committee is planning a mini-conference on the effectiveness of new Official Forms 10 (Attachment A), 10 (Supplement 1), and 10 (Supplement 2), which took effect on December 1, 2011, and were designed to implement the new mortgage claim disclosure requirements in Rules 3001(c) and 3002.1. The mini-conference will be held in conjunction with the advisory committee's fall meeting. Home mortgage servicers and attorneys (or others who are actually filing the documents), consumer debtor attorneys, chapter 13 trustees, bankruptcy judges, and clerks of court will be invited and encouraged to attend.

FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted proposed amendments to Rule 45, the subpoena rule, and a conforming amendment to Rule 37, the rule dealing with failure to cooperate in discovery, with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench, bar, and public for comment in August 2011. Three public hearings were scheduled, but all were cancelled because the two parties who asked to testify opted instead to submit written comments.

The advisory committee received 25 written comments. Its discovery subcommittee met by conference call to consider them and, based on that discussion, suggested some modifications to the proposed amendments. At the advisory committee's Spring 2012 meeting, those modifications were reviewed, and a few topics were identified for additional consideration. A revised Rule 45 package was then circulated to the full advisory committee and received unanimous support. The changes recommended to the Rule 45 package since publication are

minor and are summarized below. The modified version of the amendment package also includes style changes recommended by the Committee's style consultant.

The proposed amendments to Rule 45 result from a multi-year study of subpoena practice culminating in a decision by the advisory committee to adopt the most modest form of rule simplification considered and to adopt some but not all of the specific rule amendments proposed during the study of the rule. Four specific changes are being proposed.

First, the amendments seek to simplify Rule 45 by making the court where an action is pending the issuing court, permitting service throughout the United States (as is currently authorized under Criminal Rule 17(e)), and combining all provisions on the place of compliance into a new Rule 45(c). It preserves the various place-of-compliance provisions of the current rule except its reference to state law. The "*Vioxx* issue" is addressed separately below.

The simplification proposals received broad support in the public commentary, and only one change was made following publication. Proposed Rule 45(c)(2)(A) was changed to call for production "within 100 miles of where the person [subject to the subpoena] resides, is employed, or regularly transacts business in person." This change should ensure that if litigation about a subpoena is necessary it will occur at a location convenient for the nonparty being subpoenaed. Recognizing that agreement on the place of production is desirable, the proposed Committee Note was modified to recognize that the amendments do not limit the ability of parties to make such agreements.

A clarifying amendment to the proposed Committee Note on Rule 45(c) addresses concerns expressed in the comments that the amended rule might be read to require a subpoena for all depositions, even of parties or party officers, directors, or managing agents. The proposed Committee Note was clarified to remind readers that no subpoena is required for depositions of

these witnesses, and that the geographical limitations applicable to subpoenas do not apply when such depositions are simply noticed. Another Committee Note clarification confirms that, when the issuing court has made an order for remote testimony under Rule 43(a), a subpoena may be used to command the distant witness to attend and testify within the geographical limits of Rule 45(c).

Second, the proposed amendments address the transfer of subpoena-related motions. New Rule 45(c) essentially retains the existing rule requirement that motions to quash or enforce a subpoena be made in the district where compliance with the subpoena is required. The result is that the "enforcement court" may often be different from the "issuing court." Existing authority has recognized that some disputes over subpoena enforcement are better decided by the issuing court. The proposed amendments therefore add Rule 45(f), which explicitly authorizes transfer of subpoena-related motions from the enforcement court to the issuing court, including not only motions for a protective order but also motions to enforce the subpoena.

The published draft had permitted transfer only upon consent of the nonparty and the parties, or in "exceptional circumstances." After public comment, the advisory committee concluded that party consent should not be required. If the person subject to the subpoena consents to transfer, the enforcement court may transfer it. Whether the "exceptional circumstances" standard should be retained when the nonparty witness does not consent was the focus of considerable public comment. After considering all of the comments, the advisory committee decided to retain the "exceptional circumstances" standard.

The proposed Committee Note was revised to clarify that the prime concern should be avoiding undue burdens on the local nonparty. It also identifies considerations that might still warrant transfer, emphasizing that those considerations warrant transfer only if they outweigh the

interests of the local nonparty in local resolution of the motion. The proposed Committee Note also suggests that the judge in the compliance court might consult with the judge in the issuing court, and encourages the use of telecommunications to minimize the burden on the nonparty when transfer does occur.

Third, the proposed amendments resolve conflicting interpretations of the current rule as to whether a party or party officer can be compelled by subpoena to travel more than 100 miles to attend trial. One interpretation is that the geographical limits applicable to other witnesses do not apply to a party or party officer. *See In re Vioxx Products Liability Litigation*, 438 F. Supp. 2d 664 (E.D. La. 2006) (requiring an officer of the defendant corporation, who lived and worked in New Jersey, to testify at trial in New Orleans even though he was not served within Louisiana under Rule 45(b)(2)). The alternative interpretation is that the rule sets forth the same geographical limits for all trial witnesses. *See Johnson v. Big Lots Stores, Inc.*, 251 F.R.D. 213 (E.D. La. 2008) (holding that opt-in plaintiffs in Fair Labor Standards Act action could not be compelled to travel long distances from outside the state to attend trial because they were not served with subpoenas within the state as required by Rule 45(b)(2)).

The division in the caselaw resulted from differing interpretations of the 1991 amendments to Rule 45. The advisory committee concluded that those amendments were not intended to create the expanded subpoena power recognized in the *Vioxx* line of cases, and it decided to restore the original meaning of the rule. The proposed new amendments therefore provide in Rule 45(c)(1) that a subpoena may command any person to testify only within the limits that apply to all witnesses. As noted above, proposed Committee Note language was added to recognize that this provision does not affect existing law on the location for a deposition of a party or party's officer, director, or managing agent, for which a subpoena is not needed.

Finally, the 1991 amendments introduced the "documents only" subpoena, and added a requirement in Rule 45(b)(1) that each party be given notice of a subpoena that requires document production. In the 2007 restyling of the Civil Rules, the rule was clarified to direct that notice be provided before service of the subpoena, but experience has shown that many lawyers do not comply with the notice requirement. Therefore, the proposed amendments move the notice provision to a more prominent position, and also require that the notice include a copy of the subpoena. As published for public comment, the preliminary draft proposed to extend the notice requirement to trial subpoenas by removing the phrase "before trial" from the rule.

The effort to call attention to the notice requirement was supported during the public comment period. The Department of Justice was concerned, however, that removal of the phrase "before trial" from the rule could complicate its efforts (and the efforts of other judgment creditors) to locate assets subject to seizure pursuant to judgments. For the Department, those judgments include restitution in favor of crime victims. Giving advance notice in those situations could frustrate enforcement of judgments or make it considerably more cumbersome.

At the same time, it appeared that the value of notice of trial subpoenas (the concern that led to the proposal for removal of the phrase in the first place) was limited or nonexistent because usually the pertinent documents would be listed in the Rule 26(a)(3) disclosures or otherwise identified during pretrial preparations. Indeed, the parties may often cooperate to subpoena needed exhibits for trial. After considering alternatives, the advisory committee decided to restore the phrase "before trial" to the rule.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendments to Civil Rules 37 and 45, and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendments to the Federal Rules of Civil Procedure are in Appendix C, with an excerpt from the advisory committee report.

Informational Items

The advisory committee's discovery subcommittee continues its study of issues relating to preservation of electronically stored information and sanctions for failure to preserve material. The project was prompted by presentations and discussions at the advisory committee's May 2010 Conference on Civil Litigation held at Duke University School of Law. Since the Duke Conference, the subcommittee has held numerous conference calls and some meetings, and the full advisory committee has discussed the resulting issues at four meetings, most recently at its Spring 2012 meeting. At the advisory committee's request, the Federal Judicial Center conducted research on the frequency and nature of sanctions litigation. The results of this research were presented to the advisory committee during its Spring 2011 meeting. As previously reported, in September 2011, the subcommittee held a well-attended and very informative mini-conference about these issues with approximately two dozen judges, practicing lawyers, technical experts, and academics.

The subcommittee's work has identified some possible rule amendment efforts as more promising than others. But it has also revealed intense disagreement as to whether any rule amendments are warranted, and almost as much disagreement about what those amendments should be. In addition, the subcommittee is not the only body studying these issues. For example, on December 13, 2011, the Subcommittee on the Constitution of the House Judiciary

Committee held a hearing regarding "The Costs and Burdens of Civil Discovery" that included much discussion of e-discovery issues.

In short, much has been happening that bears generally on this topic. Over time, the discovery subcommittee's work has evolved. It focused initially on three alternative formulations of rule responses. The first two directly addressed preservation obligations. The third focused only on Rule 37, and sought to ensure uniformity and constraint in the imposition of sanctions for failure to preserve. In reaching this point, the subcommittee has encountered one basic question that has yet to be answered with confidence: whether potential rule amendments should be focused solely on electronically stored information or apply to all discoverable information. The full advisory committee discussed this question during its Spring 2012 meeting and the question has not been finally resolved. In sum, there is very active and ongoing work, but some uncertainty about where that work will ultimately lead.

A subcommittee formed after the 2010 Duke Conference is continuing to implement and oversee further work on ideas resulting from that conference. In addition to the ongoing efforts described in the Committee's January 2011 report to the Judicial Conference, the subcommittee is considering a package of various potential rules amendments aimed at reducing the costs and delay in civil litigation. The initial drafts were presented to the full advisory committee at its Spring 2012 meeting and received a very favorable response. After the drafts are refined, the subcommittee plans to convene a mini-conference in the fall to elicit the views of judges, experienced lawyers, and academics.

The advisory committee continues to pay close attention to evolving pleading practices following the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

It appears that there is no urgent need for a rules response. Much remains to be learned about what pleading standards will be when practices are better settled.

In recent years, Rule 84 has been thrust into the spotlight by the seeming incongruity between many of the illlustrative pleading forms and current pleading standards. A subcommittee made up of representatives from the advisory committees determined that, for various reasons, there is no apparent reason to establish uniform approaches to illustrative forms across the different advisory committees. The Advisory Committee on Civil Rules then created a Rule 84 subcommittee to carry forward consideration of the illustrative civil forms. All possible approaches remain open and will be considered, including abrogating Rule 84 completely, reducing the number of illustrative forms, or removing the civil forms from the Rules Enabling Act process and turning over the development of forms to the Administrative Office. An initial task will be to seek information about actual use of the Rule 84 Forms and report to the advisory committee at its Fall 2012 meeting.

The advisory committee created a Rule 23 subcommittee last November to begin studying current trends in class action practice. The Rule 23 project is in its preliminary stage, with the subcommittee considering whether Rule 23 should be taken up for consideration.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted a proposed amendment to Rule 11, with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was circulated to the bench, bar, and public for comment in August 2011.

The proposed amendment expands the colloquy under Rule 11 to require advising a defendant of possible immigration consequences when a judge accepts a guilty plea. The

amendment was undertaken in light of the Supreme Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), which held that a defense attorney's failure to advise the defendant concerning the risk of removal fell below the objective standard of reasonable professional assistance guaranteed by the Sixth Amendment. In light of *Padilla*, the advisory committee concluded that a judicial warning regarding possible immigration consequences should be required as a uniform practice at the plea allocution.

In the advisory committee's initial deliberations, a minority of members opposed the amendment on the grounds that it was unwise and unnecessary to add further requirements to the already lengthy plea colloquy now required under Rule 11. A majority of the advisory committee concluded, however, that deportation is qualitatively different from the other collateral consequences that may follow from a guilty plea, and it therefore warrants inclusion on the list of matters that must be discussed during a plea colloquy. Although *Padilla* speaks only to the duty of defense counsel to warn a defendant about immigration consequences, the Supreme Court's recognition of the distinctive nature of those consequences also supports requiring a judicial warning. The warning would be consistent with the practice of the Department of Justice, which now advises prosecutors to include a discussion of those consequences in plea agreements.

The proposed amendment mandates a generic warning rather than specific advice concerning the defendant's individual situation. The advisory committee concluded that the most effective and efficient method of conveying this information is to provide it to every defendant, without first attempting to determine the defendant's citizenship. In drafting its proposal, the advisory committee was cognizant of the complexity of immigration law, which likely will be subject to legislative changes. Accordingly, its proposal uses non-technical language designed to

be understood by lay persons and will avoid the need to amend the rule further if there are legislative changes.

Six written comments were received. Only one disagreed with the decision to add advice concerning possible immigration consequences to the plea colloquy. After publication and receipt of written comments, both the Rule 11 subcommittee and the advisory committee reconsidered the foundational question of whether Rule 11 should be amended to require advice concerning immigration consequences in all plea colloquies. Members considered prior concerns about lengthening the plea colloquy, as well as the argument that not all defendants are aliens and the notion that conscientious judges do not need a rule to require them to give warnings in appropriate cases.

After hearing the report of its Rule 11 subcommittee and full discussion, the advisory committee reiterated its support for adding immigration consequences to the plea colloquy. A majority of the advisory committee agreed that the immigration consequences covered by the proposed amendment–removal from the U.S. and denial of citizenship and reentry–are qualitatively different from other collateral consequences, and warrant inclusion in the plea colloquy. As the Supreme Court noted in *Padilla*, "deportation is an integral part–indeed, sometimes the most important part–of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." 130 S. Ct. at 1480 (footnote omitted). Although the Court's decision does not require the proposed amendment, it does provide an appropriate basis for distinguishing advice concerning immigration consequences from other collateral consequences.

The advisory committee accepted the Rule 11 subcommittee's recommendation to make several small modifications in the proposed Committee Note to address concerns raised in the

public comments. The changes emphasize that the court should provide only a general statement that there may be immigration consequences of conviction, and not seek to give specific advice concerning a defendant's individual situation. With these changes, the advisory committee recommended approval of the proposed amendment to Rule 11.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendment to Criminal Rule 11, and transmit it to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendment to Federal Rule of Criminal Procedure 11 is in Appendix D, with an excerpt from the advisory committee report.

