

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

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**MEMORANDUM**

**TO:** Honorable John D. Bates, Chair  
Standing Committee on Rules of Practice and Procedure

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

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

**DATE:** December 5, 2022

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**I. Introduction**

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on September 15, 2022. One Committee member participated remotely by means of Microsoft Teams; the rest of the Committee met in person. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee voted to seek publication for comment of an amendment to Official Form 410. Part II of this report presents that action item.

Part III of the report presents three information items. The first concerns the Advisory Committee's approval of an amendment to Rule 8006(g). The second information item discusses

the Advisory Committee’s continuing consideration of responses to public comments on published amendments to Rule 3002.1. The final item reports on the Advisory Committee’s discussion of electronic filing by pro se litigants.

## **II. Action Item**

### **Item for Publication**

**The Advisory Committee recommends that an amendment to Official Form 410 (Proof of Claim) be published for public comment in August 2023.** The form as proposed for amendment appears in the appendix to this report.

The proposed amendment would eliminate on the proof-of-claim form the language that restricts use of a uniform claim identifier (“UCI”) to electronic payments in chapter 13. It would allow the UCI to be used in cases filed under all chapters of the Bankruptcy Code and for all payments whether or not electronic. Use of the UCI is entirely voluntary on the part of the creditor. The amended language allows a creditor to list a UCI on the proof-of-claim form in any case if it chooses to do so.

Part 1, Box 3, of Official Form 410 currently provides space for a “Uniform claim identifier for electronic payments in chapter 13 (if you use one).” Dana C. McWay, chair of the Administrative Office of the U.S. Courts’ Unclaimed Funds Expert Panel, recommended that the quoted language be modified so that it is no longer limited to chapter 13. She explained that “[c]ase trustees make payments to creditors in chapter 7 asset cases, chapter 12 cases, chapter 13 cases, and when acting also as a disbursing agent, in Subchapter V chapter 11 cases. Allowing any creditor to provide this identifier can assist trustees in all case types to issue electronic payments in lieu of paper checks.” Suggestion 22-BK-C at 1.

The Advisory Committee agreed with the suggestion, but on the recommendation of the Forms Subcommittee, it voted to expand the amendment even further. Rather than simply removing the words “in chapter 13,” the Advisory Committee concluded that the entire phrase “for electronic payments in chapter 13” should be removed, finding no reason that the UCI could not be used for paper checks as well as electronic payments. Indeed, the Advisory Committee was informed that the UCI is currently being used for payments by check.

## **III. Information Items**

**Information Item 1. Rule 8006(g) (Request for Leave to Take a Direct Appeal to a Court of Appeals).** The proposed amendment, which was suggested by Bankruptcy Judge A. Benjamin Goldgar, would make explicit what the Advisory Committee believes was the existing meaning of the rule—that any party to an appeal may submit a request to the court of appeals to accept a direct appeal under 28 U.S.C. § 158(d)(2) within 30 days after it has been certified for direct appeal.

At the request of the reporter to the Standing Committee, the reporters for this Advisory Committee and the Appellate Rules Advisory Committee worked in tandem to create proposals

for their respective committees that would address the issue of petitions for direct appeal in a coordinated fashion. The amendment to Rule 8006(g) approved for publication by the Advisory Committee is a result of that effort. Because the Appellate Rules Advisory Committee at its fall meeting created a subcommittee to consider related amendments to FRAP 6(c) and to report back at its spring meeting, the Advisory Committee will wait to seek approval for publication of Rule 8006(g) until publication is also sought for amendments to the appellate rule.

**Information Item 2. Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor’s Principal Residence) and Related Forms.** In a series of meetings over the summer, the Consumer Subcommittee completed its review of the comments submitted in response to the 2021 publication of proposed amendments to Rule 3002.1. At the fall meeting, the Advisory Committee approved the changes recommended by the Subcommittee. It also approved the Subcommittee’s recommendation that the rule as revised be republished for comment in August 2023.

Substantial changes to the rule as published are being proposed, and the Advisory Committee concluded that that republication would be helpful. There is not such urgency to amend Rule 3002.1 that a year’s delay will be harmful. Some new provisions—such as the authorization of noncompensatory sanctions and the elimination of any restriction on when a motion to determine the status of a mortgage claim can be filed—might attract significant comment. Furthermore, the rule addresses some fairly technical issues on which further input from mortgage experts and trustees might be useful to the Advisory Committee. Because the Advisory Committee still needs to consider the implementing forms in light of the comments and proposed changes to the rule, it will wait until the June 2023 meeting to present the revised rule and forms to the Standing Committee.

**Information Item 3. Electronic filing by pro se litigants.** Professor Struve presented a report on the work of the Pro-Se-Electronic-Filing Working Group and sought feedback from the Advisory Committee. Several members expressed support for expanding e-filing access by self-represented litigants and indicated that they did not find persuasive the reasons given for not doing so (*i.e.*, litigants’ lack of competence to use CM/ECF; the burden on clerk’s offices of training litigants to use CM/ECF and of addressing filing errors; inappropriate filings; inappropriate docketing practices (wrong event or wrong case), and sharing of credentials). The clerk of court representative observed that paper filings create more work for the clerk’s office than electronic filings. Others pointed out that paper filing can be disadvantageous, depending on the area of the country, because there may be mail delays or the courthouse may be at a far distance.

Two participants expressed notes of caution. They raised concerns about inappropriate filings and the possible inclusion of personally identifying information. In response it was noted that these same problems can exist with paper filings.

Overall, the Advisory Committee was supportive of examining how to extend access to electronic filing to pro-se litigants in bankruptcy cases.