Rules Approved for Publication and Comment

The advisory committee on Criminal Rules submitted proposed amendments to Rules 5(d) and 58, with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench, bar, and public for comment in August 2010. Following publication, the proposed amendments were approved by the Committee and the Judicial Conference in 2011, and subsequently transmitted to the Supreme Court.

The amendments submitted to the Court included not only a change to Rule 5(d) providing for consular notice, but also a change to Rule 5(c) to clarify where an initial appearance should take place for persons who have been surrendered to the United States pursuant to an extradition treaty. In April 2012, the Court approved and transmitted to Congress only the proposed amendment to Rule 5(c). It then recommitted the amendments to the advisory committee for further consideration. As discussed below, the Committee voted to republish the proposed amendments for public comment.

The proposed parallel amendments to Rules 5(d) and 58(b) are designed to help ensure that the United States fulfills its international obligations under both Article 36 of the Vienna Convention on Consular Relations and bilateral treaties. The Vienna Convention is a multilateral treaty that sets forth basic obligations that a country has towards foreign nationals arrested within its jurisdiction. In order to facilitate the provision of consular assistance, Article 36 provides that detained foreign nationals must be advised of the opportunity to contact the consulate of their home country. Additionally, many bilateral agreements also require consular notification.

There has been substantial litigation over the manner in which Article 36 is to be implemented, whether the Vienna Convention creates rights that may be invoked by individuals in a judicial proceeding, and whether any possible remedy exists for defendants not appropriately notified of possible consular access at an early stage of a criminal prosecution. In *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006), the Supreme Court rejected a claim that suppression of evidence was an appropriate remedy for failure to inform a non-citizen defendant of his ability to have the consulate from his country of nationality notified of his arrest and detention. In that decision, the Court did not rule on the preliminary question of whether the Vienna Convention creates an individual right, holding that regardless of the answer to that question, suppression of evidence is not an appropriate remedy for any violation.

Notwithstanding the Justice Department's position that the Vienna Convention does not create an enforceable individual right, the executive branch has created policies and taken substantial measures to ensure that the United States fulfills its international obligations to other signatory states with regard to the Article 36 consular provisions. In addition, the Assistant Attorney General for the Criminal Division (who originally proposed the amendments) urged that, in addition to the measures already taken by the Departments of Justice and State, Rules 5

and 58 should be amended "to provide an additional assurance that the Vienna Convention obligations are satisfied." He characterized the proposed amendments as "responsible procedural means for further fulfilling the obligations of the United States under the Convention, without stepping into important questions of substantive rights that the Court has reserved for a later day."

At its April 2012 meeting, the advisory committee discussed the Supreme Court's return of the amendments and possible concerns that the proposed rules could be construed to: (1) intrude on executive discretion in conducting foreign affairs both generally and specifically as it pertains to deciding how to carry out treaty obligations; and (2) confer on persons other than the sovereign signatories to treaties, specifically criminal defendants, rights to demand compliance with treaty provisions. At that meeting, representatives of the Department of Justice informed the advisory committee that they had conferred with counterparts at the Department of State, and the two departments jointly proposed some changes to the proposed rule amendments to alleviate these concerns.

After extended discussion, the advisory committee concluded that Rules 5(d) and 58 should be amended to address the questions of consular notification, but that the amendments should be redrafted. Subsequent revisions to the text were unanimously approved. As now amended, the proposed rules require the court to inform non-citizen defendants at their initial appearance that: (1) they may request that a consular officer from their country of nationality be notified of their arrest; and (2) in some cases international treaties and agreements require consular notification without a defendant's request. The proposed rules do not, however, address whether treaty provisions requiring consular notification may be invoked by individual defendants in a judicial proceeding and what, if any, remedy may exist for a violation of Article

36 of the Vienna Convention. More particularly, the proposed rules alone do not create any such rights or remedies.

Informational Items

Proposed amendments to Rule 12, the rule addressing pleadings and pretrial motions in criminal proceedings, and conforming amendments to Rule 34, arresting judgment, were published for public comment in August 2011. The amendments clarify which motions must be raised before trial and the consequences if motions are not timely filed. After receiving numerous comments, including detailed objections and suggestions from various bar organizations, the advisory committee's reporters prepared an extensive memorandum analyzing the comments and discussing possible changes in the amendments as published. The Rule 12 subcommittee convened to discuss the comments at the advisory committee's Spring 2012 meeting. The subcommittee expects to complete its work over the summer and will present its recommendation at the advisory committee's Fall 2012 meeting.

At the Committee's last meeting, the advisory committee informed the Committee that it was analyzing a proposal from the Attorney General to amend Rule 6(e) regarding grand jury secrecy to authorize the disclosure of historically significant grand jury materials after a suitable period of years, subject to various limitations and procedural protections.

A Rule 6 subcommittee was formed and held two lengthy teleconferences to discuss the Attorney General's proposal, and it reviewed written and oral comments received as well as a research memorandum prepared by the advisory committee's reporters. At the close of the second teleconference, all members of the subcommittee other than those representing the Department of Justice voted to recommend that the advisory committee not pursue the proposed amendment.

After a report from the subcommittee, discussion among the full advisory committee revealed consensus that in the rare cases where disclosure of historically significant materials were sought, district judges had reasonably resolved applications by reference to their inherent authority, and that it would be premature to set out standards for the release of historical grand jury materials in a national rule. Accordingly, the advisory committee decided not to proceed with the Attorney General's proposal.

Finally, on June 6, 2012, the Senate Judiciary Committee held a hearing to examine whether a need exists for legislative action on the issue of discovery reform in federal criminal cases. This was the second hearing held on the subject and focused on the reports of investigations of the prosecution of former Senator Ted Stevens and legislation introduced by Senator Lisa Murkowski. Before the hearing, Senator Patrick J. Leahy requested that the Judicial Conference submit written testimony detailing its work on the subject of disclosure obligations. The Conference declined to submit written testimony; however, on behalf of the Secretary of the Judicial Conference and the Committee's chair, the chair of the advisory committee submitted a letter and a lengthy attachment detailing the advisory committee's past work on Rule 16.

FEDERAL RULES OF EVIDENCE

Rule Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules submitted a proposed amendment to Rule 803(10), with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was circulated to the bench, bar, and public for comment in August 2011. Scheduled public hearings on the amendment were canceled because no one asked to testify.

The proposed amendment revises the hearsay exception for the absence of a public record or entry to avoid a constitutional infirmity in the current rule in light of the Supreme Court's decision in *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009). Rule 803(10) currently allows the government to prove in a criminal case, through the introduction of a certificate, that a public record does not exist. Under *Melendez-Diaz*, the certificate would often be "testimonial" within the meaning of the Confrontation Clause, as construed by *Crawford v. Washington*, 541 U.S. 36 (2004). Therefore, the admission of certificates (in lieu of testimony) violates the accused's right of confrontation. The proposed amendment to Rule 803(10) addresses the Confrontation Clause problem in the current rule by adding a "notice-and-demand" procedure.

In *Melendez-Diaz*, the Court stated that the use of a notice-and-demand procedure (and the defendant's failure to demand production under that procedure) would cure an otherwise unconstitutional use of testimonial certificates. As amended, Rule 803(10) would permit a prosecutor who intends to offer a certification to provide written notice of that intent at least 14 days before trial. If the defendant does not object in writing within seven days of receiving the notice, the prosecutor would be permitted to introduce a certification that a diligent search failed to disclose a public record or statement and would not have to produce a witness to so testify. The amended rule would allow the court to set a different time for the notice or the objection. After considering the two public comments it received, the advisory committee recommended approval of the proposed amendment as published.

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference approve the proposed amendment to Evidence Rule 803(10), and transmit it to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

The proposed amendment to Federal Rules of Evidence 803(10) is in Appendix E, with an excerpt from the advisory committee report.

Rules Approved for Publication and Comment

The Advisory Committee on Evidence Rules submitted proposed amendments to Rules 801(d)(1)(B) and 803(6)-(8), with a request that they be published for comment. The Committee approved the advisory committee's recommendation to publish the proposed amendments for public comment.

Rule 801(d)(1)(B)

Rule 801(d)(1)(B) is the hearsay exemption for certain prior consistent statements. It would be amended to provide that prior consistent statements are admissible under the hearsay exemption whenever admissible to rehabilitate the witness's credibility. Under the current rule, some prior consistent statements offered to rehabilitate a witness's credibility – specifically, those that rebut a charge of recent fabrication or improper influence or motive – are also admissible substantively under the hearsay exemption. In contrast, other rehabilitative statements – such as those that explain a prior inconsistency or rebut a charge of faulty recollection – are admissible only for rehabilitation but not substantively. There are two basic practical problems in distinguishing between substantive and credibility use as applied to prior consistent statements. First, the necessary jury instruction is almost impossible for jurors to follow. The prior consistent statement is of little or no use for credibility unless the jury believes it to be true. Second, and for similar reasons, the distinction between substantive and impeachment use of prior consistent statements has little, if any, practical effect. The proponent has already presented the witness's trial testimony, so the prior consistent statement ordinarily adds no real substantive effect to the proponent's case.

At its Spring 2011 meeting, the advisory committee unanimously agreed that the current distinction between substantive and impeachment use of prior consistent statements is impossible for jurors to follow. But some members were concerned that any expansion of the hearsay exemption to cover all prior consistent statements admissible for rehabilitation might be taken as a signal that the rules are taking a more liberal attitude toward admitting prior consistent statements generally. The advisory committee resolved to consider the amendment further and to seek the input of federal public defenders, the Department of Justice, and state court judges on the merits of amending Rule 801(d)(1)(B). Before the Fall 2011 meeting, the Department of Justice submitted a letter favoring the amendment, and the federal public defenders submitted a letter opposing the amendment.

At its Fall 2011 meeting, the advisory committee again considered the proposed amendment and resolved to seek further input. Its reporter worked with the Federal Judicial Center to prepare a survey of district judges on the need for and merits of the proposed amendment. The proposal was also shared with the ABA Litigation Section, the American College of Trial Lawyers, the National Association of Criminal Defense Lawyers, and other interested groups.

At its Spring 2012 meeting, the advisory committee voted unanimously, with one member abstaining, to approve an amendment to Rule 801(d)(1)(B) and to recommend to the Committee that it be released for public comment. The advisory committee approved a draft retaining the phrase "motive to fabricate," language familiar and comfortable to judges and practitioners. It also fortified the proposed Committee Note to emphasize that the amended rule is not to be used to expand the admissibility of prior consistent statements or to allow the admission of cumulative consistent statements.

Rules 803(6)-(8)

The recent restyling project uncovered an ambiguity in Rules 803(6)-(8) – the hearsay exceptions for business records, absence of business records, and public records. The exceptions originally set out admissibility requirements and then provided that a record that met these requirements, although hearsay, was admissible "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." The rules did not specifically state which party had the burden of showing trustworthiness or untrustworthiness.

The restyling project initially sought to clarify this ambiguity by providing that a record that fit the other admissibility requirements would satisfy the exception if "the opponent does not show that" the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. But the proposal did not go forward as part of restyling because research into the case law indicated that the change would be substantive. Most courts impose the burden of proving untrustworthiness on the opponent, but a few require the proponent to prove that a record is trustworthy. Because the proposal would have changed the law in at least one court, it was deemed substantive and therefore outside the scope of the restyling project.

When the Committee approved the restyled Evidence Rules, several members suggested that the advisory committee consider making the minor substantive change to clarify that the opponent has the burden of showing untrustworthiness. At the advisory committee's Spring 2011 meeting, however, a majority opposed amending Rules 803(6)-(8), concluding that most courts were construing them as they were intended to be read (i.e., placing the burden of proving untrustworthiness on the opponent). However, at the Spring 2012 meeting, the reporter informed the advisory committee that a Texas committee restyling the state's rules of evidence had unanimously concluded that restyled Federal Rules of Evidence 803(6)-(8) could be interpreted

as making substantive changes by placing the burden on the *proponent* of the evidence to show trustworthiness. The advisory committee voted unanimously, with one member abstaining, to recommend to the Committee that the proposed amendments to Rules 803(6)-(8) be published for public comment.

Informational Items

As part of the advisory committee's ongoing responsibility to engage in a "continuous study" of the need for any amendments to the Evidence Rules, the reporter has raised the following possible amendments for the advisory committee's consideration: (1) amending Rule 106 to provide that statements may be used for completion even if they are hearsay; (2) clarifying that Rule 607 does not permit a party to impeach its own witness if the only reason for calling the witness is to present otherwise inadmissible evidence to the jury; (3) clarifying that Rule 803(5) can be used to admit statements made by one person and recorded by another; (4) clarifying the business duty requirement in Rule 803(6); and (5) resolving a dispute in the courts over whether prior testimony in a civil case may be admitted against one who was not a party at the time the testimony was given. At the advisory committee's Spring 2012 meeting, it also considered a suggestion made in an article by Professor Jeffery Bellin to amend Rule 803(1) to explicitly require corroboration from an equally percipient witness. The reporter stated that Professor Liesa Ricter has published a rebuttal to the suggestion in which she encourages the advisory committee to abstain from amending the Evidence Rules while social media communications remain nascent. The advisory committee is considering holding a symposium in conjunction with its Fall 2013 meeting to consider the intersection of the Evidence Rules and emerging technologies.

As previous reports have noted, the advisory committee continues to monitor case law developments after the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36

(2004), in which the Court held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to confront and cross-examine the declarant. The advisory committee also continues to monitor developments on the relationship between the Evidence Rules and an accused's right to confrontation.

Finally, in conjunction with its Fall 2012 meeting, the advisory committee will host a symposium on Rule 502 (Attorney-Client Privilege and Work Product; Limitations on Waiver). The goal is to review the current use of Rule 502 by courts and litigants, and to discuss ways in which Rule 502 can be better known and understood. The intent is to promote its use as a mechanism for reducing the costs of preproduction privilege review. The advisory committee has invited a number of distinguished judges, practitioners, and academics to make presentations. The symposium proceedings will be published in the *Fordham Law Review*.

JUDICIARY STRATEGIC PLANNING

On April 10, 2012, Judge Charles Breyer, the judiciary's planning coordinator, requested that the Committee submit a report detailing its progress in implementing the *Strategic Plan for the Federal Judiciary.* The Committee delegated to the chair and reporter the task of preparing and transmitting a report to Judge Breyer. The report was submitted on July 2, 2012.

Respectfully submitted,

Mark R. Kravitz, Chair

James. M. Cole	David F. Levi
Dean C. Colson	Patrick J. Schiltz
Roy T. Englert, Jr.	James A. Teilborg
Gregory G. Garre	Larry D. Thompson
Neil M. Gorsuch	Richard C. Wesley
Marilyn L. Huff	Diane P. Wood
Wallace B. Jefferson	

Appendix A – Proposed Amendments to the Federal Rules of Appellate Procedure
Appendix B – Proposed Amendments to the Federal Rules of Bankruptcy Procedure
Appendix C – Proposed Amendments to the Federal Rules of Civil Procedure
Appendix D – Proposed Amendment to the Federal Rules of Criminal Procedure
Appendix E – Proposed Amendment to the Federal Rules of Evidence

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

Agenda E-19 (Appendix A)
Rules
September 2012

MEMORANDUM

TO: Judge Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Judge Jeffrey S. Sutton, Chair
Advisory Committee on Appellate Rules

DATE: May 8, 2012

RE: Report of Advisory Committee on Appellate Rules

I. Introduction

The Advisory Committee on Appellate Rules met on April 12, 2012, in Washington, DC. The Committee gave final approval to proposed amendments to Appellate Rules 13, 14, 24, 28, and 28.1 and to Form 4.

* * * * *

II. Action items for final approval

The Committee presents the following proposals for final approval.

A. Proposed amendments to Rules 13, 14, and 24

The proposed amendments to Rules 13, 14, and 24 concern appeals from the United States Tax Court. The proposed amendments to Rules 13 and 14 revise those rules to address permissive interlocutory appeals from the Tax Court under 26 U.S.C. § 7482(a)(2). The Committee developed these proposals in consultation with the Tax Court and with the Tax Division of the Department of Justice. The proposed amendment to Rule 24 grows out of a suggestion by the Tax Court that Rule 24(b)'s reference to the Tax Court be revised to remove a possible source of confusion concerning the Tax Court's legal status.

1. Text of proposed amendments and Committee Notes

The Committee recommends final approval of the proposed amendments to Rules 13, 14, and 24, as set out in the enclosure to this report.

2. Changes made after publication and comment

The Committee did not make any changes to the proposed amendments to Rules 13, 14, and 24 after publication. (It received no comments on these proposed amendments.)

B. Proposed amendments to Rules 28 and 28.1

The proposed amendment to Rule 28 revises Rule 28(a)'s list of the contents of the appellant's brief by removing the requirement of separate statements of the case and of the facts, and makes conforming changes to Rule 28(b) (concerning the appellee's brief). The proposed amendment to Rule 28.1 makes conforming changes to Rule 28.1 (concerning cross-appeals).

Current Rule 28(a)(6) requires "a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below." Current Rule 28(a)(7) requires that the brief include "a statement of facts." Rule 28(a) requires these items to appear "in the order indicated." These dual requirements have confused practitioners. It seems intuitively more sensible to permit the appellant to weave those two statements together and present the relevant events in chronological order. As a point of comparison, Supreme Court Rule 24 does not separate the two requirements; rather, Supreme Court Rule 24.1(g) requires "[a] concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, e.g., App. 12, or to the record, e.g., Record 12."

The proposed amendment to Rule 28(a) consolidates subdivisions (a)(6) and (a)(7) into a new subdivision (a)(6) that provides for one "statement." The proposed new Rule 28(a)(6) allows the lawyer to present the factual and procedural history chronologically, but also provides flexibility to depart from chronological ordering. Conforming changes renumber Rules 28(a)(8) through (11) as Rules 28(a)(7) through (10), revise Rule 28(b)'s discussion of the appellee's brief, and revise Rule 28.1's discussion of briefing on cross-appeals.

1. Text of proposed amendments and Committee Notes

The Committee recommends final approval of the proposed amendments to Rules 28 and 28.1 as set out in the enclosure to this report.

2. Changes made after publication and comment

The comments that the Committee received on the proposed amendments to Rules 28 and 28.1 are described in the enclosure to this report. Four of the six sets of comments supported the proposed amendments' goal. Among those supportive comments, two sets of comments proposed drafting changes; a number of those proposals sprang from a concern that deletion of some of the current language of Rule 28(a)(6) could be problematic. At its spring meeting, the Committee carefully reviewed both the concerns expressed by the two commenters who argued against the proposed amendments and also the suggestions submitted by the two commenters who proffered alternative language for the amendments. A detailed account of the Committee's discussions can be found in the draft minutes of the Committee meeting. To address the concerns expressed by the commenters, the Committee revised the text of proposed Rule 28(a)(6) and added a new paragraph to the Committee Note.

As published, proposed Rule 28(a)(6) referred to "a concise statement of the case setting out the facts relevant to the issues submitted for review and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e))." In response to commenters' concerns that this language omitted to mention procedural history, the Committee revised the proposed Rule to refer to "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 (see Rule 28(e))." The Committee hopes that the amended Rule's reference to "the relevant procedural history" – rather than to "the course of proceedings" – will discourage the unnecessary detail with which some briefs currently describe the procedural history of the case. The Committee added a second paragraph to the Committee Note to Rule 28(a) that describes the contents of the statement of the case and that notes the permissibility of including subheadings. The latter point responds to one commenter's concern that judges and clerks need a way to locate quickly, in the brief, a description of the rulings presented for review. The Committee also added, in the Committee Note, a reference to Supreme Court Rule 24.1(g), on which the amended Rule text is loosely modeled.

C. Proposed amendments to Form 4

The proposed amendments to Form 4 concern applications to proceed IFP on appeal. Appellate Rule 24 requires a party seeking to proceed IFP in the court of appeals to provide an affidavit that, inter alia, "shows in the detail prescribed by Form 4 ... the party's inability to pay or to give security for fees and costs." (Likewise, a party seeking to proceed IFP in the Supreme Court must use Form 4. *See* Supreme Court Rule 39.1.) The proposed amendments would substitute one revised question for two of the questions on the current Form 4: Question 10 – which requests the name of any attorney whom the litigant has paid (or will pay) for services in

connection with the case, as well as the amount of such payments – and Question 11 – which inquires about payments for non-attorney services in connection with the case.

Questions 10 and 11 have been criticized by commentators for seeking information that seems unnecessary to the IFP determination. Some commentators have suggested that Questions 10 and 11 might in some circumstances seek disclosure of information protected by attorney-client privilege and/or work product immunity. Research by the Committee's reporter suggested that though the information solicited by Questions 10 and 11 is relatively unlikely to be subject to attorney-client privilege, it may sometimes constitute protected work product. The Committee also discussed the possibility that even if the information solicited by Questions 10 and 11 is not privileged or protected, its disclosure could as a practical matter disadvantage some IFP litigants. In any event, the function of Form 4 is to provide the information necessary to determine whether the applicant is unable "to pay or to give security for fees and costs," Fed. R. App. P. 24(a)(1)(A). Neither the Committee's own deliberations and research nor informal discussions with the Supreme Court Clerk's Office have disclosed any reason to think that it is necessary to obtain all of the information currently sought by Questions 10 and 11. Accordingly, the proposed amendment would replace Questions 10 and 11 with a new Question 10 that would read: "Have you spent – or will you be spending – any money for expenses or attorney fees in connection with this lawsuit? If yes, how much?"

The proposed amendments would also make certain technical amendments to Form 4, to bring the official Form into conformity with changes that were approved by the Judicial Conference in fall 1997 but were not subsequently transmitted to Congress. The proposed technical amendments would add columns in Question 1 to permit the applicant to list the applicant's spouse's income; would limit the requests for employment history in Questions 2 and 3 to the past two years; and would specify that the requirement for inmate account statements applies to civil appeals.

1. Text of proposed amendments

The Committee recommends final approval of the proposed amendments to Form 4 as set out in the enclosure to this report.

2. Changes made after publication and comment

The single comment received on the proposed amendments to Form 4 is summarized in the enclosure to this report. The comment – from the National Association of Criminal Defense Lawyers ("NACDL") – suggests a revision to the Form's discussion of inmate account statements. The Committee decided not to incorporate this comment into the current proposed amendments, but has added it to the Committee's study agenda as a new item. Further detail on this matter can be found in the draft minutes of the Committee's spring meeting.

* * * * *

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE*

TITLE III. ~~REVIEW OF A DECISION OF~~ APPEALS FROM THE UNITED STATES TAX COURT

Rule 13. ~~Review of a Decision of~~ Appeals from the Tax Court

(a) ~~How Obtained; Time for Filing Notice of Appeal~~ Appeal as of Right.

(1) How Obtained; Time for Filing a Notice of Appeal.

~~(1) Review of a decision of~~ (A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

*New material is underlined; matter to be omitted is lined through.

~~(2)~~ (B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

~~**(b)**~~ **(2) Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

~~**(c)**~~ **(3) Contents of the Notice of Appeal; Service; Effect of Filing and Service.** Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

~~**(d)**~~ **(4) The Record on Appeal; Forwarding; Filing.**

~~(1)~~ (A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the ~~An~~ appeal ~~from the Tax Court~~ is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. ~~References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.~~

~~(2)~~ (B) If an appeal ~~from a Tax Court decision~~ is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(b) Appeal by Permission. An appeal by permission is governed by Rule 5.

Committee Note

Rules 13 and 14 are amended to address the treatment of permissive interlocutory appeals from the Tax Court under 26 U.S.C. § 7482(a)(2). Rules 13 and 14 do not currently address such appeals;

instead, those Rules address only appeals as of right from the Tax Court. The existing Rule 13 – governing appeals as of right – is revised and becomes Rule 13(a). New subdivision (b) provides that Rule 5 governs appeals by permission. The definition of district court and district clerk in current subdivision (d)(1) is deleted; definitions are now addressed in Rule 14. The caption of Title III is amended to reflect the broadened application of this Title.

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made after publication and comment.

* * * * *

Rule 14. Applicability of Other Rules to ~~the Review of a~~ Appeals from the Tax Court ~~Decision~~

All provisions of these rules, except Rules ~~4-9~~ 4, 6-9, 15-20, and 22-23, apply to ~~the review of a~~ appeals from the Tax Court ~~decision~~. References in any applicable rule (other than Rule 24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

Committee Note

Rule 13 currently addresses appeals as of right from the Tax Court, and Rule 14 currently addresses the applicability of the Appellate Rules to such appeals. Rule 13 is amended to add a new subdivision (b) treating permissive interlocutory appeals from the Tax Court under 26 U.S.C. § 7482(a)(2). Rule 14 is amended to address the applicability of the Appellate Rules to both appeals as of right and appeals by permission. Because the latter are governed by Rule 5, that rule is deleted from Rule 14's list of inapplicable provisions. Rule 14 is amended to define the terms “district court” and “district clerk” in applicable rules (excluding Rule 24(a)) to include the Tax Court and its clerk. Rule 24(a) is excluded from this definition because motions to appeal from the Tax Court in forma pauperis are governed by Rule 24(b), not Rule 24(a).

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made after publication and comment.

* * * * *

Rule 24. Proceeding in Forma Pauperis

(a) Leave to Proceed in Forma Pauperis.

(1) **Motion in the District Court.** Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) **Action on the Motion.** If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) **Prior Approval.** A party who was permitted to proceed in forma pauperis in the district-court action, or

who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) **Notice of District Court's Denial.** The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) **Motion in the Court of Appeals.** A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) Leave to Proceed in Forma Pauperis on Appeal from the United States Tax Court or on Appeal or Review of an Administrative-Agency Proceeding. ~~When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a~~ A party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1):

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

Committee Note

Rule 24(b) currently refers to review of proceedings "before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court)." Experience suggests that Rule 24(b) contributes to confusion by fostering the impression that the Tax Court is an executive branch agency rather than a court. (As a general example of that confusion, appellate courts have returned Tax Court records to the Internal Revenue Service, believing the Tax Court to be part of that agency.) To remove this possible source of confusion, the quoted parenthetical is deleted from subdivision (b) and appeals from the Tax Court are separately listed in subdivision (b)'s heading and in new subdivision (b)(1).

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made after publication and comment.

* * * * *

Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(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;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case ~~briefly indicating the nature of the case, the course of proceedings, and the disposition below;~~

~~(7) a statement of~~ 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 (see Rule 28(e));

~~(8)~~(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

~~(9)~~ (8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

~~(10)~~ (9) a short conclusion stating the precise relief sought; and

~~(11)~~ (10) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-~~(9)~~ (8) and ~~(11)~~ (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;

(3) the statement of the case;

~~(4) the statement of the facts;~~ and

~~(5)~~ (4) the statement of the standard of review.

* * * * *

Committee Note

Subdivision (a). Rule 28(a) is amended to remove the requirement of separate statements of the case and of the facts. Currently Rule 28(a)(6) provides that the statement of the case must "indicat[e] the nature of the case, the course of proceedings, and the disposition below," and it precedes Rule 28(a)(7)'s requirement that the brief include "a statement of facts." Experience has shown that these requirements have generated confusion and redundancy. Rule 28(a) is amended to consolidate subdivisions (a)(6) and (a)(7) into a new subdivision (a)(6) that provides for one "statement," much like Supreme Court Rule 24.1(g) (which requires "[a] concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix...."). This permits but does not require the lawyer to present the factual and procedural history chronologically. Conforming changes are made by renumbering Rules 28(a)(8) through (11) as Rules 28(a)(7) through (10).

The statement of the case should describe the nature of the case, which includes (1) the facts relevant to the issues submitted for review; (2) those aspects of the case's procedural history that are necessary to understand the posture of the appeal or are relevant to the issues submitted for review; and (3) the rulings presented for review. The statement should be concise, and can include

subheadings, particularly for the purpose of highlighting the rulings presented for review.

Subdivision (b). Rule 28(b) is amended to accord with the amendment to Rule 28(a). Current Rules 28(b)(3) and (4) are consolidated into new Rule 28(b)(3), which refers to "the statement of the case." Rule 28(b)(5) becomes Rule 28(b)(4). And Rule 28(b)'s reference to certain subdivisions of Rule 28(a) is updated to reflect the renumbering of those subdivisions.

CHANGES MADE AFTER PUBLICATION AND COMMENT

After publication and comment, the Committee made one change to the text of the proposal and two changes to the Committee Note.

During the comment period, concerns were raised that the deletion of current Rule 28(a)(6)'s reference to "the nature of the case, the course of proceedings, and the disposition below" might lead readers to conclude that those items may no longer be included in the statement of the case. The Committee rejected that concern with respect to the "nature of the case" and the "disposition below," because the Rule as published would naturally be read to permit continued inclusion of those items in the statement of the case. The Committee adhered to its view that the deletion of "course of proceedings" is useful because that phrase tends to elicit unnecessary detail; but to address the commenters' concerns, the Committee added, to the revised Rule text, the phrase "describing the relevant procedural history."

The Committee augmented the Note to Rule 28(a) in two respects. It added a reference to Supreme Court Rule 24.1(g), upon which the proposed revision to Rule 28(a)(6) is modeled. And it added – as a second paragraph in the Note – a discussion of the contents of the statement of the case.

* * * * *

Rule 28.1. Cross-Appeals

* * * * *

(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 28(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 appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case ~~or a statement of the facts~~ 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 28(a)(2)-~~(9)~~ (8) and ~~(11)~~ (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;

(C) the statement of the case;

~~(D) the statement of the facts;~~ and

~~(E)~~ (D) the statement of the standard of 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 28(a)(2)-(3) and ~~(11)~~ (10) and must be limited to the issues presented by the cross-appeal.

* * * * *

Committee Note

Subdivision (c). Subdivision (c) is amended to accord with the amendments to Rule 28(a). Rule 28(a) is amended to consolidate subdivisions (a)(6) and (a)(7) into a new subdivision (a)(6) that provides for one "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. . . ." Rule 28.1(c) is amended to refer to that consolidated "statement of the case," and references to subdivisions of Rule 28(a) are revised to reflect the re-numbering of those subdivisions.

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made to the text of the proposed amendment to Rule 28.1 after publication and comment. The Committee revised a quotation in the Committee Note to Rule 28.1(c) to conform to the changes (described above) to the text of proposed Rule 28(a)(6).

* * * * *

Form 4. Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

* * * * *

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$_____	$_____	$_____	$_____
Self-employment	$_____	$_____	$_____	$_____
Income from real property (such as rental income)	$_____	$_____	$_____	$_____
Interest and dividends	$_____	$_____	$_____	$_____
Gifts	$_____	$_____	$_____	$_____
Alimony	$_____	$_____	$_____	$_____
Child support	$_____	$_____	$_____	$_____
Retirement (such as social security, pensions, annuities, insurance)	$_____	$_____	$_____	$_____
Disability (such as social security, insurance payments)	$_____	$_____	$_____	$_____
Unemployment payments	$_____	$_____	$_____	$_____
Public-assistance (such as welfare)	$_____	$_____	$_____	$_____
Other (specify): _____	$_____	$_____	$_____	$_____
Total monthly income:	$_____	$_____	$_____	$_____

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. *How much cash do you and your spouse have? $_____*
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
_____	_____	$_____	$_____
_____	_____	$_____	$_____

_____ _____ $_____ $_____

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

* * * * *

~~*10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?* ☐ Yes ☐ No~~

~~If yes, how much? $_____~~
~~If yes, state the attorney's name, address, and telephone number:~~
_____
_____
_____

~~*11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?*~~

~~☐ Yes ☐ No~~
~~If yes, how much? $_____~~
~~If yes, state the person's name, address, and telephone number:~~
_____
_____
_____

10. *Have you spent – or will you be spending – any money for expenses or attorney fees in connection with this lawsuit?*

☐ Yes ☐ No
If yes, how much? $_____

~~12.~~ 11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

~~13.~~ 12. *State the city and state of your legal residence.*

_____
Your daytime phone number: (____) _____
Your age: _____ Your years of schooling: _____
Last four digits of your social-security number: _____

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made to the proposed amendments to Form 4 after publication and comment.

* * * * *

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

MEMORANDUM

TO: Honorable Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Eugene R. Wedoff, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 14, 2012

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 29 and 30, 2012, in Phoenix, Arizona.

* * * * *

II. Action Items

A. Items for Final Approval

1. Amendments Published for Comment in August 2011. **The Advisory Committee recommends that the proposed rule and form amendments that are summarized below be approved and forwarded to the Judicial Conference. It recommends that the amended form take effect on December 1, 2012.** The texts of the amended rules and form are set out in Appendix A.

Action Item 1. Rules 1007(b)(7) and 5009(b) involve the obligation of individual debtors in chapters 7, 11, and 13 to complete a personal financial management course as a condition of receiving a discharge in bankruptcy. Rule 1007(b)(7) currently requires the debtor to file a "statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form." That form is Official Form 23, which requires the debtor to certify completion of an instructional course in personal financial management. Accordingly, Rule 5009(b) now requires the clerk to send notice to an individual debtor who has not filed Official Form 23 within 45 days after the first date set for the meeting of creditors. Debtors who do not file the necessary statement of completion from their course provider are not given a discharge before their cases are closed. Many of these cases are reopened later, necessitating the payment of an additional fee.

The Advisory Committee sought publication of amendments that would streamline the process of filing statements of the completion of financial management courses. The amendments remove the obligation of the debtor to file Official Form 23 if the financial management course provider has notified the court of the debtor's successful completion of the course. Rule 1007(b)(7) would be amended to authorize providers to file course completion statements directly with the court. Rule 5009(b) would be amended to direct the clerk to send notice to the debtor only if the debtor is required to file the statement and the provider has not already done so. At its June 2011 meeting, the Standing Committee approved the request for publication.

Upon publication, the Advisory Committee received five comments. Three comments expressed support for the amendments. They were submitted by Michael Shklar, Phillip Dy, and Ganna Gudkova. Two comments opposed the amendments. Jeanne E. Hovenden, an attorney in Virginia, urged that the debtor's attorney should be required to file the statement of completion. She expressed concern that allowing a financial course management provider to file the statement directly with the court may lead to a discharge even when it is not in the debtor's best interest. Because the provider is not familiar with all the circumstances of a case, the provider will not know if a particular debtor would be better served by not receiving a discharge. Raymond P. Bell, Jr., of Pennsylvania submitted a comment agreeing with Ms. Hovenden and emphasizing that the debtor's attorney or the debtor should bear responsibility for filing the statement of completion.

The Advisory Committee did not view the concern raised by the negative comments as a substantial one. As Ms. Hovenden's comment recognized, only in rare cases would a debtor want to avoid a discharge. When those cases do arise, the debtor may decline to receive a discharge in other ways. The debtor has the option of waiving the discharge under § 727(a)(10) of the Code or failing to complete plan payments under chapter 11 or 13, which would result in denial of a discharge despite the filing of a notification of course completion by the provider.

Accordingly, the Advisory Committee voted unanimously to recommend approval of the amended rules as published.

Action Item 2. Rules 9006, 9013, and 9014 would be amended to highlight the default deadlines for the service of motions and written responses. Rule 9006, based on Civil Rule 6, contains a subsection regarding the time for service of motions. Rule 9006(d) regulates timing for any motions not addressed elsewhere in the Bankruptcy Rules or by order of the court. Unlike the civil rule, however, Rule 9006 does not indicate in its title that it addresses time periods for motions. Nor is it followed by a rule that addresses the form of motions, as is the case with the civil rule.

The Advisory Committee proposed several amendments to highlight the existence of Rule 9006(d). The title of Rule 9006 would be amended to add a reference to the "time for motion papers." This change, which is consistent with Civil Rule 6, should make it easier to find the provision governing motion practice. Coverage of subdivision (d) would be expanded to address the timing of the service of any written response to a motion (rather than only opposing affidavits as the rule current states). This change would make the provision as inclusive as possible in order to capture differences in local motion practice. Rule 9013, which addresses the form and service of motions, would be amended to provide a cross-reference to the time periods in Rule 9006(d). This amendment is also intended to call greater attention to the default deadlines for motion practice. In addition, stylistic changes would be made to Rule 9013 to add greater clarity. Rule 9014, which addresses contested matters in bankruptcy, would similarly be amended to provide a cross-reference to the times under Rule 9006(d) for serving motions and responses.

No comment was received on these amendments. The Advisory Committee voted unanimously to recommend approval of the proposed amendments to Rules 9006, 9013, and 9014 as published.

Action Item 3. Official Form 7 is the debtor's Statement of Financial Affairs. The form requires debtors to disclose certain payments made to or for the benefit of insiders. The current version of the form contains a definition of "insider" that differs from the Bankruptcy Code's definition of the term. As used in the form, the term includes "any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives." The Code definition of "insider" lists other qualifying relationships, including a "person in control" of a corporate debtor, but makes no reference to a five-percent shareholder. 11 U.S.C. § 101(31). Although the

Code gives a nonexclusive definition of an insider, the Advisory Committee found no basis for concluding that § 101(31) provides authority for the current definition used in the form. The Code does not contain a bright-line test that invariably makes a five-percent shareholder an insider. That language was added to the form in 2000, but no explanation for the addition appears in the Committee Note, the Advisory Committee's report to the Standing Committee, or the Advisory Committee minutes.

As amended, the definition of insider in Form 7 would adhere more closely to the Code. The language regarding a five-percent shareholder of a corporate debtor would be deleted. In its place, the definition would include "any persons in control of a corporate debtor." The statutory reference following the definition would also be updated to give a pinpoint citation to the definition of insider in the Code.

Upon publication, no comment was received on this amendment. The Advisory Committee voted unanimously to recommend approval of the proposed amendment to Official Form 7 as published.

2. Amendments for Which Final Approval Is Sought Without Publication. **The Advisory Committee recommends that the proposed amendments that are summarized below be approved and forwarded to the Judicial Conference. It recommends that the amended forms become effective on December 1, 2012.** Because the proposed amendments are technical or conforming in nature, the Committee concluded that publication for comment is not required. The texts of the amended rules and forms are set out in Appendix A.

Action Item 4. Rule 4004(c)(1) would be amended to conform to the simultaneous amendment of Rule 1007(b)(7) and to state in more precise language other provisions of the subdivision.

As discussed above, the Advisory Committee is recommending that the Standing Committee forward to the Judicial Conference an amendment to Rule 1007(b)(7) that would allow providers of courses on personal financial management to notify a bankruptcy court directly that a debtor had completed the course. Notification by the provider would relieve the debtor of the obligation to file a certificate of completion. Consistent with that change, Rule 4004(c)(1)(H) would be amended to provide that the court must delay entering a discharge for a debtor who has not filed a certificate of completion only if the debtor was in fact required to do so under Rule 1007(b)(7).

The other two changes to Rule 4004(c)(1) are clarifications. One makes clear that the circumstances listed in the paragraph prevent the court from entering a discharge. The other states specifically that the prohibition on entering a discharge under subdivision (c)(1)(K) ceases when a presumption of undue hardship expires or the court concludes a hearing on the presumption.

Because the latter amendments would simply state more precisely the existing meaning of the provision and because the first one is conforming, the Committee voted unanimously to recommend that they be approved without publication.

Action Item 5. Official Forms 9A-9I and 21 would be amended to reduce the risk that a debtor's Social Security number will be inadvertently disclosed publicly in a bankruptcy case. The Advisory Committee would add prominent warnings about proper submission of the forms, which may contain a debtor's Social Security information.

Official Form 9 is directed at creditors. A particular version of the form (denoted Form 9A through Form 9I) applies depending on the nature of the bankruptcy case, but all serve the same function. The form gives notice to potential creditors of the debtor's bankruptcy case and provides important information, such as the date of the meeting of creditors and the deadline to object to an individual debtor's discharge. The form includes identifying information to allow a recipient to determine whether it is a creditor of the debtor. For individual debtors, that identifying information includes the debtor's Social Security information. A redacted version of Form 9 is included in the court files. Official Form 21 is directed at the debtor. The form requires debtors to disclose, under penalty of perjury, their Social Security numbers. Neither the unredacted version of Form 9 sent to creditors nor Form 21 is intended to be placed on the public docket of a bankruptcy case.

The Judicial Conference's Committee on Court Administration and Case Management raised the concern that bankruptcy forms may be mistakenly filed in ways that publicly reveal debtors' private identifying information. To respond to that concern, the Advisory Committee would amend Form 9 to make clear that a creditor should not attach a copy of the form when filing a proof of claim. Stylistic changes have also been made to the form. Similarly, the Advisory Committee would add to Form 21 a prominent warning about proper submission of the form, so as to avoid its inadvertent inclusion on the court's public docket.

Because the changes to the forms do not alter their function or purpose, the Advisory Committee voted unanimously to recommend that the amended forms be approved without publication.

Action Item 6. Official Form 10 would be amended (1) to eliminate a reference to filing a power of attorney with a proof of claim, thereby conforming to Rule 9010(c), and (2) to include statements about the attachment of required documentation for certain types of claims.

Rule 9010(c) generally requires an agent to give evidence of its authority to act on behalf of a creditor in a bankruptcy case by providing a power of attorney. This requirement, however, does not apply when an agent files a proof of claim. The Committee therefore voted unanimously to remove from the signature box of Form 10 the instruction that an authorized agent "attach copy of power of attorney, if any."

The Committee voted unanimously at its spring 2011 meeting to include in line 7 of Form 10 statements that certain required documentation is attached. For claims secured by the debtor's principal residence, the form would state that the Mortgage Proof of Claim Attachment—required as of December 1, 2011—is being filed with the claim. For claims based on an open-end or revolving consumer credit agreement, the form would state that the information required by Rule 3001(c)(3)(A)—scheduled to take effect on December 1, 2012—is attached.

* * * * *

III. Items Published in August 2011 for which Final Approval Is Not Being Sought

A. Rule 3007(a). An amendment of this rule, which addresses the time and manner of serving objections to claims, was published for public comment last August. The Advisory Committee proposed the amendment in response to two suggestions submitted on behalf of the Administrative Office's Bankruptcy Judges Advisory Group. The first suggestion proposed that Rule 3007(a) be amended to permit the use of a negative notice procedure for objections to claims. The second suggestion sought clarification of the proper method of serving objections to claims.

To accomplish these goals, the preliminary draft of amended Rule 3007(a) would have no longer required notice of a claim objection to be provided at least 30 days before "the hearing" on the objection. Instead, it would have required notice of the objection to be provided at least 30 days before "any scheduled hearing on the objection or any deadline for the claimant to request a hearing." It also would have specified how and on whom an objecting party must serve the objection and notice of objection.

Two comments were submitted in response to the publication of the proposed amendment. Bankruptcy Judge Eric Frank (E.D. Pa.) questioned whether a negative notice procedure is generally appropriate for an objection to a claim, since Rule 3001(f) provides that a properly executed and filed proof of claim is entitled to be treated as prima facie evidence of the validity and amount of the claim. Given this evidentiary effect of a proof of claim, Judge Frank suggested that in many situations a claim should not be disallowed by default and without a hearing. Raymond P. Bell, Jr., submitted a comment agreeing with Judge Frank.

At its spring meeting, the Advisory Committee concluded that the proposed amendment to Rule 3007(a) should be withdrawn for the time being so that it can be considered along with rule amendments that are being studied in connection with the drafting of a national chapter 13 form plan. Under consideration are possible rule amendments that would permit the allowed amount of certain types of claims to be determined in a chapter 13 plan, as well as by motion or claim objection. The Committee decided that the method of service on a claimant should be the

same regardless of the method used for seeking the determination of a claim amount. Rather than proceed with the published amendment of Rule 3007(a), which generally allows service by mail on the person designated on the proof of claim, the Committee voted to postpone further action on the amendment of Rule 3007(a) until a unified approach to the service of claim objections and claim modifications in plans can be proposed. The Committee will also give further consideration to the appropriateness of a negative notice procedure for claim objections.

B. Official Form 6C. The proposed amendment to Form 6C—the debtor's schedule of property claimed as exempt—was intended to reflect the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), by providing an option for the debtor to state the value of the claimed exemption as the "full fair market value of the exempted property." The *Schwab* opinion explained that if the debtor used the quoted language to claim an exemption and "the trustee fails to object, or . . . the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset." 130 S. Ct. at 2668.

The proposed amendment of Schedule C prompted seven written comments and testimony during a telephonic hearing.

Opponents—including representatives of the chapter 7 and chapter 13 trustee associations—asserted that the proposed amendment would encourage debtors to claim the full market value when invoking exemptions that are capped at a dollar amount. This, they said, would lead to a "plethora of objections" and increased gamesmanship in claiming exemptions. The trustees stated that they would be forced to spend additional time analyzing exemption claims and litigating claims to exempt the full market value.

Supporters of amendment—including the National Association of Consumer Bankruptcy Attorneys—disputed the trustees' prediction of a "plethora of objections" and contended that the amendment is consistent with the *Schwab* decision. The supporters asserted that debtors need to know promptly whether property claimed exempt is exempt and thus is available for the debtor's use, sale, or other disposition.

The Advisory Committee considered the comments and testimony, debated the merits of the proposed amendment, and explored the alternative of rules amendments to require trustees to make prompt decisions on abandonment of property. The Committee concluded, however, that potential rule amendments would be inconsistent with either § 554 of the Bankruptcy Code or the *Schwab* decision.

After a further discussion, the Advisory Committee voted, with two dissents, to withdraw the Form 6C amendment and refer the revision of Schedule C to the Forms Modernization Project. The Committee's decision was based on two factors. First, debtors are incorporating into existing Schedule C the language suggested by the Supreme Court in *Schwab*. The need to amend the form in response to that decision therefore appears to be less compelling than the Committee initially thought. Second, courts are divided on whether it is always improper for a

debtor to claim an exemption of full fair market value when the exemption in question is capped at a specific dollar amount. The Committee decided that any amendment of Schedule C should await further development of the case law. The recommendation to withdraw the published amendment is therefore intended to maintain the status quo and does not signal the Committee's rejection of the permissibility of claiming as exempt the full fair market value of property.

C. Official Forms 22A and 22C. The proposed amendments to both Forms 22A and 22C reflected changes in the IRS collection financial standards regarding telecommunication expenses, and an additional amendment to Form 22C responded to the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010).

Two comments were submitted regarding the proposed *Hamilton v. Lanning* amendment. The first, from California attorney Peter M. Lively, objected to the amendment on the ground that its one-year period for reporting expected changes in income or expenses conflicts with a Ninth Circuit decision. The other comment was from attorney Henry J. Sommer, writing on behalf of the National Association of Consumer Bankruptcy Attorneys. He stated that the proposed amendment is unnecessary and confusing, since changes in income and expenses in the year after filing are already required to be reported on Schedules I and J and can be addressed by motions to modify a confirmed Chapter 13 plan.

The Committee concluded that neither comment provided grounds for reconsidering the proposed amendment of Form 22C. The Committee found that the proposed amendment, by requiring debtors to provide information about changes in income and expenses, does not prevent the debtor from arguing that there is no applicable commitment period if the debtor has no projected disposable income. In this respect, the proposed revised form continues to apply the rule that the applicable commitment period is determined by the debtor's current monthly income, pursuant to 11 U.S.C. § 1325(b)(4), rather than by the debtor's projected disposable income, determined under 11 U.S.C. § 1325(b)(2).

The Committee was also unpersuaded by Mr. Sommer's comments. Schedules I and J report different income and expenses than those called for in calculating projected disposable income under Form 22C. And modification of a confirmed plan is not an appropriate method for dealing with changes of the kind involved in *Lanning*. Proper treatment of projected disposable income is a requirement for plan confirmation in the first instance.

Despite its continued support for the published amendments to Forms 22A and 22C, the Committee is not seeking final approval of them at this meeting. In order to avoid having the previously published amendments take effect in 2012 and then reformatted versions of the forms designed by the Forms Modernization Project take effect in 2013, the Advisory Committee incorporated all of the proposed amendments to the two forms into the "modernized" forms that the Committee is seeking to have published this summer.

* * * * *

Appendix A.1

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

For Final Approval and Transmittal to the Judicial Conference

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

* * * * *

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

* * * * *

(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 ~~a~~ course ~~concerning personal financial management~~, prepared as prescribed by the appropriate Official Form.; and

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

[**] In addition to the amendment of Rules 1007(b) and 5009(b), Official Form 23 would be amended to clarify that the debtor should not file the form if the provider of a personal financial management course has already notified the court of the debtor's completion of the course.

(B) An individual debtor in a chapter 11 case shall file the statement ~~in a chapter 11 case in which~~ if § 1141(d)(3) applies.

* * * * *

Committee Note

Subdivision (b)(7) is amended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. Course providers approved under § 111 of the Code may be permitted to file this notification electronically with the court immediately upon the debtor's completion of the course. If the provider does not notify the court, the debtor must file the statement, prepared as prescribed by the appropriate Official Form, within the time period specified by subdivision (c).

CHANGES MADE AFTER PUBLICATION

No changes were made after publication.

* * * * *

Rule 4004. Grant or Denial of Discharge

* * * * *

(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 ~~unless~~, 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 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management ~~as~~ if required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption ~~has arisen~~ is in effect under § 524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or

(L) a motion is pending to delay discharge~~,~~ because the debtor has not filed with the court all tax documents required to be filed under § 521(f).

* * * * *

Committee Note

Subdivision (c)(1) is amended in several respects. The introductory language of paragraph (1) is revised to emphasize that the listed circumstances do not just relieve the court of the obligation

to enter the discharge promptly but that they prevent the court from entering a discharge.

Subdivision (c)(1)(H) is amended to reflect the simultaneous amendment of Rule 1007(b)(7). The amendment of the latter rule relieves a debtor of the obligation to file a statement of completion of a course concerning personal financial management if the course provider notifies the court directly that the debtor has completed the course. Subparagraph (H) now requires postponement of the discharge when a debtor fails to file a statement of course completion only if the debtor has an obligation to file the statement.

Subdivision (c)(1)(K) is amended to make clear that the prohibition on entering a discharge due to a presumption of undue hardship under § 524(m) of the Code ceases when the presumption expires or the court concludes a hearing on the presumption.

Because this amendment is being made to conform to a simultaneous amendment of Rule 1007(b)(7) and is otherwise technical in nature, final approval is sought without publication.

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

* * * * *

(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 ~~has not~~ file~~d the~~ a statement under ~~required by~~ 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).

* * * * *

Committee Note

Subdivision (b) is amended to conform to the amendment of Rule 1007(b)(7). Rule 1007(b)(7) relieves an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider notifies the court that the debtor has completed the course. The clerk's duty under subdivision (b) to notify the debtor of the possible closure of the case without discharge if the statement is not timely filed therefore applies only if the course provider has not already notified the court of the debtor's completion of the course.

CHANGES MADE AFTER PUBLICATION

No changes were made after publication.

* * * * *

Rule 9006. Computing and Extending Time; Time for Motion Papers

* * * * *

(d) ~~FOR~~ MOTION~~S~~ PAPERS~~= AFFIDAVITS~~. 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. ~~and, e~~Except as otherwise provided in Rule 9023, ~~opposing affidavits~~ any written response shall ~~may~~ be served not later than one day before the hearing, unless the court permits otherwise~~them to be served at some other time~~.

* * * * *

Committee Note

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers. Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change. Other changes are stylistic.

CHANGES MADE AFTER PUBLICATION

No changes were made after publication.

* * * * *

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 ~~if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs~~.

Committee Note

A cross-reference to Rule 9006(d) is added to this rule to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule. The other changes are stylistic.

CHANGES MADE AFTER PUBLICATION

No changes were made after publication.

* * * * *

Rule 9014. Contested Matters

* * * * *

(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.

* * * * *

Committee Note

A cross-reference to Rule 9006(d) is added to subdivision (b) to call attention to the time limits for the service of motions, supporting affidavits, and written responses to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

CHANGES MADE AFTER PUBLICATION

No changes were made after publication.

* * * * *

B 7 (Official Form 7) (12/12)

UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

In re:_____ _____, Debtor

Case No. _____ (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any ~~owner of 5 percent or more of the voting or equity securities~~ persons in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(2), (31).

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

* * * * *

COMMITTEE NOTE

The definition of "insider" is amended to conform to the statutory definition of the term. See 11 U.S.C. § 101(31). Under the Code definition, ownership of 5% or more of the voting shares of a corporate debtor does not automatically make the owner an insider of the corporation. And in order to be an affiliate of the debtor and an insider on that basis, ownership or control of at least 20% of the outstanding voting securities of the debtor is required. 11 U.S.C. § 101(2). The phrase "any owner of 5% or more of the voting or equity securities" is therefore deleted. Because § 101(31) provides that a person in control of a debtor corporation is an insider, that term is substituted for the deleted phrase.

Changes Made After Publication

No changes were made after publication.

* * * * *

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Presumption of Abuse under 11 U.S.C. § 707(b)
See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.
Or
The presumption of abuse arises.
Or
Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the debtor(s) in the last 8 years (include trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	 Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. Location:
( ) P. M.

Presumption of Abuse under 11 U.S.C. § 707(b)
See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

Or

The presumption of abuse arises.

Or

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____ (date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:
Notice of deadline will be sent at a later time.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS **B9F (Official Form 9F) (12/12)**

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS **B9F ALT (Official Form 9F ALT) (12/12)**

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 12 bankruptcy case on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____ (date) and was converted to a case under chapter 12 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors(except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor [corporation] *or* [partnership] listed below filed a chapter 12 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter_____ on _____ (date) and was converted to a case under chapter 12 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors(except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 13 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____
on _____ (date) and was converted to a case under chapter 13 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit):

For a governmental unit (except as otherwise provided in Fed. R. Bankr. P. 3002(c)(1)):

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS **B9I (Official Form 9I) (12/12)**

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. *Do not include this notice with any filing you make with the court.*
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to a discharge under Bankruptcy Code § 1328(f), you must file a motion objecting to discharge in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2) or (4), you must file a complaint in the bankruptcy clerk's office by the same deadline. The bankruptcy clerk's office must receive the motion or the complaint and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

COMMITTEE NOTE

All versions of the form have been updated on the first page and in the claims box on the explanation page to remind creditors that the form should not be included with or attached to any proof of claim or other filing in the case. Stylistic changes to the form are also made.

Final approval of these conforming and stylistic amendments is sought without publication.

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		**PROOF OF CLAIM**
Name of Debtor:	Case Number:	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		**COURT USE ONLY**
Name and address where notices should be sent: Telephone number: email:		❒ Check this box if this claim amends a previously filed claim. **Court Claim Number:**_____ (*If known*) Filed on:_____
Name and address where payment should be sent (if different from above): Telephone number: email:		❒ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $_____

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

❒Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: _____
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
___ ___ ___ ___	_____ (See instruction #3a)	_ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ❒Real Estate ❒Motor Vehicle ❒Other
Describe:

Value of Property: $_____

Annual Interest Rate_____% ❒Fixed or ❒Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:

$_____

Basis for perfection: _____

Amount of Secured Claim: $_____

Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

❒ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

❒ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

❒ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

Amount entitled to priority:

❒ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

❒ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

❒ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(__).

$_____

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, ~~and~~ security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. *(See instruction #7, and the definition of "**redacted**".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

❒ I am the creditor. ❒ I am the creditor's authorized agent. ~~(Attach copy of power of attorney, if any.)~~ ❒ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ❒ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____
Title: _____
Company: _____
Address and telephone number (if different from notice address above):
_____
_____
_____
Telephone number: email:

_____
(Signature) (Date)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, ~~attach a complete copy of any power of attorney, and~~ provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

COMMITTEE NOTE

Section 7 of the form is amended to remind filers of the need to attach documents required by Rule 3001(c) for claims based on an open-end or revolving consumer credit agreement or claims secured by a security interest in the debtor's principal residence.

Section 8 is revised to delete the direction that an authorized agent attach a power of attorney if one exists. Rule 9010(c) does not require that an agent's authority to file a proof of claim be evidenced by a power of attorney.

Final approval of these conforming and stylistic amendments is sought without publication.

Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records. Please consult local court procedures for submission requirements.

United States Bankruptcy Court

_____ District Of _____

In re _____, [Set forth here all names including married, maiden, and trade names used by debtor within last 8 years]	
Debtor	Case No. _____
Address _____ _____	Chapter _____
Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s).,(if any): _____ _____	
Employer Tax-Identification (EIN) No(s).(if any): _____ _____	

STATEMENT OF SOCIAL-SECURITY NUMBER(S)

(or other Individual Taxpayer-Identification Number(s) (ITIN(s)))[*]

1.Name of Debtor (Last, First, Middle):_____
(Check the appropriate box and, if applicable, provide the required information.)

☐ Debtor has a Social-Security Number and it is:_____
(If more than one, state all.)
☐ Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN), and it is: _____
(If more than one, state all.)
☐ Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

2.Name of Joint Debtor (Last, First, Middle):_____
(Check the appropriate box and, if applicable, provide the required information.)

☐ Joint Debtor has a Social-Security Number and it is: _____
(If more than one, state all.)
☐ Joint Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN) and it is: _____
(If more than one, state all.)
☐ Joint Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

I declare under penalty of perjury that the foregoing is true and correct.

X _____
Signature of Debtor Date

X _____
Signature of Joint Debtor Date

---

*<u>*Joint debtors must provide information for both spouses*</u>.
Penalty for making a false statement: Fine of up to $250,000 or up to 5 years imprisonment or both. 18 U.S.C. §§ 152 and 3571.

COMMITTEE NOTE

The form is amended to remind debtors that, in accordance with Rule 1007(f), it should be submitted to the court, but not filed on the public docket. This rule protects an individual debtor's social-security number or taxpayer-identification number from becoming accessible to the public.

Final approval of the conforming amendment is sought without publication.

MEMORANDUM

TO: Honorable Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable David G. Campbell, Chair
Advisory Committee on Federal Rules of Civil Procedure

DATE: May 8, 2012

RE: Report of the Civil Rules Advisory Committee

Introduction

The Civil Rules Advisory Committee met at the University of Michigan Law School in Ann Arbor on March 22 and 23, 2012. Draft Minutes of this meeting are attached.

* * * * *

Part I of this Report presents for action a proposal to amend Civil Rule 45. The proposal was published in August, 2011. Some modest changes are recommended in light of the public comments and further Subcommittee and Committee deliberations. It is recommended that the revised Rule 45 be recommended to the Judicial Conference for transmission to the Supreme Court for adoption.

* * * * *

I. RULES 45 & 37: ACTION TO RECOMMEND ADOPTION OF REVISED RULES 45 & 37

ACTION ITEM: RULE 45

A preliminary draft of proposed amendments to Rule 45 was published for comment in August, 2011. Three public hearings were scheduled, but all were eventually cancelled. Nobody indicated an interest in testifying at either the first or the second, and the two who indicated an interest in testifying at the last hearing decided to submit written comments instead. The Advisory Committee received 25 written comments; a summary of those comments is attached.

After the public comments were in, the Discovery Subcommittee of the Advisory Committee met by conference call to consider them, and based on that discussion suggested some modifications to the proposed amendments. At the Advisory Committee's Spring meeting, those modifications were reviewed, and a few topics were identified for additional consideration. After the Advisory Committee's meeting and review by the Subcommittee, a revised Rule 45 package was circulated to the full Advisory Committee and received unanimous support from the Advisory Committee. The changes recommended to the Rule 45 package since publication are very minor, and will be summarized below. The modified version of the amendment package also includes style changes recommended by the Standing Committee's Style Consultant.

The proposed amendments to Rule 45 result from a multi-year study conducted by the Advisory Committee that began with a literature search and an effort to canvass bar groups to identify issues possibly warranting amendments to the rule. That activity initially produced a list of some 17 specific possible amendments that was winnowed to a much shorter list. Meanwhile, overall concerns about the length and complexity of Rule 45 produced a variety of ideas about ways to simplify the rule, in addition to amendments targeting specific concerns. After much work had been done on these various matters, the Subcommittee convened a mini-conference attended by about two dozen experienced lawyers to review and evaluate the various amendment ideas. Building on that foundation (and with further input from some bar groups), the Advisory Committee eventually decided to adopt the most modest form of rule simplification it had considered and to adopt some but not all of the specific rule amendments that were proposed during its study of the rule. Four specific changes will be made by the proposed amendments.

Simplification: Current Rule 45 creates what the Advisory Committee came to call a "three-ring circus" of challenges for the lawyer seeking to use a subpoena. First, the lawyer would have to choose the right "issuing court," then she would have to ensure that the subpoena was served within that district, or outside of the district but within 100 miles of where performance was required, or within the state if state law allowed, and then she would have to determine where compliance could be required, a project made challenging in part by the scattered provisions bearing on place of compliance found in different provisions of the rule.

The amendment package sought to eliminate this three-ring circus by making the court where the action is pending the issuing court, permitting service throughout the United States (as is currently authorized under Fed. R. Crim. P. 17(e)), and combining all provisions on place of compliance in a new Rule 45(c). New Rule 45(c) preserves the various place-of-compliance

provisions of the current rule (except that the reference to state law is eliminated and the "*Vioxx*" issue is addressed as discussed below).

The simplification proposals received broad support in the public commentary, and only one change has been proposed to those amendments. The published proposal permitted the place of compliance for document subpoenas under Rule 45(c)(2)(A) to be any place "reasonably convenient for the person who is commanded to produce." The premise of this provision was that, particularly with electronically stored information, place of production should not be a problem and should be handled flexibly. But it was noted that Rule 45(d)(2)(B)(i) directs the party that served the subpoena to file a motion to compel compliance in "the district where compliance is required." That could lead to mischief, if the lawyer serving the subpoena designates her office as the place for production and a distant nonparty served with the subpoena objects on some ground. The objecting nonparty should not have to *litigate* in the lawyer's home jurisdiction just because *production* there would be "reasonably convenient," as it might well be. Accordingly, Rule 45(c)(2)(A) was changed to call for production "within 100 miles of where the person [subject to the subpoena] resides, is employed, or regularly transacts business in person." This change should ensure -- as Rule 45(c) is generally designed to ensure -- that if litigation about the subpoena is necessary it will occur at a location convenient for the nonparty.

At the same time, agreement on place of production is a desirable thing, and the Committee Note is therefore modified to recognize that the rule amendments do not limit the ability of parties to make such agreements. We expect that the current practice of parties agreeing to produce electronically stored information by email or by simply sending a CD will continue.

A clarifying amendment to the Committee Note on Rule 45(c) addresses concerns expressed in the comments. One is the risk some would read the amended rule to require a subpoena for all depositions -- even of parties or party officers, directors, or managing agents. The Note has been clarified to remind readers that no subpoena is required for depositions of such witnesses, and that the geographical limitations that apply to subpoenas do not apply when such depositions are simply noticed. Another Committee Note clarification confirms that, when the issuing court has made an order for remote testimony under Rule 43(a), a subpoena may be used to command the distant witness to attend and testify within the geographical limits of Rule 45(c).

Transfer of subpoena-related motions: New Rule 45(c) essentially retains the existing rule requirement that motions to quash or enforce a subpoena should be made in the district where compliance with the subpoena is required, with the result that the "enforcement court" may often be different from the "issuing court."

Existing authority has recognized that some matters are better decided by the issuing court. Rule 26(c)(1), for example, permits a nonparty from whom discovery is sought to seek relief in the court where the action is pending. The Committee Note to the 1970 amendment adding subdivision (c) to Rule 26 also recognized that "[t]he court in the district where the

deposition is being taken may, and frequently will, remit the deponent or party to the court where the action is pending."

This amendment package adds Rule 45(f), which explicitly authorizes transfer of subpoena-related motions from the enforcement court to the issuing court, including not only motions for a protective order but also motions to enforce the subpoena.

The published draft permitted transfer only upon consent of the nonparty and the parties, or in "exceptional circumstances." After public comment, the Advisory Committee concluded that party consent should not be required; if the person subject to the subpoena consents to transfer then the enforcement court may transfer. The Committee felt that the person whose convenience should be of primary concern is the person subject to the subpoena, and that transfer of a dispute to the court presiding over the action should be authorized whenever that person agrees. The Committee also felt that parties to an action can never justifiably complain when they are required to litigate an issue before the judge presiding over the action, and that requiring their consent to a transfer might in some cases encourage parties to refuse to consent in the hope of getting a different judge to rule on the dispute -- a kind of mid-case forum shopping.

Whether the "exceptional circumstances" standard should be retained when the nonparty witness does not consent was the focus of considerable public comment. Some urged that a more flexible standard be adopted. Others argued that the protection of the nonparty subject to the subpoena should be paramount, and therefore that the "exceptional circumstances" standard should remain when the nonparty does not consent. Eventually the Advisory Committee decided to retain the "exceptional circumstances" standard. The Committee is concerned that a lower standard could result in too-frequent transfers that force nonparties to litigate in distant fora to protect their interests.

The Committee Note has been revised to clarify that the prime concern should be avoiding undue burdens on the local nonparty, and also to identify considerations that might warrant transfer nonetheless, emphasizing that such concerns warrant transfer only if they outweigh the interests of the local nonparty in local resolution of the motion. It also suggests that the judge in the compliance court might consult with the judge in the issuing court, and encourages use of telecommunications methods to minimize the burden on the nonparty when transfer does occur.

Trial subpoenas for distant parties and party officers: There is a distinct split in existing authority about whether a subpoena may command a distant party or party officer to testify at trial. One view is that the geographical limits that apply to other witnesses do not apply to such witnesses. See *In re Vioxx Products Liability Litigation*, 438 F.Supp.2d 664 (E.D. La. 2006) (requiring an officer of the defendant corporation, who lived and worked in New Jersey, to testify at trial in New Orleans even though he was not served within Louisiana under Rule 45(b)(2)). The alternative view is that the rule sets forth the same geographical limits for all trial witnesses. See *Johnson v. Big Lots Stores, Inc.*, 251 F.R.D. 213 (E.D. La. 2008) (holding that opt-in plaintiffs in Fair Labor Standards Act action could not be compelled to travel long distances from

outside the state to attend trial because they were not served with subpoenas within the state as required by Rule 45(b)(2)).

The division of authority resulted from differing interpretations of the 1991 amendments to Rule 45. The Advisory Committee concluded that those amendments were not intended to create the expanded subpoena power recognized in *Vioxx* and its progeny, and decided to restore the original meaning of the rule. The Committee was concerned also that such expanded power could invite tactical use of a subpoena to apply inappropriate pressure to the adverse party. Party officers subject to such subpoenas might often be able to secure protective orders, but the motions would burden the courts and the parties and there might be some *in terrorem* value despite the protective-order route to relief. Moreover, with large organizations it will often be true that the best witnesses are not officers but other employees. To the extent testimony of such party witnesses is important there are alternatives to attending trial. See, e.g., Rule 30(b)(3) (authorizing audiovisual recording of deposition testimony) and 43(a) (permitting the court to order testimony by contemporaneous transmission).

The amendments therefore provide in Rule 45(c)(1) that a subpoena can command any person to testify only within the limits that apply to all witnesses. As noted above, Committee Note language was added to recognize that this provision does not affect existing law on the location for a deposition of a party or party's officer, director, or managing agent, for which a subpoena is not needed.

For purposes of inviting public comment, the Rule 45 publication package included an Appendix adding authority for the court to order testimony at trial by parties or party officers in specified circumstances. The published draft made clear that the Advisory Committee did not propose the addition of such authority. The public comment on this proposal was mixed, and the Advisory Committee did not change its view that this authority should not be added to the rule. The Appendix is therefore not included in this package.

Notice of service of "documents only" subpoena: The 1991 amendments introduced the "documents only" subpoena. The deposition notice requirements of Rule 30 did not apply to such subpoenas. Rule 45(b)(1) was therefore added to require that notice be given of service of such subpoenas. In the restyling of 2007, the rule provision was clarified to direct that notice be provided before service of the subpoena.

As it examined Rule 45 issues, the Committee was repeatedly informed that this notice provision is frequently not obeyed. Parties often obtain documents by subpoena without notifying other parties that the subpoena has been served. The result can be that there are serious problems at or before trial when "surprise" documents emerge and arguments may be made that they should not be admissible or that further discovery is warranted.

The amendment package attempts to solve these problems by moving the existing provision to become a new Rule 45(a)(4) with a heading that calls attention to the requirement -- "Notice to Other Parties Before Service." The relocated provision also slightly modifies the existing provision by directing that a copy of the subpoena be provided along with the notice.

That should assist the other parties in knowing what is being sought and determining whether they have objections to production of any of the materials sought or wish to subpoena additional materials.

The effort to call attention to the notice requirement was supported during the public comment period. The Department of Justice raised a concern, however, about the proposal to remove the phrase "before trial" from the current rule. It noted that removal of that phrase could complicate its efforts (and the efforts of other judgment creditors) to locate assets subject to seizure pursuant to judgments. For the Department, those judgments include restitution in favor of crime victims. Giving advance notice in such situations could frustrate enforcement of judgments or make it considerably more cumbersome.

At the same time, it appeared that the value of notice of trial subpoenas (the concern that led to the proposal for removal of the phrase in the first place) was limited or nonexistent because usually any such documents would be listed in the Rule 26(a)(3) disclosures or otherwise identified during pretrial preparations. Indeed, the parties may often cooperate to subpoena needed exhibits for trial. After considering alternatives, the solution adopted was to restore the phrase "before trial" to the rule. The Committee Note explanation for removal of "before trial" has been removed.

Another issue that has been raised repeatedly since early in the Advisory Committee's consideration of Rule 45 has been that additional notices should be required as subpoenaed materials are produced, and perhaps also when subpoenas are modified. There have also been suggestions that the rule should require that access be provided to materials produced in response to a subpoena. In particular, it has been noted (and repeated in the public comment period) that a number of states direct that the party serving the subpoena give notice upon receipt of produced materials, and that some states also require access to the materials.

Both the Subcommittee and the Advisory Committee have repeatedly discussed these proposals for additional notice provisions. All agree that cooperation and transparency in relation to subpoenas are desirable. All expect that judges would insist on such behavior in cases in which the parties did not do so without court intervention. But the Subcommittee and the full Committee have repeatedly concluded that adding notice requirements or an access requirement to the rule would not, overall, produce desirable effects.

A starting point is to recognize the reason for relocation of the existing notice requirement -- the frequent failure of lawyers to obey it. The requirement has been in the rule for over 20 years; the amendment is based on the optimistic expectation that relocation and addition of a heading will prompt much broader compliance. It also expands the requirement slightly, by insisting that the notice include the subpoena itself.

The Committee believes that this change will result in all parties being made aware when a subpoena is served -- a marked change from actual current practice -- and that this awareness will enable parties adequately to protect their interests. The Committee is concerned that requiring notice of receipt of documents could create new complications. Production of

documents in response to a subpoena often occurs on a "rolling" basis, with documents being produced over time as they are found. Requiring a new notice every time additional documents are received could be burdensome, especially in large document cases, and failure to give notice on one or more occasions of a rolling production would likely spawn satellite litigation on the effect of the missed notice, with parties asking that documents not noticed be excluded from use in the litigation. As one member of the Advisory Committee noted during the Committee's Spring meeting: "Less compliance with more rules breeds satellite litigation." The "gotcha" possibilities of additional requirements can be considerable. Because we believe that clarifying the notice requirement will resolve most of the notice problems presently occurring under Rule 45, we have concluded that additional notice requirements, with their potential problems, should not be included.

The Committee has repeatedly been told that, having received the notice called for by the existing rule, lawyers can take action to guard themselves. They can be persistent in pursuit of information about the fruits of the subpoena. They can seek assistance from the court if needed. The Committee Note recognizes that lawyers can follow up in these manners. In response to these concerns, it has been expanded to note that parties can seek the assistance of the court, either in the scheduling order or otherwise, to obtain access.

Having reconsidered these issues yet again after the public comment period, the Discovery Subcommittee decided not to expand what is in the rule at present. The full Advisory Committee concurred. Accordingly, although the Committee Note has been amplified on these points, the rule provision itself has not been changed from what is currently in Rule 45(b)(1).

* * * * *

Rule 45. Subpoena

(a) In General.

(1) ***Form and Contents.***

(A) *Requirements — In General*. Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action~~, the court in which it is pending,~~ and its civil-action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(d<u>e</u>) and (e~~d~~).

(B) *Command to Attend a Deposition — Notice of the Recording Method*. A subpoena

commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person ~~party~~ to permit inspection, copying, testing, or sampling of the materials.

(2) ***Issuing*** ~~***Issued from Which***~~ ***Court.*** A subpoena must issue from the court where the action is pending. ~~as follows:~~

~~**(A)** for attendance at a hearing or trial, from the court for the district where the hearing or trial is to be held;~~

~~**(B)** for attendance at a deposition, from the court for the district where the deposition is to be taken; and~~

~~**(C)** for production or inspection, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.~~

(3) ***Issued by Whom.*** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court. ~~as an officer of:~~

~~**(A)** a court in which the attorney is authorized to practice; or~~

~~**(B)** a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court where the action is pending.~~

(4) ***Notice to Other Parties Before Service.*** If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party ~~before the subpoena is served on the person to whom it is directed~~.

(b) Service.

(1) ***By Whom and How; Tendering Fees; ~~Serving a Copy of Certain Subpoenas~~.*** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. ~~If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before~~

~~trial, then before it is served, a notice must be served on each party.~~

(2) ***Service in the United States.*** A subpoena may be served at any place within the United States. ~~Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:~~

~~**(A)** within the district of the issuing court;~~

~~**(B)** outside that district but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection;~~

~~**(C)** within the state of the issuing court if a state statute or court rule allows service at that place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or~~

~~**(D)** that the court authorizes on motion and for good cause, if a federal statute so provides.~~

(3) ***Service in a Foreign Country.*** 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) ***Proof of Service.*** Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) Place of compliance.

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

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

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

(i) ~~the person~~ is a party or a party's officer; or

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

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

(A) production of documents, ~~tangible things, or~~ electronically stored information, or tangible

things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person ~~reasonably convenient for the person who is commanded to produce~~; and

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

(d)~~(c)~~ Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The ~~issuing~~ court for the district where compliance is required ~~under Rule 45(c)~~ must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents,

electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections*. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the ~~issuing~~ court for the district where compliance is required

~~under Rule 45(c)~~ for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required*. On timely motion, the ~~issuing~~ court for the district where compliance is required ~~under Rule 45(c)~~ must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); ~~who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a~~

~~trial by traveling from any such place within the state where the trial is held;~~

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by a subpoena, the ~~issuing~~ court for the district where compliance is required ~~under Rule 45(c)~~ may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.~~; or~~

~~**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.~~

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(de)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(ed) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the

requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must

promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required ~~under Rule 45(c)~~ ~~under seal~~ for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Transferring a Subpoena-Related Motion. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if ~~the parties and~~ the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court

may transfer the order to the court where the motion was made.

(ge) Contempt. The court for the district where compliance is required ~~under Rule 45(c)~~ — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. ~~A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).~~

Committee Note

Rule 45 was extensively amended in 1991. The goal of the present amendments is to clarify and simplify the rule. The amendments recognize the court where the action is pending as the issuing court, permit nationwide service of a subpoena, and collect in a new subdivision (c) the previously scattered provisions regarding place of compliance. These changes resolve a conflict that arose after the 1991 amendment about a court's authority to compel a party or party officer to travel long distances to testify at trial; such testimony may now be required only as specified in new Rule 45(c). In addition, the amendments introduce authority in new Rule 45(f) for the court where compliance is required to transfer a subpoena-related motion to the court where the action is pending ~~in exceptional circumstances or~~ on consent ~~by agreement~~ of ~~the parties and~~ the person subject to the subpoena or in exceptional circumstances.

Subdivision (a). This subdivision is amended to provide that a subpoena issues from the court where ~~in which~~ the action is pending. Subdivision (a)(3) specifies that an attorney authorized to practice in that court may issue a subpoena, which is consistent with current practice.

In Rule 45(a)(1)(D), "person" is substituted for "party" because the subpoena may be directed to a nonparty.

Rule 45(a)(4) is added to highlight and slightly modify a notice requirement first included in the rule in 1991. Under the 1991 amendments, Rule 45(b)(1) required prior notice of the service of a "documents only" subpoena to the other parties. Rule 45(b)(1) was clarified in 2007 to specify that this notice must be served before the subpoena is served on the witness.

The Committee has been informed that parties serving subpoenas frequently fail to give the required notice to the other parties. The amendment moves the notice requirement to a new provision in Rule 45(a) and requires that the notice include a copy of the subpoena. The amendments are intended to achieve the original purpose of enabling the other parties to object or to serve a subpoena for additional materials. ~~The amendment also deletes the words "before trial" that appear in the current rule; notice of trial subpoenas for documents is as important as notice of discovery subpoenas.~~

Parties desiring access to information produced in response to the subpoena will need to follow up with the party serving it or the person served to obtain such access. The rule does not limit the court's authority to order notice of receipt of produced materials or access to them. The party serving the subpoena should in any event make reasonable provision for prompt access.

Subdivision (b). The former notice requirement in Rule 45(b)(1) has been moved to new Rule 45(a)(4).

Rule 45(b)(2) is amended to provide that a subpoena may be served at any place within the United States, removing the complexities prescribed in prior versions.

Subdivision (c). Subdivision (c) is new. It collects the various provisions on where compliance can be required and simplifies them. Unlike the prior rule, place of service is not critical to place of compliance. Although Rule 45(a)(1)(A)(iii) permits the subpoena to direct a place of compliance, that place must be selected under Rule 45(c).

Rule 45(c)(1) addresses a subpoena to testify at a trial, hearing, or deposition. Rule 45(c)(1)(A) provides that compliance may be required within 100 miles of where the person subject to the subpoena resides, is employed, or regularly conducts business in person. For parties and party officers, Rule 45(c)(1)(B)(i) provides that

compliance may be required anywhere in the state where the person resides, is employed, or regularly conducts business in person. When an order under Rule 43(a) authorizes testimony from a remote location, the witness can be commanded to testify from any place described in Rule 45(c)(1).

Under Rule 45(c)(1)(B)(ii), nonparty witnesses can be required to travel more than 100 miles within the state where they reside, are employed, or regularly transact ~~conduct~~ business in person only if they would not, as a result, incur "substantial expense." When travel over 100 miles could impose substantial expense on the witness, the party that served the subpoena may pay that expense and the court can ~~could~~ condition enforcement of the subpoena on such payment.

Because Rule 45(c) directs that compliance may be commanded only as it provides, these amendments resolve a split in interpreting Rule 45's provisions for subpoenaing parties and party officers. *Compare In re Vioxx Products Liability Litigation*, 438 F. Supp. 2d 664 (E.D. La. 2006) (finding authority to compel a party officer from New Jersey to testify at trial in New Orleans), with *Johnson v. Big Lots Stores, Inc.*, 251 F.R.D. 213 (E.D. La. 2008) (holding that Rule 45 did not require attendance of plaintiffs at trial in New Orleans when they would have to travel more than 100 miles from outside the state). Rule 45(c)(1)(A) does not authorize a subpoena for trial to require a party or party officer to travel more than 100 miles unless the party or party officer resides, is employed, or regularly transacts ~~conducts~~ business in person in the state.

Depositions of parties, and officers, directors, and managing agents of parties need not involve use of a subpoena. Under Rule 37(d)(1)(A)(i), failure of such a witness whose deposition was properly noticed to appear for the deposition can lead to Rule 37(b) sanctions (including dismissal or default but not contempt) without regard to service of a subpoena and without regard to the geographical limitations on compliance with a subpoena. These amendments do not change that existing law; the courts retain their authority to control the place of party depositions and impose sanctions for failure to appear under Rule 37(b).

For other discovery, Rule 45(c)(2) directs that inspection of premises occur at those premises, and that production of documents, tangible things, and electronically stored information may be commanded to occur at a place within 100 miles of where the person subject to the subpoena resides, is employed, or regularly conducts business in person ~~reasonably convenient for the person commanded to produce~~. Under the current rule, parties often agree that

production, particularly of electronically stored information, be transmitted by electronic means. Such arrangements facilitate discovery, and nothing in these amendments limits the ability of parties to make such arrangements ~~the place of production has not presented difficulties. The provisions on the reasonable place for production are intended to be applied with flexibility, keeping in mind the assurance of Rule 45(d)(1) that undue expense or burden must not be imposed on the person subject to the subpoena~~.

Rule 45(d)(3)(A)(ii) directs the court to quash any subpoena that purports to compel compliance beyond the geographical limits specified in Rule 45(c).

Subdivision (d). Subdivision (d) contains the provisions formerly in subdivision (c). It is revised to recognize the court where the action is pending as the issuing court, and to take account of the addition of Rule 45(c) to specify where compliance with a subpoena is required.

Subdivision (f). Subdivision (f) is new. Under Rules 45(d)(2)(B), 45(d)(3), and 45(e)(2)(B), subpoena-related motions and applications are to be made to the court where compliance is required under Rule 45(c). Rule 45(f) provides authority for that court to transfer the motion to the court where the action is pending. It applies to all motions under this rule, including an application under Rule 45(e)(2)(B) for a privilege determination.

Subpoenas are essential to obtain discovery from nonparties. To protect local nonparties, local resolution of disputes about subpoenas is assured by the limitations of Rule 45(c) and the requirements in Rules 45(d) and (e) that motions be made in the court in which compliance is required under Rule 45(c). But transfer to the court where the action is pending is sometimes warranted. If ~~the parties and~~ the person subject to the subpoena consents to transfer, Rule 45(f) provides that the court where compliance is required may do so.

In the absence of consent, the court may transfer in exceptional circumstances, and the proponent of transfer bears the burden of showing that such circumstances are present. The prime concern should be avoiding burdens on local nonparties subject to subpoenas, and it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions. In some circumstances, however, transfer may be warranted in order to avoid disrupting the issuing court's management of the underlying litigation, as when that court has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts. Transfer is

appropriate only if such interests outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion. Judges in compliance districts may find it helpful to consult with the judge in the issuing court presiding over the underlying case while addressing subpoena-related motions.

~~A precise definition of "exceptional circumstances" authorizing transfer is not feasible. Generally, if the dispute about the subpoena is focused on issues involved in the underlying action — for example, if these issues have already been presented to the issuing court or bear significantly on its management of the underlying action, or if there is a risk of inconsistent rulings on subpoenas served in multiple districts, or if the issues presented by the subpoena-related motion overlap with the merits of the underlying action — transfer may be warranted. If, on the other hand, the dispute is focused on the burden or expense on the local nonparty, transfer should not occur. The rule contemplates that transfers will be truly rare events.~~

If the motion is transferred, judges are encouraged to permit telecommunications methods to ~~can~~ minimize the burden a transfer imposes on nonparties, if it is necessary for attorneys admitted in the court where the motion is made to appear in the court in which the action is pending. The rule provides that if these attorneys are authorized to practice in the court where the motion is made, they may file papers and appear in the court in which the action is pending in relation to the motion as officers of that court.

After transfer, the court where the action is pending will decide the motion. If the court rules that discovery is not justified, that should end the matter. If the court orders further discovery, it is possible that retransfer may be important to enforce the order. One consequence of failure to obey such an order is contempt, addressed in Rule 45(g). Rule 45(g) and Rule 37(b)(1) are both amended to provide that disobedience of an order enforcing a subpoena after transfer is contempt of the issuing court and the court where compliance is required under Rule 45(c). In some instances, however, there may be a question about whether the issuing court can impose contempt sanctions on a distant nonparty. If such circumstances arise, or if it is better to supervise compliance in the court where compliance ~~it~~ is required, the rule provides authority for retransfer for enforcement. Although changed circumstances may prompt a modification of such an order, it is not expected that the compliance court will reexamine the resolution of the underlying motion.

Subdivision (g). Subdivision (g) carries forward the authority of former subdivision (e) to punish disobedience of subpoenas as contempt. It is amended to make clear that, in the event of transfer of a subpoena-related motion, such disobedience constitutes contempt of both the court where compliance is required under Rule 45(c) and the court where the action is pending. If necessary for effective enforcement, Rule 45(f) authorizes the issuing court to transfer its order after the motion is resolved.

The rule is also amended to clarify that contempt sanctions may be applied to a person who disobeys a subpoena-related order, as well as one who fails entirely to obey a subpoena. In civil litigation, it would be rare for a court to use contempt sanctions without first ordering compliance with a subpoena, and the order might not require all the compliance sought by the subpoena. Often contempt proceedings will be initiated by an order to show cause, and an order to comply or be held in contempt may modify the subpoena's command. Disobedience of such an order may be treated as contempt.

The second sentence of former subdivision (e) is deleted as unnecessary.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

* * * * *

(b) Failure to Comply with a Court Order.

(1) ***Sanctions <u>Sought</u> in the District Where the Deposition Is Taken.*** If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. <u>If a deposition-related motion is transferred</u>

to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) ***Sanctions Sought in the District Where the Action Is Pending.***

* * * * *

Committee Note

Rule 37(b) is amended to conform to amendments made to Rule 45, particularly the addition of Rule 45(f) providing for transfer of a subpoena-related motion to the court where the action is pending. A second sentence is added to Rule 37(b)(1) to deal with contempt of orders entered after such a transfer. The Rule 45(f) transfer provision is explained in the Committee Note to Rule 45.

* * * * *

CHANGES MADE AFTER PUBLICATION AND COMMENT

As described in the Report, the published preliminary draft was modified in several ways after the public comment period. The words "before trial" were restored to the notice provision that was moved to new Rule 45(a)(4). The place of compliance in new Rule 45(c)(2)(A) was changed to a place "within 100 miles of where the person resides, is employed, or regularly conducts business." In new Rule 45(f), the party consent feature was removed, meaning consent of the person subject to the subpoena is sufficient to permit transfer to the issuing court. In addition, style changes were made after consultation with the Standing Committee's Style Consultant. In the Committee Note, clarifications were made in response to points raised during the public comment period.

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

Agenda E-19 (Appendix D)
Rules
September 2012

MEMORANDUM

TO: Hon. Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Reena Raggi, Chair
Advisory Committee on Federal Rules of Criminal Procedure

DATE: May 17, 2012

RE: Report of the Advisory Committee on Criminal Rules

I. Introduction

The Advisory Committee on the Federal Rules of Criminal Procedure ("the Committee") met on April 22-23, 2012, in San Francisco, California, and took action on a number of proposals.

* * * * *

II. Action Items

A. Rule 11 (advice re immigration consequences of guilty plea)

Following publication, the Advisory Committee decided to maintain the language of the proposed amendment to Rule 11 as drafted, but adopted several changes in the Committee Note that respond to issues raised in the public comments. The Advisory Committee now recommends that the Standing Committee approve the amendment to Rule 11 and transmit it to the Judicial Conference.

1. The purpose of the proposed amendment

In light of the Supreme Court's ineffective assistance of counsel decision in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), the Advisory Committee concluded that a judicial warning regarding possible immigration consequences should be required as a uniform practice at the plea allocution. *Padilla* held that a defense attorney's failure to advise the defendant concerning the risk of deportation fell below the objective standard of reasonable professional assistance guaranteed by the Sixth Amendment. The Court stated that in light of changes in immigration law "deportation is an integral part–indeed, sometimes the most important part–of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." 130 S.Ct. at 1480 (footnote omitted). It also noted that "because of its close connection to the criminal process," deportation as a consequence of conviction is "uniquely difficult to classify as either a direct or a collateral consequence" of a plea. *Id*. at 1482. The Committee concluded that the Supreme Court's decision provides an appropriate basis for adding advice concerning immigration consequences to the required colloquy under Rule 11, leaving the question whether to provide advice concerning other adverse collateral consequences to the discretion of the district courts.

In the Committee's initial deliberations, a minority of members opposed the amendment on the grounds that it was unwise and unnecessary to add further requirements to the already lengthy plea colloquy now required under Rule 11. *Padilla* was based solely on the constitutional duty of defense counsel, and it did not speak to the duty of judges. The list of matters that must be addressed in the plea colloquy is already lengthy, and these members expressed concern that adding immigration consequences would open the door to future amendments. This could eventually turn a plea colloquy into a minefield for a judge and expand litigation challenges to pleas despite the rule's harmless error provision.

A majority of the Committee concluded, however, that deportation is qualitatively different from the other collateral consequences that may follow from a guilty plea, and it therefore warrants inclusion on the list of matters that must be discussed during a plea colloquy. Although *Padilla* speaks only to the duty of defense counsel to warn a defendant about immigration consequences, the Supreme Court's recognition of the distinctive nature of such consequences also supports requiring a judicial warning. This would be consistent with the practice of the Department of Justice, which now advises prosecutors to include a discussion of those consequences in plea agreements. Thus, judges should warn a defendant who pleads guilty that the plea could implicate his or her right to remain in the United States or to become a U.S. citizen.

The proposed amendment mandates a generic warning rather than specific advice concerning the defendant's individual situation. The Committee concluded that the most effective and efficient method of conveying this information is to provide it to every defendant, without first attempting to determine the defendant's citizenship. In drafting its proposal, the Committee was cognizant of the complexity of immigration law, which likely will be subject to legislative changes. Accordingly, the Committee's proposal uses non-technical language that is designed to be understood by lay persons and will avoid the need to amend the rule if there are legislative changes altering more specific terms of art.

2. The public comments

Six written comments were received. Only one comment disagreed with the decision to add advice concerning possible immigration consequences to the plea colloquy; it recommended that the amendment be withdrawn or at least substantially narrowed.

The remaining comments–which came from immigration specialists, a federal defender, and the National Association of Criminal Defense Lawyers–agreed with the concept of amending Rule 11 to add advice concerning immigration consequences. Two comments supported the amendment as published. Two other comments suggested modifications to the Committee Note. The final comment, from the National Association of Criminal Defense Lawyers, urged the Advisory Committee to withdraw the amendment and pursue a different strategy, placing the burden of providing warnings and advice at the plea colloquy upon the prosecution, rather than the court.

3. The Advisory Committee's recommendation

After publication, the Rule 11 Subcommittee and the Advisory Committee both reconsidered the foundational question whether Rule 11 should be amended to require advice concerning immigration consequences in all plea colloquies. Members considered prior concerns about lengthening the plea colloquy, as well as the argument that not all defendants are aliens and conscientious judges do not need a rule to require them to give warnings in appropriate cases. After hearing the report of the Rule 11 Subcommittee and full discussion, the Advisory Committee reiterated its support for adding immigration consequences to the plea colloquy. A majority of the Committee agreed that the immigration consequences covered by the proposed amendment–removal from the U.S. and denial of citizenship and reentry–are qualitatively different than other collateral consequences, and that they warrant inclusion in the plea colloquy. As the Supreme Court noted in *Padilla*, "deportation is an integral part–indeed, sometimes the most important part–of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." 130 S.Ct. at 1480 (footnote omitted). Although the Supreme Court's decision does not require the proposed amendment, it does provide an appropriate basis for distinguishing advice concerning immigration consequences from other collateral consequences.

There was also support for the requirement that the court provide the general statement of possible immigration consequences in every case. Members emphasized that immigration consequences are an issue in nearly one half of all criminal cases. In fiscal year 2011, 48% of defendants for whom sentencing data were available were non-citizens.[1] Moreover, as emphasized in several of the public comments, attempts to determine the immigration status of individual defendants could raise self-incrimination issues.

The Advisory Committee accepted the Rule 11 Subcommittee's recommendation to make several small modifications in the Committee Note to address concerns raised in the public comments. The changes emphasize that the court should provide only a general statement that there may be immigration consequences of conviction, and not seek to give specific advice concerning a defendant's individual situation. The National Immigration Project argued persuasively that it is neither appropriate nor feasible for judges to give individualized advice, and it provided examples of cases in which courts gave erroneous advice. See 11-CR-005 at 2 n.2. Moreover, attempts to elicit information that would provide the basis for individual advice could raise self-incrimination concerns.

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[1]U. S. Sentencing Commission, 2011 Sourcebook of Federal Sentencing Statistics, Table 9, *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/Table09.pdf .

The Committee Note as published and the changes recommended by the Subcommittee are shown below:

> **Subdivision (b)(1)(O).** The amendment requires the court to include a general statement ~~concerning the potential~~ that there may be immigration consequences of conviction in the advice provided to the defendant before the court accepts a plea of guilty or nolo contendere.
>
> For a defendant who is not a citizen of the United States, a criminal conviction may lead to removal, exclusion, and the inability to become a citizen. In *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), the Supreme Court held that a defense attorney's failure to advise the defendant concerning the risk of deportation fell below the objective standard of reasonable professional assistance guaranteed by the Sixth Amendment.
>
> The amendment mandates a generic warning, ~~and does not require the judge to provide~~ not specific advice concerning the defendant's individual situation. Judges in many districts already include a warning about immigration consequences in the plea colloquy, and the amendment adopts this practice as good policy. The Committee concluded that the most effective and efficient method of conveying this information is to provide it to every defendant, without ~~first~~ attempting to determine the defendant's citizenship.

By a vote of nine in favor and three opposed, the Advisory Committee agreed to adopt the proposed changes in the Committee Note, and to transmit the proposed amendment to the Standing Committee with the recommendation that it be approved and sent to the Judicial Conference.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 11 be approved as amended and transmitted to the Judicial Conference.

Rule 11. Pleas.

* * * * *

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) ***Advising and Questioning the Defendant***. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

* * * * *

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); ~~and~~

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and~~.~~

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

* * * * *

Committee Note

Subdivision (b)(1)(O). The amendment requires the court to include a general statement that there may be immigration consequences of conviction in the advice provided to the defendant before the court accepts a plea of guilty or nolo contendere.

For a defendant who is not a citizen of the United States, a criminal conviction may lead to removal, exclusion, and the inability to become a citizen. In *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), the Supreme Court held that a defense attorney's failure to advise the defendant concerning the risk of deportation fell below the objective standard of reasonable professional assistance guaranteed by the Sixth Amendment.

The amendment mandates a generic warning, not specific advice concerning the defendant's individual situation. Judges in many districts already include a warning about immigration consequences in the plea colloquy, and the amendment adopts this practice as good policy. The Committee concluded that the most effective and efficient method of conveying this information is to provide it to every defendant, without attempting to determine the defendant's citizenship.

CHANGES MADE AFTER PUBLICATION AND COMMENT

The Committee Note was revised to make it clear that the court is to give a general statement that there may be immigration consequences, not specific advice concerning a defendant's individual situation.

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

Agenda E-19 (Appendix E)
Rules
September 2012

MEMORANDUM

TO: Honorable Mark R. Kravitz, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Sidney A. Fitzwater, Chair
Advisory Committee on Evidence Rules

DATE: May 3, 2012

RE: Report of the Advisory Committee on Evidence Rules

I. Introduction

The Advisory Committee on Evidence Rules (the "Committee") met on April 4, 2012 in Dallas at the SMU Dedman School of Law.

The Committee seeks final Standing Committee approval and transmittal to the Judicial Conference of the United States of one proposal: an amendment to Evidence Rule 803(10)—the hearsay exception for absence of public record or entry—to address a constitutional infirmity in light of the Supreme Court's decision in *Melendez-Diaz v. Massachusetts*.

* * * * *

II. Action Items

A. Proposed Amendment to Evidence Rule 803(10)

At its June 2011 meeting, the Standing Committee approved releasing for public comment an amendment to Rule 803(10). Rule 803(10) currently allows the government to prove in a criminal case, through the introduction of a certificate, that a public record does not exist. Under *Melendez-Diaz v. Massachusetts* such a certificate would be "testimonial" within the meaning of the Confrontation Clause, as construed by *Crawford v. Washington*. Therefore, the admission of such certificates (in lieu of testimony) violates the accused's right of confrontation. The proposed amendment to Rule 803(10) addresses the Confrontation Clause problem in the current rule by adding a "notice-and-demand" procedure. In *Melendez-Diaz* the Court stated that the use of a notice-and-demand procedure (and the defendant's failure to demand production under that procedure) would cure an otherwise unconstitutional use of testimonial certificates. As amended, Rule 803(10) would permit a prosecutor who intends to offer a certification to provide written notice of that intent at least 14 days before trial. If the defendant does not object in writing within 7 days of receiving the notice, the prosecutor would be permitted to introduce a certification that a diligent search failed to disclose a public record or statement rather than produce a witness to so testify. The amended Rule would allow the court to set a different time for the notice or the objection.

At its Spring 2012 meeting, the Committee considered the two comments received on the proposed amendment. The Magistrate Judges' Association favors the proposal. The National Association of Criminal Defense Lawyers ("NACDL") agrees in principle with a notice-and-demand solution, but it has several objections to the proposed amendment. The Committee unanimously voted to amend Rule 803(10) by adopting the language published for public comment, and to transmit the proposed rule to the Standing Committee with the recommendation that it be approved and sent to the Judicial Conference. The proposed Rule and Committee Note are set out in an appendix to this Report.

Recommendation: The Committee recommends that the proposed amendment to Evidence Rule 803(10) be approved and transmitted to the Judicial Conference of the United States.

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Appendix to Report to the Standing Committee from the Advisory Committee on Evidence Rules

June 2012

Advisory Committee on Evidence Rules
Proposed Amendment: Rule 803(10)

Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

* * * * *

(10) ***Absence of a Public Record.*** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if ~~the testimony or certification is admitted to prove that~~:

(A) the testimony or certification is admitted to prove that

(~~A~~ i) the record or statement does not exist; or

(~~B~~ ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

* * * * *

Committee Note

Rule 803(10) has been amended in response to *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009). The *Melendez-Diaz* Court declared that a testimonial certificate could be admitted if the accused is given advance notice and does not timely demand the presence of the official who prepared the certificate. The amendment incorporates, with minor variations, a "notice-and-demand" procedure that was approved by the *Melendez-Diaz* Court. See Tex. Code Crim. P. Ann., art. 38.41.

CHANGES MADE AFTER PUBLICATION AND COMMENT

No changes were made to the proposed amendment or Committee Note as they were issued for public comment.

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